

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2362 of 2017

T.Kasthuri

...Appellant /Petitioner

Vs.

1.S.M.A.Khaleel Rahaman
(R1 Remained exparte before the Tribunal,
hence his presence may be and hereby dispensed with)

2.United India Insurance Company Ltd.,
Motor Third Party Claims HUB
Silingi Building, 4th floor
No.134, Greams Road
Chennai-600 006. Respondents/Respondents

Appeal under Section 173 of the Motor Vehicles Act
against the judgment and decree dated 06.07.2016 made in
MACTOP No.1001 of 2014 on the file of the Motor Accidents
Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Ms.M.Malar

For Respondents : Mr.D.Baskaran for R2

R1 : Exparte

JUDGMENT

This appeal is preferred by the appellant/claimant
against the award of a sum of Rs.1,37,000/- towards
compensation due to the injuries sustained by her in a
motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 22.10.2013 at about 12.30
p.m., the appellant was travelling in the Scooty Pep two-
wheeler bearing Reg. No.TN-21-K-3621, as pillion rider in
the G.S.T.Road. When the two-wheeler was nearing
Keezhakaranai Bus Stop, the TATA Indica car bearing
Reg.No.TN-10-Y-8997 belonging to the first respondent and
insured with the second respondent Insurance Company,
driven by its driver in a rash and negligent manner came at
high speed and dashed against the Scooty Pep two-wheeler in
which the appellant was travelling. Due to the said impact,

the appellant sustained grievous injuries. The appellant / claimant filed a claim petition before the Tribunal, claiming a sum of Rs.8,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.1,37,000/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant-claimant has filed the present Civil Miscellaneous Appeal for enhancement of compensation.

4.The learned counsel for the appellant /claimant has submitted that the Tribunal has erred in reducing the percentage of disability fixed by the Doctor at 35% to 30%. She further submitted that the amounts awarded by the Tribunal towards other heads are meagre. Stating so, the learned counsel prayed for enhancement of compensation.

5.The learned counsel for the second respondent Insurance Company has submitted that the Tribunal has rightly considered the materials and evidence available on record and has awarded the just, fair and reasonable compensation and hence the same does not require any interference in the hands of this Court.

6.Heard the learned counsel for the appellant and the learned counsel for the second respondent Insurance Company and perused the materials available on record carefully and meticulously.

7.The details of compensation awarded by the Tribunal are as follows:

HEADS	AMOUNT (Rs.)
Loss of income	13,000/-
Transport to hospital	3,000/-
Extra nourishment	10,000/-
Damages to clothes	1,000/-
Pain and suffering	25,000/-
Damages for mental and physical shock	10,000/-
25% disability	75,000/-
TOTAL...	1,37,000/-

8.P.W.2-Doctor deposed before the Tribunal that the injured sustained 35% disability and he issued Ex.P8-Disability Certificate to that effect. But the Tribunal has reduced the same to 30%. It is seen that the appellant sustained fracture of left clavicle and a head injury in the left parietal area and experienced pain because of

deformity of left shoulder. It is also seen there was malunion of clavicle bones from outside which hindered the smooth function of her shoulder. In these circumstances, this Court is of the considered opinion that the percentage of disability at 35% fixed by P.W.2-Doctor appears to be correct. If that is adopted, the amount towards disability works out to Rs.90,000/-. Accordingly, the amount awarded by the Tribunal towards disability stands modified to Rs.90,000/-. Further, in view of the injuries sustained, the appellant / claimant had lost her comfort to a certain extent. Considering the said aspect, it would be appropriate to award a sum of Rs.10,000/- towards loss of amenities. The amounts awarded by the Tribunal towards other heads are confirmed.

9.The details of the modified compensation are as under:

HEADS	AMOUNT (Rs.)
Loss of income	13,000/-
Transport to hospital	3,000/-
Extra nourishment	10,000/-
Damages to clothes	1,000/-
Pain and suffering	25,000/-
Damages for mental and physical shock	10,000/-
25% disability	90,000/-
Loss of amenities	10,000/-
TOTAL...	1,62,000/-

Thus, the appellant / claimant is entitled to the modified compensation of Rs.1,62,000/- with interest at the rate of 7.5% per annum from the date of petition.

10.The Civil Miscellaneous Appeal is allowed to the extent indicated above. No costs.

11.The second respondent Insurance Company is directed to deposit the modified compensation as ordered above, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant / claimant shall withdraw the same, on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KM

To

1.The III Court of Small Causes,
Motor Accidents Claims Tribunal, Chennai.

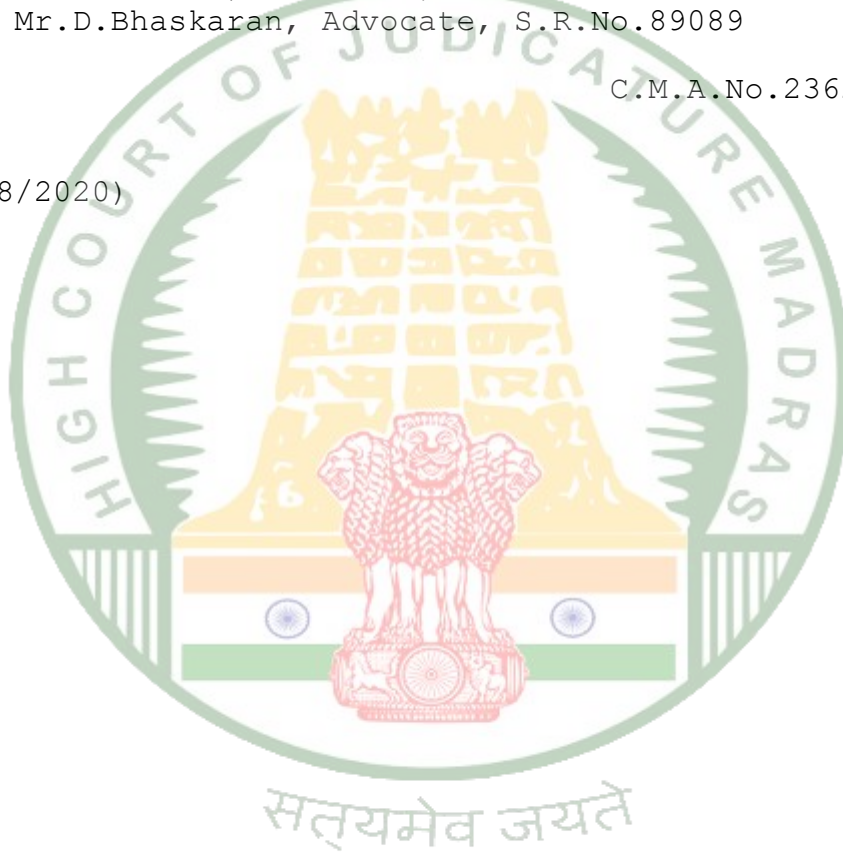
2.The Section Officer,
VR Section,
Madras High Court.

+lcc to Mrs.M.Malar, Advocate, S.R.No.89381

+lcc to Mr.D.Bhaskaran, Advocate, S.R.No.89089

C.M.A.No.2362 of 2017

RSI (CO)
CB(27/08/2020)



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