

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NOS.161 AND 637 OF 2015

AND

M.P.NO.1 OF 2015

C.M.A.No.161 of 2015

M/s.New India Assurance Co. Ltd.,
No.45, Moore Street,
Chennai - 600 001.

.. Appellant/2nd Respondent

Vs.

1.Thiru.V.Senthilkumar

.. 1st Respondent/Claimant

2.Thiru.V.Chellapandi

.. 2nd Respondent/1st Respondent

C.M.A.No.637 of 2015

V.Senthilkumar

.. Appellant/Claimants

Vs.

1.P.Chellapandi

2.The New India Assurance Co. Ltd.,
No.45, Moore Street,
Chennai - 600 001.

.. Respondents 1 & 2/
Respondents 1 & 2

Prayer:

These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.06.2014 made in M.C.O.P.No.2286 of 2013 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

In C.M.A.No.161 of 2015

For Appellant : Mr.J.Chandran
For R1 : Ms.A.Subadra for
Mr.V.Velu
For R2 : No appearance

In C.M.A.No.637 of 2015

For Appellant : Ms.A.Subadra for
Mr.V.Velu
For R2 : Mr.J.Chandran
For R1 : No appearance

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

C.M.A.No.161 of 2015 is filed by the Insurance Company against the award dated 26.06.2014 made in M.C.O.P.No.2286 of 2013 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

C.M.A.No.637 of 2015 is filed by the claimant for enhancement of compensation granted by the Tribunal in the award dated 26.06.2014 made in M.C.O.P.No.2286 of 2013 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to by their respective ranks in the claim petition for the sake of convenience.

3.The claimant filed M.C.O.P.No.2286 of 2013 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 26.02.2013.

4.According to the claimant, on the date of accident i.e. on 26.02.2013 at 06.00 P.M., while one Janakiraman was riding in his motorcycle along with the claimant as pillion rider at

Subbaiya Swamy Madam, the 1st respondent rode his Hero Honda Motorcycle in a rash and negligent manner, hit the motorcycle of the claimant and caused the accident. In the accident, the claimant sustained grievous injuries and therefore, he filed the claim petition claiming compensation against the respondents.

5.The 1st respondent/owner cum rider of the offending motorcycle filed counter statement and denied the averments made in the claim petition. He stated that while the rider of the motorcycle was proceeding towards petrol bunk after passing the bus stand and the 1st respondent who was proceeding towards Chennai from the opposite direction, the motorcycle of the claimant took a turn to the petrol bunk, suddenly the motorcycle got struck, the 1st respondent stopped his vehicle after seeing this and thus the accident occurred. Therefore, the 1st respondent was not responsible for the accident. The accident has occurred solely due to negligence on the part of the rider of the motorcycle.

6.The 2nd respondent/Insurance Company filed counter statement denying the averments made in the claim petition and stated that the accident has occurred due to rash and negligent riding by the rider of the motorcycle in which the claimant was travelling as a pillion rider. The insurer of the motorcycle was not made as a party to the claim petition and hence, the claim petition is bad for non-joinder of necessary party. The 2nd respondent/Insurance Company has also denied the age, avocation and income of the claimant. In any event, the compensation claimed by the claimant is excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the claimant examined himself as P.W.1, one Janakiraman, who is the rider of the motorcycle was examined as P.W.2, one C.Umapathy, employer of the claimant was examined as P.W.3, Dr.J.R.R.Thiagarajan, was examined as P.W.4 and marked twenty four documents as Ex.P1 to P24. The respondents did not let in any oral and documentary evidence.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the 1st respondent, owner cum rider of the motorcycle and directed the 2nd respondent/Insurance Company being insurer of the motorcycle to pay a sum of Rs.9,55,200/- as compensation to the claimant.

9.Against the said award dated 26.06.2014 made in M.C.O.P.No.2286 of 2013, the 2nd respondent/Insurance Company has come out with C.M.A.No.161 of 2015 challenging the liability as well as quantum of compensation. Not being satisfied with the amounts granted by the Tribunal, the claimant has come out with

C.M.A.No.637 of 2015 seeking enhancement of compensation.

10.The learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal ought to have held that the accident occurred due to rash and negligent act of the rider of the motorcycle, in which the claimant was travelling as a pillion rider. The Tribunal erred in fixing a sum of Rs.8,500/- as monthly income of the claimant. In the absence of any registration certificate from Department of Industries, Central Excise and Customs, Sales Tax Certificate, Municipality Work Permit, Pay register etc, the Tribunal ought to have rejected the evidence of PW3 / Umapathy, Senior Special Officer of Prince Engineering Limited and pay slip marked as Ex.P14. The Tribunal failed to consider the evidence of PW4 / Dr.J.R.R.Thiagarajan, who deposed that the claimant was treated with plaster of paris. He did not mention about steel plate implantation. Further PW4 / Dr.J.R.R.Thiagarajan has not treated the claimant and the disability assessed by PW4 / Dr.J.R.R.Thiagarajan as 90% is on the higher side. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal and dismissal of the C.M.A.No.637 of 2015 filed by the claimant.

