

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2523 of 2013

N.Purusothaman

... Appellant/Petitioner

/versus/

1.R.Subramani

2.Cholamandalam General Insurance Co.Ltd.,  
Spurtank Road, Chennai-34

... Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, praying to allow this appeal and be pleased to allow the Claim in M.C.O.P.No.438 of 2009 on the file of Motor Accident Claims Tribunal, Additional District Judge, (1<sup>st</sup> Fast Track Court) Poonamallee, as prayed for with interest and cost.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents: Mr.E.Rajadurai  
for Mr.M.B.Raghavan for R2

R1 - Exparte

J U D G M E N T

As against the quantum of compensation fixed by the Tribunal at Rs.1,21,500/-, this appeal has been preferred by the claimant / appellant.

2.It is the case of the claimant before the Tribunal is that on 04.02.2009 at about 11.00 p.m. when the claimant was riding a motor cycle bearing Regn.TN31P7859 on the Velachery to Tambaram Road near Kaivel Petrol bunk at that time the 1<sup>st</sup> respondent's JCB bearing Regn.No.TN22AX9610 driven by the driver of the vehicle, came in a rash and negligent manner and suddenly turned left side without any signal which resulted the claimant sustaining grievous injuries all over the body. The appellant was aged 34 years and earned a sum of Rs.30,000/- per month and

due to the accident, he could not earn as before, hence he filed the claim petition before the Motor Accident Tribunal.

3.The Tribunal after the contest has fastened the liability on the 2<sup>nd</sup> respondent / Insurance Company and ultimately arriving at a quantum of Rs.1,21,500/- together with interest at the rate of 7.5% from 02.06.2009 the date of filing the petition till the date of deposit. Being not satisfied with the said compensation, the appellant is before this court.

4.Heard the learned counsel appearing for the appellant and the 2<sup>nd</sup> respondent. Notice to the 1<sup>st</sup> respondent / owner of the vehicle is dispensed with since he has set exparte before the Tribunal.

5.It has to be pointed out that the appellant has challenged only the quantum of compensation arrived by the Tribunal and hence this Court would like to deal with the quantum of compensation eschewing the negligent aspect. In view of the same, the negligence as arrived by the Tribunal is confirmed.

6.The learned counsel for the appellant at the outset submitted that the tribunal has not appreciated the documents and evidence in a proper prospective. The Tribunal has awarded very meagre compensation under all the heads which needs considerable enhancement, more particularly, when the medical bill was produced to the extent of Rs.2,73,649/-, the tribunal has awarded only Rs.21,500/-.

7.The learned counsel for the 2<sup>nd</sup> respondent however submitted that the Tribunal has considered each and every aspect and awarded a just compensation which needs no interference at the hands of this Court. The learned counsel further prays for dismissal of the appeal.

8.Based on the F.I.R. Account and Ex.P2 / Accident Register, the Tribunal has fastened the liability on the 2<sup>nd</sup> respondent herein. Further the Tribunal has taken into account of Ex.P3 & Ex.P4 / discharge summary, Ex.P5 / Brain report, Ex.P6 / treatment record and Ex.P11 / disability certificate, has awarded a compensation amount towards loss of income, pain and sufferings and loss of future amenities for his disability are in dispute. The disability certificate issued by the Orthopaedic Surgeon shows that the claimant had left clavicle fracture, Pseudomeninglocele in left neural foramen of C6 vertebra, C5-C6 Disc Bulge indenting on ventral Thecal SAC. The Tribunal has ultimately taken the disability at 40%. The normal yardstick to be adopted and awarded at Rs.2,000/- per percentage. For disability if that yardstick is adopted, a compensation to be awarded under the head of disability would be Rs.80,000/-. It is

in dispute that the appellant could not have been going for a job for minimum of 4 months and hence a sum of Rs.40,000/- ought to have been awarded under that head. Considering the nature of injuries and a period of treatment, the disability suffered by the Appellant, the Tribunal has failed to consider the charges spent on attender and hence the compensation amount under the head of pain and suffering is enhanced at Rs.20,000/- and Rs.2,000/- has been awarded under the head of attender charges. The amount awarded towards Extra Nourishment and Transport to hospital at Rs.10,000/-, 10,000/- respectively by the Tribunal is confirmed as such.

9.Towards medical expenses Ex.P7 series have been produced by the appellant would be in rhyming and the Tribunal has awarded only Rs.21,500/- which is incorrect and hence a sum of Rs.2,73,645/- is awarded towards medical expenditure, based on the Bills. The re-structured compensation amount would be thus;

| S.No | Description                                 | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|------|---------------------------------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1    | Loss of Income                              | 10,000/-                        | 40,000/-                          | enhanced                               |
| 2    | Transport to hospital                       | 10,000/-                        | 10,000/-                          | confirmed                              |
| 3    | Extra Nourishment                           | 10,000/-                        | 10,000/-                          | confirmed                              |
| 4    | Medical Expenditure                         | 21,500/-                        | 2,73,645/-                        | enhanced                               |
| 5    | Pain and Suffering                          | 10,000/-                        | 20,000/-                          | enhanced                               |
| 6    | Loss of future amenities for his disability | 60,000/-                        | 80,000/-                          | enhanced                               |
| 7    | Attender charges                            | Nil                             | 2,000/-                           | awarded                                |
|      | Total                                       | Rs.1,21,500/-                   | Rs.4,35,645/-                     | enhanced by Rs.3,14,145/-              |

10.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,21,500/- is hereby enhanced to Rs.4,35,645/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is hereby directed to pay the necessary Court fee, if any, on the enhanced

compensation. The 2<sup>nd</sup> respondent/ Insurance is hereby 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. On such deposit, the appellant/ claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To.

1. Motor Accident Claims Tribunal/  
Additional District Judge,  
(1<sup>st</sup> Fast Track Court) Poonamallee
2. The Section Officer,  
V.R Section,  
High Court, Madras.

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.11530

+1cc to Mr.P.Selvaraj, Advocate, S.R.No.11064

C.M.A.No.2523 of 2013

MR(CO)  
CS/18/08/2020

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