

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.1952 OF 2013

M.Karthik

... Appellant/Petitioner

Vs

1. D.Ganesan

2. The New India Assurance Co., Ltd.,  
Macmillan House, 2nd Floor, B.Block,  
No.21, Pattulas Road,  
Chennai - 600 002

... Respondents/Respondents

(R1 was set exparte in the Trial Court)

Prayer:

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree made in M.C.O.P.No.1685 of 2010 on the file of Motor Accident Claims Tribunal (XVIII Additional Judge) Chennai dated 30.08.2012.

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

For Respondents: Mr.R.Neethiperumal for R2  
R1 - Exparte

#### J U D G M E N T

The appellant herein, who is the claimant has preferred this Civil Miscellaneous Appeal against the Judgment and Decree made in M.C.O.P.No.1685 of 2010 on the file of Motor Accidents Claims Tribunal (learned XVIII Additional Judge) at Chennai dated 30.08.2012.

2. The case of the appellant/claimant is that on 22.03.2010 at 16.00 hours, when the appellant was riding the motor cycle bearing Regn.No.TN-22-BW-4042 along the Mambakkam Main Road from Medavakkam to mambakkam direction, near gold winner oil company, parson complex, with due care and diligence, at that time, a

ambassador car bearing Regn.No.TN-09-L-8120 came from opposite direction in a rash and negligent manner without following traffic rules and regulations and dashed against the motor cycle. Due to which, the appellant and rider of the motor cycle sustained grievous injuries. The accident occurred due to reckless driving of the driver of the car and he is responsible for the accident. Therefore, the 1st respondent, as owner and 2nd respondent, as insurer of the offending vehicle are jointly, severally liable to pay compensation to the appellant with interest. At the time of accident, the appellant was working as Carpenter in Target Homes India Pvt., Ltd., and earning a sum of Rs.9,000/- per month.

3. In contrary, the 2nd respondent / Insurance Company has filed a counter denying all the averments of the appellant. It is the appellant, who had drove the vehicle in a rash and negligent manner without following any Rules. Hence the accident had occurred only due to the negligent driving of the motor vehicle, therefore, 2nd respondent / Insurance company is not liable to compensate the appellant, thereby seeks to dismiss the claim petition.

4. The Tribunal on considering all the averments, counter averments, the materials available on record and on examining the witnesses had awarded a sum of Rs.1,72,000/- to the appellant, which is as follows:- Being not satisfied with the said award, the appellant is before this Court.

| Sl.No | Name of Heads                         | Amount awarded by Tribunal |
|-------|---------------------------------------|----------------------------|
| 1     | Transport to Hospital                 | Rs.7,000/-                 |
| 2     | Extra Nourishment                     | Rs.5,000/-                 |
| 3     | Medical Expenses                      | Rs.90,000/-                |
| 4     | Pain and Sufferings                   | Rs.10,000/-                |
| 5     | Compensation for Permanent Disability | Rs.30,000/-                |
| 6     | Loss of earning power                 | Rs.27,000/-                |
| TOTAL |                                       | Rs.1,69,000/-              |

5. The learned counsel for the appellant submits that the Tribunal erred in deciding the quantum of compensation payable to the appellant, though it has rightly found that the negligence was on the part of the 1st respondent's vehicle. Further, the appellant suffered multiple fractures over right femur and dislocation over right hip besides other severe injuries and underwent surgeries as evidenced by Exs.P.1 to P.5 and he is taking treatment as outpatient. Even after the

prolonged treatment, the appellant is not in a position to do his normal avocation and day-to-day affairs, but the Tribunal erred in not awarding any amount towards Future medical expenses and awarded only a meager amount towards extra nourishment.

6. The learned counsel for the appellant contended that when the Doctor has assessed 40% disability, the Tribunal had awarded only a sum of Rs.30,000/- towards permanent disability and hence the same needs interference, he pleaded.

7. The learned counsel for the 2nd respondent / Insurance Company reiterates the averments in the counter filed before the Tribunal and further submits that the appellant has not suffered any fracture of bones causing any functional disability and the alleged injuries are only simple in nature and hence pleaded to dismiss the appeal filed by the appellant.