11. The learned counsel appearing for the claimant contended that the claimant was working as Assembler in Prince Engineering Limited, Industrial Estate, Maraimalai Nagar and was earning a sum of Rs.8757.82 per month. He has examined PW3 / Umapathy, Senior Special Officer of Prince Engineering Limited and marked Ex.P18 / Identity Card and Ex.P.6 / pay slip to prove the same. The Tribunal, without considering the same, fixed only a sum of Rs.8,500/- as monthly income of the claimant. In the accident, the claimant has sustained fracture shaft of left femur, left clavicle and multiple injuries all over his body. The claimant has taken treatment as in-patient at Chengalpet Medical College Hospital from 26.02.2013 to 13.03.2013 and underwent surgery on 05.03.2013. Then he has taken treatment in the same hospital as in-patient from 16.04.2013 to 27.04.2013. Thereafter he has taken treatment as out-patient till 29.11.2013 and suffered shortening of left leg by 1½ inches. PW4 / Dr.J.R.R.Thiagarajan has assessed the disability of the claimant as 90%, whereas the Tribunal has reduced the disability to 60% and fixed 20% disability for whole body. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation and dismissal of the C.M.A.No.161 of 2015 filed by the 2nd respondent / Insurance Company.

12.Though notice has been served on the 1st respondent and his name has been printed in the cause list, there is no representation on behalf of him either in person or through

counsel.

13. Heard the learned counsel appearing for the claimant as well as the 2nd respondent/Insurance Company and perused the entire materials available on record.

14. It is the contention of the claimant that the accident occurred due to rash and negligent riding by the 1st respondent, the rider of the offending motorcycle. The claimant examined himself as PW1 and marked Ex.P1/FIR which has been registered against the 1st respondent and deposed to that effect. On the other hand, it is the contention of the 2nd respondent/Insurance Company that the accident occurred due to rash and negligent riding by the rider of the motorcycle, in which the claimant was travelling as pillion rider. The 2nd respondent/Insurance Company has not examined the 1st respondent, the rider of the offending motorcycle or any eye witness to prove that the accident did not occur due to rash and negligent riding by the 1st respondent. Though the 2nd respondent/Insurance Company contended that the 1st respondent did not possess a valid driving license at the time of the accident, they have not let in any evidence to prove the same. The Tribunal considering the oral and documentary evidence let in by the claimant, held that the accident occurred only due to rash and negligent riding by the 1st respondent, rider of the offending motorcycle and the 2nd respondent/Insurance Company is liable to pay compensation to the claimant. There is no error in the said finding of the Tribunal warranting interference by this Court.

15. As far as quantum of compensation is concerned, the claimant has contended that he was aged 25 years at the time of the accident and was working as Assembler in Prince Engineering Limited, Industrial Estate, Maraimalai Nagar and was earning a sum of Rs.8,500/- per month. He has examined PW3/Umapathy, Senior Special Officer, Prince Engineering Limited and marked Ex.P18/Identity card of P.W.3, Ex.P19/education and employment details of P.W.1 and Ex.P.6/salary slip of PW1 to prove the same. As per Ex.P6 and Ex.P19, the gross income of the claimant is Rs.8,757.82. The Tribunal considering the same, has fixed a sum of Rs.8,500/- as monthly income of the claimant and awarded a sum of Rs.1,02,000/- (Rs.8,500/- x 12) towards loss of income for a period of twelve months. In addition to that, the Tribunal has awarded a sum of Rs.3,67,200/- (Rs.8,500/- x 12 x 18 x 20%) towards loss of earning capacity by adopting multiplier method. P.W.4/Dr.J.R.R.Thiagarajan in his evidence has deposed that the claimant has suffered fracture shaft of left femur, left clavicle and underwent two surgeries and assessed the disability of the claimant as 90%. The Tribunal holding that the disability assessed by P.W.4/Dr.J.R.R.Thiagarajan is on the higher side, reduced the disability of the claimant as 60% and awarded a sum

