

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos. 2134 of 2014 & 2089 of 2015
and M.P. No. 1 of 2014

C.M.A.No. 2134 of 2014

M/s. Bharati AXA General Insurance Co. Ltd.,
'Metro Plaza' No.162, Anna Salai,
Chennai 600 002. .. Appellant/2nd Respondent

Vs.

1.S. Mohanraj ..1st Respondent/Petitioner

2.R. Anitha ..2nd Respondent/1st Respondent

C.M.A.No.2089 of 2015

S. Mohanraj .. Appellant/Petitioner

Vs.

1.R. Anitha

2.Bharti AXA General Insurance Company Ltd.,
No. 162, Anna Salai,
Chennai 600 002. ... Respondents /Respondents

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 13.08.2013, made in M.C.O.P.No. 1700 of 2011, on the file of the III Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

(In C.M.A.No. 2134 /2014)

For Appellant : Mr. J. Michael Visuvasam
for M/s. C. Bhuvanasundari

For Respondents: Mr. F. Terry Chellaraja (For R1)

(In C.M.A.No. 2089 /2015)

For Appellant : Mr. F. Terry Chellaraja

For Respondents : Mr. J. Michael Visuvasam
(For R2)
for M/s. C. Bhuvanasundari

C O M M O N J U D G M E N T

C.M.A. No. 2134 of 2014 is filed for enhancement of the compensation and C.M.A. No. 2089 of 2015 is filed against the award dated 13.08.2013, made in M.C.O.P.No. 1700 of 2011, on the file of the III Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment.

3.The parties are referred to as per their rank in the claim petition.

4.The claimant filed the said claim petition claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by him in the accident that took place on 26.03.2011.

5.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Lorry belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.12,08,200/- as compensation to the claimant at the first instance and recover the same from the 1st respondent.

6.Against the said award dated 13.08.2013, made in M.C.O.P.No. 1700 of 2011, the 2nd respondent-Insurance Company has filed C.M.A.No.2134 of 2014 challenging the quantum of compensation and claimant has filed C.M.A.No.2089 of 2015 for enhancement of the compensation.

7.According to the claimant, he suffered multiple injuries in the accident that occurred on 26.03.2011 due to rash and negligent driving by the driver of the vehicle belonging to the 1st respondent and insured with the 2nd respondent. Due to the injury, he took treatment as in-patient from 26.03.2011 to 04.04.2011, 29.07.2011 to 03.08.2011 at Sundaram Medical Foundation, Chennai and 22.05.2012 to 28.05.2012 at Ganga

Medical Centre, Chennai. The claimant examined P.W.2 - Doctor to prove the nature of injuries and disability suffered by him. P.W.2 - Doctor deposed that the claimant has sustained grade II compound fracture of both bones at left leg and multiple injuries all over the body and open reduction and internal fixation was done. Learned counsel for the claimant contended that the appellant was working as Software Engineer in M/s. Ivesa Solutions India Private Limited and was earning a sum of Rs.20,000/- per month. The Tribunal without assigning any reasons, reduced the monthly income of the claimant to Rs.15,000/-. The claimant is entitled to compensation for loss of income at the rate of Rs.20,000/- per month. The Tribunal has not awarded any amount for disability separately. The claimant has spent Rs.1,00,000/- towards transportation expenses. But the Tribunal has awarded only a sum of Rs.30,000/- towards the same. In any event, the amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation and allowing C.M.A. No. 2089 of 2015.

8.Per contra, learned counsel appearing for the 2nd respondent-Insurance Company contended that the claimant himself has resigned the job and he was not terminated by the Company. The claimant was working as a Program Analyst and he could have continued the work in the same position without any discomfort or defect. The claimant is not entitled to any compensation for loss of income. The claimant can get similar job, as the nature of work is only to sit and do. The Tribunal has awarded compensation by adopting the multiplier method and hence, he is not entitled for compensation separately for disability. The Tribunal considering the salary certificate and other documents filed by the claimant, awarded compensation without properly appreciating the evidence and documents on record. The Tribunal has erroneously awarded excessive amounts which are liable to be set aside and prayed for allowing the appeal in C.M.A. No. 2134 of 2014.

9.Heard the learned counsel appearing for the claimant as well as the 2nd respondent and perused the materials available on record.

10.From the materials on record, it is seen that in the accident, the claimant sustained multiple injuries and took treatment as in-patient for a period of 14 days in three different spells viz., from 26.03.2011 to 04.04.2011, 29.07.2011 to 03.08.2011 at Sundaram Medical Foundation, Chennai and 22.05.2012 to 28.05.2012 at Ganga Medical Center, Chennai. P.W.2- Doctor has certified that the claimant has suffered 65% disability. The Tribunal considering the materials on record with regard to the injuries and evidence of P.W.2-Doctor,

