

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3451 of 2013

Amutha

...Petitioner/Appellant

Vs

1. R.Maharajan

2. Bajaj Allianz General Insurance Company Ltd.,
Prince Tower, 4th Floor,
College Road,
Nungambakkam,
Chennai- 600 034.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the order made in M.C.O.P.No.394 of 2010 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Judge, Poonamallee, dated 22.06.2012 and for enhancement of compensation.

For Petitioner : Mr.G.Mannar Mannan

For Respondents : Mr.R.Rajadurai
for M/s. M.B. Gopalan
for R2
R1 - Ex-parte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 22.06.2012 made in M.C.O.P.No.394 of 2010 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Judge, Poonamallee.

2. The appellant herein is the claimant in M.C.O.P.No.394 of 2010 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Judge, Poonamallee. She filed the above said claim petition claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by her in the accident that took place on 26.09.2008.

3. The case of the appellant is that on 26.09.2008 at about 09.30 hours, when the appellant was travelling as a passenger in a Van bearing Regn. No.TN-57-Z-4050 from Pooparai to Bodinayakanur, Thondimalai, Sundal Village in Kerala State, the van was driven by its driver in a rash and negligent manner at high speed endangering the public safety and due to high speed, the driver lost control of the van and the van plunged into a valley and fell on the roof of a house. Due to the said accident, the appellant and all other passengers sustained grievous injuries all over the body.

4. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the rider-cum-owner of the van belonging to the first respondent and insured with the second respondent and directed the second respondent to pay a sum of Rs.1,46,000/- as compensation to the appellant/claimant on behalf of the first respondent.

5. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6. Heard the learned counsel appearing for the appellant as well as the second respondent and perused the materials available on record.

7. From the materials on record, it is seen that P.W.4/Dr.Subramani has been examined the appellant and assessed the disability as 50%. The Tribunal has reduced the same and fixed 35% disability and awarded a sum of Rs.70,000/- towards "disability". By considering the nature of injuries sustained by her and experiencing the difficulty due to pain and muscle tightness and also that she could not lift heavy objects, this Court enhances the percentage of disability to 45% and awards a sum of Rs.90,000/- for the same (45 X 2000). The Tribunal has awarded a sum of Rs.3,000/- towards "loss of income" for a period of one month. The same is hereby enhanced for a period of four months, which comes to Rs.12,000/- (3000 X 4). The Tribunal has awarded a sum of Rs.2,000/- each towards "Transportation" and "Extra Nourishment". The same are hereby enhanced to Rs.5,000/- each. The Tribunal has awarded a sum of Rs.500/- towards "Damages to clothes and articles" and the same is hereby increased to Rs.1,000/-. The Tribunal has awarded a sum of Rs.58,500/- towards "Medical expenses", which is just and reasonable, and the same

is hereby confirmed. The Tribunal has awarded a sum of Rs.10,000/- towards "pain and sufferings", which is hereby increased to Rs.15,000/-. The Tribunal has not awarded any amount towards "attender charges" and "loss of amenities". This Court is inclined to award a sum of Rs.5,000/- each for the same. The amounts awarded by the Tribunal under other heads are 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.	Permanent disability	70,000/-	90,000/-	enhanced
2.	Pain and Suffering	10,000/-	15,000/-	enhanced
3.	Medical expenses	58,500/-	58,500/-	confirmed
4.	Transportation	2,000/-	5,000/-	enhanced
5.	Extra Nourishment	2,000/-	5,000/-	enhanced
6.	Loss of income	3,000/-	12,000/-	enhanced
7	Damages to Cloths and articles	500/-	1,000/-	enhanced
8	Attendant charges	-----	5,000/-	granted
9	Loss of amenities	-----	5,000/-	granted
	Total	Rs.1,46,000/-	Rs.1,96,500/-	enhanced by Rs.50,500/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,46,000/- is hereby enhanced to Rs.1,96,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent-Insurance Company is directed to deposit the enhanced award amount along with interest and costs now 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 and recover

the same from the owner of the vehicle. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount, if any, already withdrawn. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sbn

To

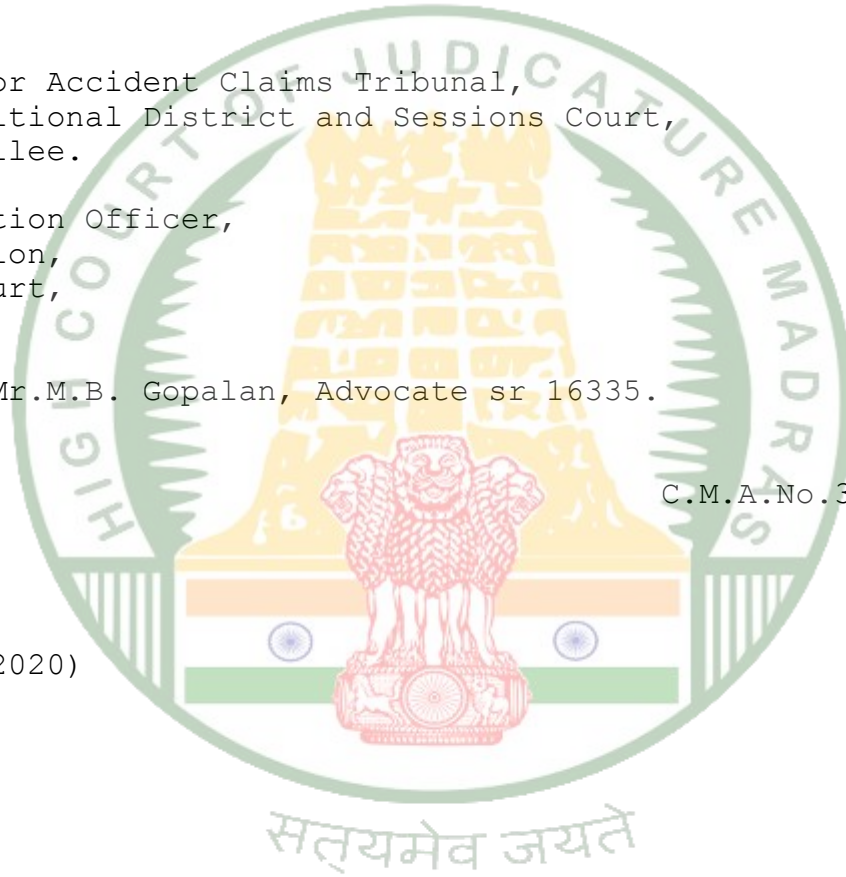
1.The Motor Accident Claims Tribunal,
III Additional District and Sessions Court,
Poonamallee.

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

+1 CC to Mr.M.B. Gopalan, Advocate sr 16335.

C.M.A.No.3451 of 2013

VGII(CO)
SP(29/10/2020)



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