of Rs.1,20,000/- towards disability at the rate of Rs.2,000/- per percentage of disability. In view of the above, a sum of Rs.1,02,000/- awarded by the Tribunal towards loss of income for twelve months is excessive and the same is liable to be set aside and is hereby set aside. The Tribunal has awarded a sum of Rs.50,000/- towards pain & suffering, which is not meagre. Considering the nature of injuries sustained by the claimant, the Tribunal has awarded a sum of Rs.40,000/- towards mental agony, which is not correct and the same is liable to be set aside and is hereby set aside. The claimant has not marked any documents to show that due to the injuries sustained in the accident, his marital prospect was affected and therefore, a sum of Rs.1,00,000/- awarded by the Tribunal towards loss of proper marital alliance is not correct and the same is liable to be set aside and is hereby set aside. Further, the Tribunal has awarded a sum of Rs.50,000/- towards loss of amenities, which is excessive and hence the same is hereby reduced to Rs.25,000/-. The amounts awarded by the Tribunal under other heads are just and reasonable and the same are hereby 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 income for 12 months	1,02,000	-	Set aside
2.	Transportation	15,000	15,000	Confirmed
3.	Extra nourishment	15,000	15,000	Confirmed
4.	Damages to clothes	1,000	1,000	Confirmed
5.	Medical expenses	25,000	25,000	Confirmed
6.	Future medical expenses	50,000	50,000	Confirmed
7.	Attendant charges	20,000	20,000	Confirmed
8.	Mental agony	40,000	-	Set aside
9.	Loss of amenities of life	50,000	25,000	Reduced

10.	Loss of proper marital alliance	1,00,000	-	Set aside
11.	Pain and suffering	50,000	50,000	Confirmed
12.	Disability	1,20,000	1,20,000	Confirmed
13.	Loss of earning power	3,67,200	3,67,200	Confirmed
	Total	Rs.9,55,200/-	Rs.6,88,200/-	Reduced by Rs.2,67,000/-

16. In the result, C.M.A.No.637 of 2015 filed by the claimant is dismissed and C.M.A.No.161 of 2015 filed by the 2nd respondent/Insurance Company is partly allowed and the compensation of Rs.9,55,200/- awarded by the Tribunal is hereby reduced to Rs.6,88,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the modified 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 order. On such deposit, the claimant is permitted to withdraw the award amount along with accrued interest and costs, after adjusting the amount if any, already withdrawn. The 2nd respondent/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.2286 of 2013, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mtl

To

1. The Motor Accident Claims Tribunal,
II Judge, Court of Small Causes
Chennai.

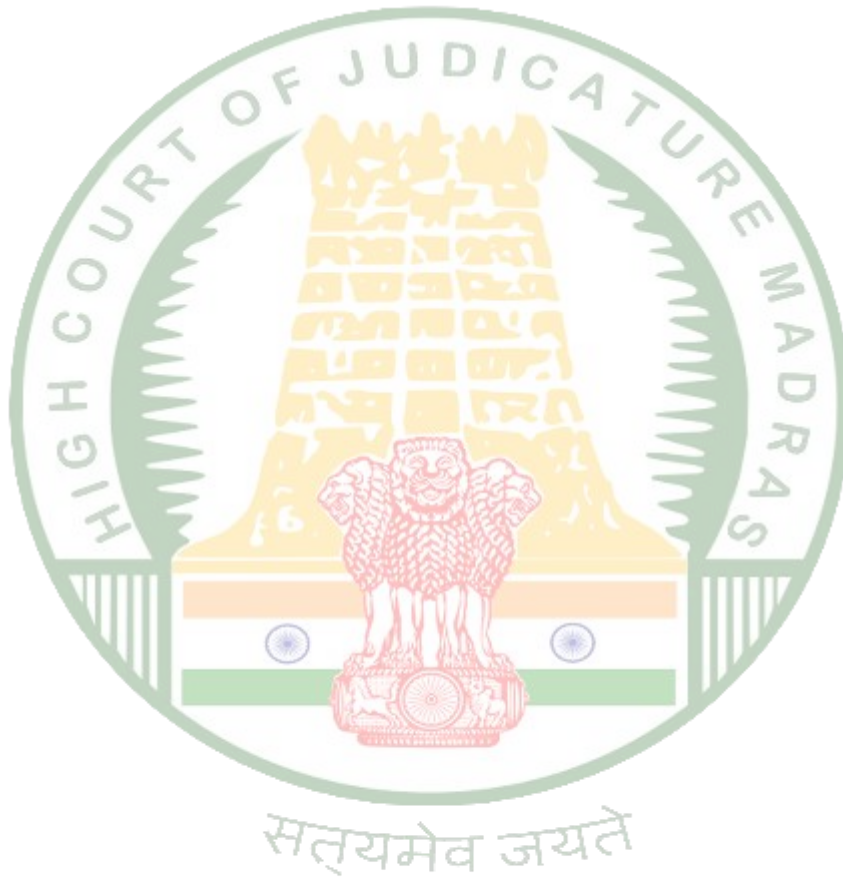
2. The Section Officer
V.R.Section, High Court,
Chennai.

+1cc to Mr.V.Velu, Advocate, S.R.No.13741

+1cc to Mr.J.Chandran, Advocate, S.R.No.13844

C.M.A.Nos.161 and 637 of 2015

NR (CO)
CS/04/05/2021



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