8. Heard the learned counsel for the appellant and the 2nd respondent and perused the materials placed on record.

9. Before the Tribunal, the appellant was examined himself as P.W.1 and Dr.K.J.Mathizhagan was examined as P.W.2 and Exs.P.1 to P.11 were marked to prove his case and no one was examined on behalf of the respondent and no documents were marked.

10. From the perusal of the order passed by the court below, it is seen that the court below by taking note of the fact that the accident had happened due to the rash and negligent driving of the 1st respondent's vehicle, has rightly fixed the liability on the 2nd respondent / insurance company. Further, taking into consideration of Ex.P.6, viz., Medical Bills, the Tribunal has rightly awarded a sum of Rs.90,000/- towards Medical Expenses. That apart, towards loss of earning power, the Tribunal has rightly awarded a sum of Rs.27,000/- Therefore, since the said amounts awarded under the above mentioned heads are just and reasonable, this Court hereby confirms the same.

11. With regard to the amount awarded under transport to hospital, a sum of Rs.7,000/- was awarded and in respect of extra nourishment, a sum of Rs.5,000/- was awarded, as the same are meager, a sum of Rs.10,000/- each is hereby awarded under the said heads. Considering the injuries suffered by the appellant, viz., multiple injuries all over the body, this Court feels that a sum of Rs.10,000/- awarded for Pain and Sufferings needs to be enhanced, hence the same is hereby enhanced to Rs.20,000/-. Moreover, the Tribunal has not awarded any amount towards attender charges, definitely for a person, who suffered multiple injuries all over the body, another person would have accompanied him to carryout his day to day activities, hence a

sum of Rs.10,000/- is hereby awarded towards Attendant charges.

12. With regard to the permanent disability sustained by the appellant, the tribunal has awarded only a sum of Rs.30,000/-, this Court taking into consideration of the evidence of P.W.2, Dr.K.J.Mathizhagan, who had assessed the disability of the appellant as 40%, as per Ex.P.11, hereby is inclined to award Rs.3,000/- per percentage, accordingly, a sum of Rs.1,20,000/- is hereby awarded towards permanent disability. Accordingly, the modified compensation awarded to the appellant by this Court is tabulated as under:-

| Sl. No | Name of Heads                         | Amount awarded by Tribunal | Enhanced / Confirmed | Amount awarded by this Court |
|--------|---------------------------------------|----------------------------|----------------------|------------------------------|
| 1      | Transport to Hospital                 | Rs.7,000/-                 | Enhanced             | Rs.10,000/-                  |
| 2      | Extra Nourishment                     | Rs.5,000/-                 | Enhanced             | Rs.10,000/-                  |
| 3      | Medical Expenses                      | Rs.90,000/-                | Confirmed            | Rs.90,000/-                  |
| 4      | Pain and Sufferings                   | Rs.10,000/-                | Enhanced             | Rs.20,000/-                  |
| 5      | Compensation for Permanent Disability | Rs.30,000/-                | Enhanced             | Rs.1,20,000/-                |
| 6      | Loss of earning power                 | Rs.27,000/-                | Confirmed            | Rs.27,000/-                  |
| 7      | Attendant Charges                     | -                          | Awarded              | Rs.10,000/-                  |
| TOTAL  |                                       | Rs.1,69,000/-              |                      | Rs.2,87,000/-                |

13. In total, a sum of Rs.2,87,000/- is awarded to the appellant with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation. The respondents jointly or severally directed to deposit the enhanced award amount to the Credit of M.C.O.P.No.1685 of 2010 on the file of the Motor Accident Claims Tribunal (XVIII Additional Judge) Chennai, along with interest and costs as determined by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant is permitted to withdraw the amount, less the amount if any, already withdrawn, by filing an appropriate application before the Court concerned.

With the above said observations and directions, the present Civil Miscellaneous Appeal is allowed. No costs.

Sd/-  
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Motor Accident Claims Tribunal  
(XVIII Additional Judge) Chennai

Copy To

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

+1cc to Mr.R.Neethiperumal, Advocate, S.R.No.12349  
+1cc to Mr.C.Munusamy, Advocate, S.R.No.12301

C.M.A.No.1952 of 2013

PPA(CO)  
CS/06/05/2021