

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.2055 of 2012
and 2241 of 2014
and M.P.No.01 of 2014

C.M.A.No.2055 of 2012

A.Govindan Appellant

Vs.

1.T.Rajagopal
2.The New India Assurance Company Limited,
No.80, Arcot Road,
Porur,
Chennai-600 116. Respondents

(R1 was set exparte in the tribunal)

C.M.A.No.2241 of 2014

M/s.New India Assurance Company Limited,
No.80, Arcot Road,
Porur,
Chennai-600 116 ... Appellant

Vs.

1.A.Govindan
2.T.Rajagopal ... Respondents

R2 was set exparte in the tribunal)

Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.02.2012 made in M.C.O.P.No.3620 of 2009 on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai.

In C.M.A.No.2055 of 2012

For Appellant : Mr.C.Munusamy
for M/s.C & K Law Firm

For R1 : Ex-parte
For R2 : Mr.E.Rajadurai for
Mr.M.B.Gopalan

In C.M.A.No.2241 of 2014

For Appellant : Mr.E.Rajadurai
For R1 : Mr.C.Munusamy for
M/s. C&K law firm
For R2 : Ex-parte

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

C.M.A.No.2241 of 2014 is filed by the Insurance Company against the award dated 24.02.2012 made in M.C.O.P.No.3620 of 2009 on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai.

C.M.A.No.2055 of 2012 is filed by the claimant for enhancement of compensation granted by the Tribunal in the award dated 24.02.2012 made in M.C.O.P.No.3620 of 2009 on the file of the Motor Accidents Claims Tribunal, IV 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.3620 of 2009 on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by her in the accident that took place on 13.08.2009.

4. The case of the claimant is that on 13.08.2009 at about 09.00 hours, while the claimant was riding the motor cycle bearing Regn.No.TN-20-L-5961 along the Manapakkam Main road from Manapakkam towards Ramapuram, opposite to Manapakkam Indira Nagar Sriram Garden, at that time, a Tata 407 Van bearing

Regn.No.TN-37-L-3794 came from the opposite direction in a rash and negligent manner and dashed against the motor cycle, thereby causing grievous injuries to the claimant.

5. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the auto belonging to the 1st respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.2,74,000/- as compensation. Against the said award dated 24.02.2012 made in M.C.O.P.No.3620 of 2009, the second respondent/Insurance Company has come out with C.M.A.No.2241 of 2014 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.2055 of 2012 seeking enhancement of compensation.

6.The learned counsel appearing for the Insurance Company contended that the Tribunal has erred in granting inordinately high compensation which is not in consonance with the facts and circumstances of the case. The Tribunal failed to appreciate that the facial injuries sustained by the claimant and treatment for 20 days did not justify disability of 65% which was assessed, nor the various heads of award that have been excessively granted. The nature of injuries and the permanent disability alleged were highly exaggerated. The award of Rs.1,20,000/- for disability, Rs.50,000/- for pain and suffering, Rs.50,000/- for loss of amenities and Rs.30,000/- for loss of income were all excessive and not warranted by the nature of injuries or the period of treatment and prayed for setting aside the award of the Tribunal.

7.The learned counsel appearing for the claimant contended that the claimant met with motor accident and suffered fracture of left frontal bone, fracture over skull and severe head injuries besides other severe injuries. He took inpatient treatment in the Government General Hospital for months together and underwent surgery as evidenced by Ex.P1 to P.3 and Ex.P6 to P.8. Even now she is taking treatment as outpatient. Even after prolonged treatment, the appellant/injured is not in a position to do his normal avocation and day-to-day affairs owing to the physical disabilities. The Tribunal did not award any amount towards future medical treatment while it is manifestly proved that the injured/appellant has to take continuous follow up treatment. The learned counsel contended that the amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

8.Heard the learned counsel appearing for the claimant as well as the Insurance Company and perused the materials available on record. The owner of the vehicle/1st respondent

remained exparte before the Tribunal and notice to the 1st respondent is dispensed with.