converted the percentage of disability sustained by the claimant to the whole body and fixed the percentage of disability as 22%. The Tribunal taking into account the nature of injuries, treatment taken by the claimant, evidence of P.W.2- Doctor and percentage of disability and due to the injuries, the claimant has lost the job, awarded compensation for loss of earning capacity by applying multiplier method. The contention of the learned counsel appearing for the 2nd respondent that the claimant himself has resigned the job which he would have continued and therefore, he is not entitled for any compensation for loss of earning power by applying multiplier method, is without merits. Considering the evidence of P.W.2-Doctor, the Tribunal applied the multiplier method to arrive at the compensation for loss of earning power, which is proper and need not be interfered with. The claimant contended that he was working as Software Engineer in M/s. Ivesia Solutions India Private Limited and was earning a sum of Rs.20,000/- per month. He has examined P.W.3-Manager of M/s. Ivesia Solutions India Private Limited, who deposed that the claimant was earning a sum of Rs.19,000/- per month and due to the injuries sustained in the accident, he could not continue the job as he was doing earlier and marked Personal Information Questionnaire, Joining Report and Offer letter as Exs. P34 to 36 respectively, to substantiate the avocation of the claimant. The Tribunal without assigning any reason, fixed the monthly income of the claimant at Rs.15,000/-, which is meagre. This Court, taking into consideration all the materials on record, fixes the monthly income of the claimant at Rs.19,000/-. The claimant was aged 26 years at the time of accident. Thus, applying multiplier '17', the amount awarded by the Tribunal towards loss of earning power is modified to Rs.8,52,720/- [Rs.19,000/- x 12 x 17 x 22%]. Apart from compensation towards loss of earning capacity, the Tribunal has also awarded compensation for loss of income for a period of six months. In view of the same, the claimant is not entitled to any compensation separately towards disability. The Tribunal rejected Ex.P28 - travel bills, on the ground that those bills were created for the purpose of the case and awarded a sum of Rs.30,000/- towards transportation charges. The same is proper. The claimant has not produced any document to prove that he requires future medical treatment. In view of the same, the amount of Rs.50,000/- awarded by the Tribunal towards future medical expenses is set aside. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning power	6,73,200/-	8,52,720/-	Enhanced
2.	Loss of income	90,000/-	90,000/-	Confirmed
3.	Transportation	30,000/-	30,000/-	Confirmed
4.	Extra nourishment	15,000/-	15,000/-	Confirmed
5.	Damages to clothes	5,000/-	5,000/-	Confirmed
6.	Medical expenses	2,50,000/-	2,50,000/-	Confirmed
7.	Future medical expenses	50,000/-	-	Set aside
8.	Attendant charges	25,000/-	25,000/-	Confirmed
9.	Loss of amenities	20,000/-	20,000/-	Confirmed
10.	Pain and sufferings	50,000/-	50,000/-	Confirmed
	Total	12,08,200/-	13,37,720/-	Enhanced by Rs.1,29,520/-

11. In the result, both the appeals are partly allowed and the amount awarded by the Tribunal at Rs.12,08,200/- is enhanced to Rs.13,37,720/- along with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.1700 of 2011 at the first instance and recover the same from the 1st respondent, owner of the vehicle. On such deposit, the claimant is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any, already withdrawn. It is made clear that the claimant is not entitled for any interest for the delay period on the amount of Rs.1,29,520/-, enhanced by this Court, as per the order of this Court dated 07.09.2015, made in

M.P. No. 2 of 2015 in C.M.A. SR. No. 86049 of 2014.
Consequently, connected Civil Miscellaneous Petition is closed.
No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gsa
To

1.The III Judge,
Court of Small Causes,
(Motor Accident Claims Tribunal),
Chennai.

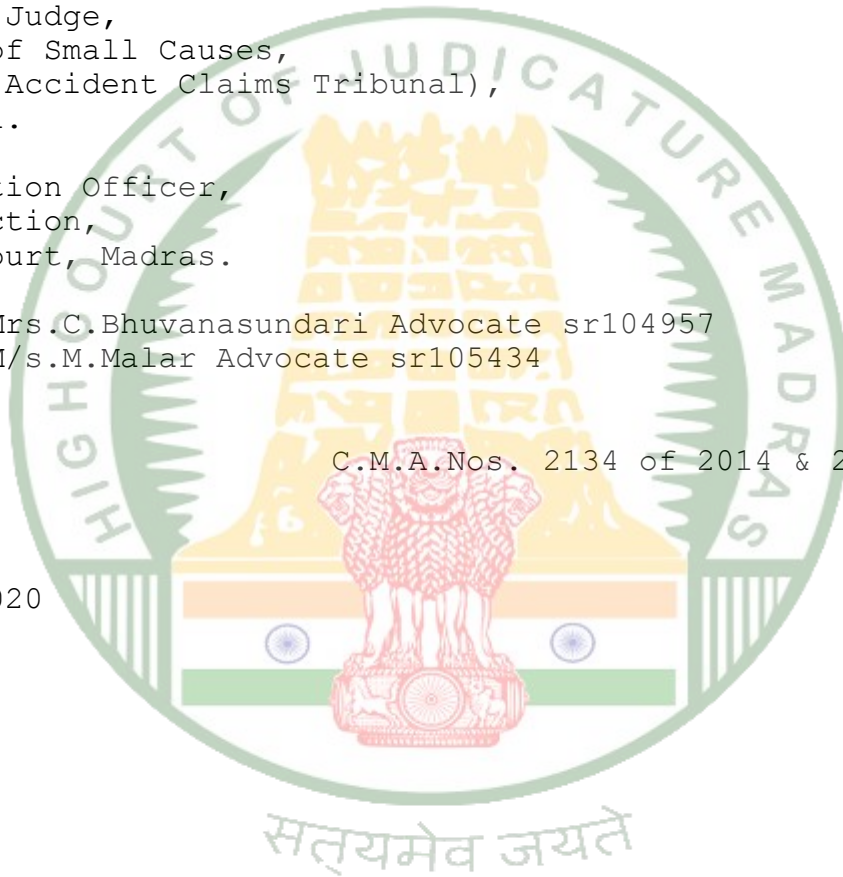
2.The Section Officer,
V.R Section,
High Court, Madras.

+1 cc to Mrs.C.Bhuvanasundari Advocate sr104957

+1 cc to M/s.M.Malar Advocate sr105434

C.M.A.Nos. 2134 of 2014 & 2089 of 2015

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