9. From the materials available on record, it is seen that the claimant in the claim petition has stated that on 13.08.2009 at about 09.00 hours, while the claimant was riding the motor cycle bearing Regn.No.TN-20-L-5961 along the Manapakkam Main road from Manapakkam towards Ramapuram, opposite to Manapakkam Indira Nagar Sriiram Garden, a Tata 407 Van bearing Regn.No.TN-37-L-3794 came from the opposite direction in a rash and negligent manner and dashed against the motor cycle, thereby causing grievous injuries to the claimant. In the claim petition, he has stated that he was a Mason and was earning a sum of Rs.15,000/- per month. No documents have produced to prove the same hence, the Tribunal has fixed a sum of Rs.5,000/- as notional income and awarded a sum of Rs.30,000/- for 6 months towards "Loss of income". The Tribunal has awarded a sum of Rs.3,000/-, towards "Transportation" which is very meagre and the same is hereby enhanced to Rs.10,000/-. The Tribunal has awarded a sum of Rs.5,000/- towards "Extra Nourishment" the same is hereby enhanced to Rs.7,000/-. The Tribunal has awarded a sum of Rs.1,000/- towards "damages to clothes", which is just and reasonable and the same is hereby confirmed. The Tribunal has awarded a sum of Rs.15,000/- towards "attender charges" the same is also hereby confirmed. The Tribunal has awarded a sum of Rs.50,000/- each towards "loss of amenities" and "pain and sufferings" which is just and reasonable. Hence, this Court is not inclined to interfere with the same. The Tribunal has awarded a sum of Rs.1,20,000/- towards "Disability" at the rate of Rs.2,000/- per percentage. This Court is inclined to enhance the same to Rs.1,50,000/- at the rate of Rs.2,500 per percentage. The Tribunal did not award any amount towards medical expenses. After considering the medical bills and receipts, this Court awards a sum of Rs.10,000/-. 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	30,000/-	30,000/-	confirmed
2.	Transportation	3,000/-	10,000/-	enhanced
3.	Extra nourishment	5,000/-	7,000/-	enhanced
4.	Damage to Clothes	1,000/-	1,000/-	confirmed

5.	Medical Expenses	-----	10,000/-	granted
6.	Attender charges	15,000/-	15,000/-	confirmed
7.	Loss of amenities	50,000/-	50,000/-	confirmed
8.	Pain and sufferings	50,000/-	50,000/-	confirmed
9.	Permanent disability	1,20,000/-	1,50,000/-	enhanced
	Total	2,74,000/-	3,23,000	Enhanced by Rs.49,000/-

10. In the result, C.M.A.No.2241 of 2014 filed by the 2nd respondent/Insurance Company is dismissed and a portion of the award passed by the Tribunal is modified directing the 2nd respondent/Insurance Company to pay enhanced compensation to the claimant together with interest of 7.5% per annum from the date of petition till the date of deposit. C.M.A.No.2055 of 2012 filed by the claimant is partly allowed and the compensation of Rs.2,74,000/- awarded by the Tribunal is hereby enhanced to Rs.3,23,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. On such deposit, the claimant is permitted to withdraw the entire award amount along with interest and costs, after adjusting the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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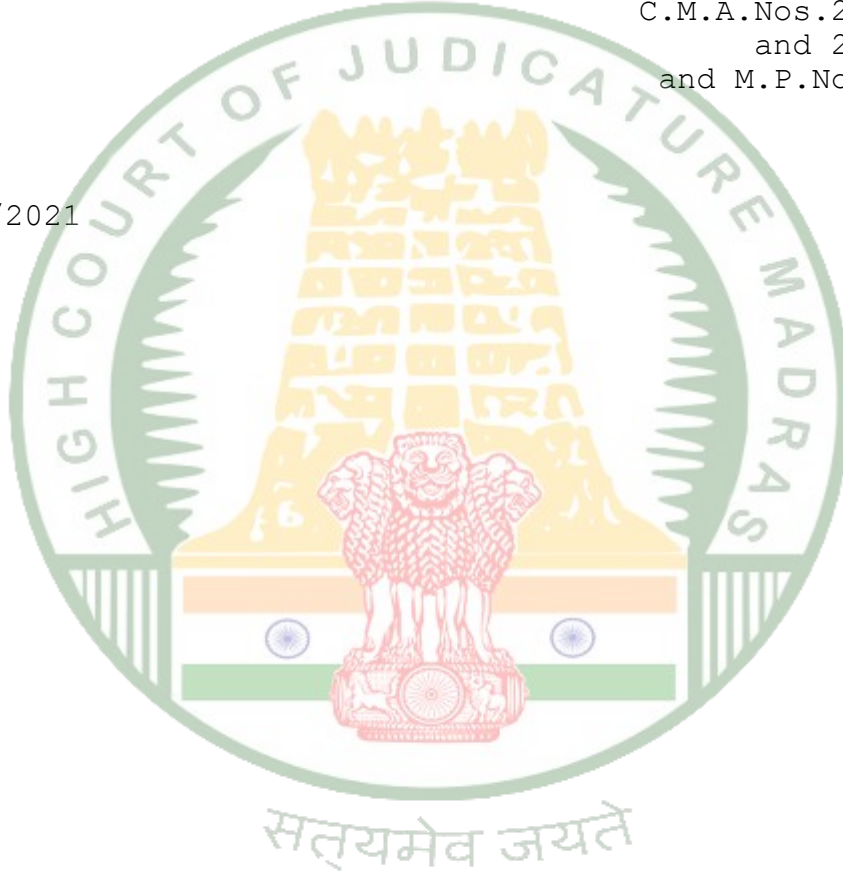
1. The IV Judge,
Court of Small Causes,
The Motor Accident Claims Tribunal,
Chennai.

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

+1cc to Mr.C.Munusamy, Advocate Sr.13671
+2c to Mr.M.B.Gopalan, Advocate Sr.14886, 14887

C.M.A.Nos.2055 of 2012
and 2241 of 2014
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