

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.1520 of 2020

Rathana

... Appellant

Vs.

1. Jayakumar

(R1 remained Exparte be for the Tribunal)

2. National Insurance Company Limited,

No.46, Moore Street,

T.P. Hub,

Chennai 600 001

.... Respondents

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act, 1988, to set aside the award dated 31.10.2019 and made in MCOP No.1872 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court-2, Small Causes Court, Chennai.

For Appellant : Mr. F.Terry Chella Raja

For Respondent : Mrs. R. Shreevidhya,
for R2

J U D G M E N T

The claimant is before this Court with this appeal seeking for enhancement of compensation.

2. The case of the claimant in brief is as follows:

On 22.02.2018, at about 3.00 p.m., while the injured/claimant, was standing in front of Annai Hospital at Natesan Road, Virukambakkam, a car bearing Registration NO.TN 22 CL 3900, owned by the first respondent, which was insured with the second respondent Insurance Company came in a rash and negligent manner and dashed against the claimant, in which, he sustained serious injuries, distal tibia in right leg was fractured, and he was admitted in the hospital and undergone surgery and suffered 30%

disability. Hence, claiming compensation of Rs.20 lakhs claim petition has been filed.

3. The owner of the vehicle remained exparte and the Insurance Company contested the claim petition on the ground that the accident has taken place due to the negligence of the injured and there is no details regarding the nature of the accident. Insurance Company also denied that the first respondent vehicle is involved in the accident and also disputed the monthly income of the injured person.

4. Before the Tribunal, the claimant examined herself as PW1 and the Doctor was examined as PW2 and as many as 16 exhibits have been marked. On the side of respondents, neither any witness nor any document has been marked.

5. The Tribunal, after considering the evidence available on record, held that the accident has taken place due to the negligent driving of the car belonging to the first respondent and so far as the quantum of compensation is concerned, even though the medical certificate was produced as Ex.P.16 stating that he suffered 30% disability, the Tribunal fixed the disability at 10% and granted Rs.30,000/- towards the disability, granting Rs.3000/- per percentage. In respect of other heads, the Tribunal granted compensation as follows:

Sl. No.	Headings	Amount Awarded by the Tribunal Rs.
1	Permanent disability	30,000
2	Pain and sufferings	10,000
3	Transportation expenses	3,000
4	Extra Nourishment	10,000
5	Clothes and damages	1,000
6	Attendant charges	5,000
7	Loss of Income	27,000
	Total	86,000

Feeling aggrieved over the same, the claimant is before this Court, with this appeal.

6. Heard both sides and perused the materials available on records carefully.

7. The learned counsel appearing for the appellant would submit that in the instant case, the appellant suffered fracture in the distal tibia and he is having difficulty in climbing stairs and standing and squatting on the floor and he has also examined the Doctor to that effect. However, the Tribunal fixed his disability only at 10% without any reason. From the perusal of the record, it could be seen that after the accident, the claimant was admitted in the hospital as in-patient from 28.02.2018 to 10.03.2018 and she has also undergone surgery for the fracture she suffered. P.W.2, the Doctor has issued a disability certificate, which is marked as Ex.P.16, in which it is stated as follows :

"Injuries - fracture of distal tibia right leg and observation regarding the injuries - she has difficulty in climbing stairs, standing on affected leg, squatting on floor, sitting cross legged, limping walking"

The doctor was examined as P.W.2. However, the Tribunal fixed the disability at 10% without any reason whatsoever, fixing Rs.3000/- per percentage. According to the claimant, at the time of the accident, she was 19 years old and she has completed her school education and she was a tailor and she suffered a fracture in the leg and she could not continue her avocation as before. From the disability certificate issued by the Doctor, it could be seen that due to the accident, she is having difficulty in climbing stair and she is not able to stand on the affected leg and considering the above fact that the injury suffered by her affected her future earning, however, the Tribunal fixed the disability only at 10% without any reason whatsoever. This Court accepting the disability certificate issued by the P.W.2 Doctor, fixed the disability as 30% partial permanent disability. Considering the fact that the accident has taken place in the year 2018, and other circumstances, a sum of Rs.4,000/- is ordered per percentage. Hence, the claimant is entitled for a sum of Rs.1,20,000/- towards the disability.

8. The claimant was admitted in the hospital for nearly two weeks and undergone surgery. Hence, a sum of Rs.25,000/- is ordered towards pain and suffering and a sum of Rs.5,000/- towards Transport expenses and Rs.7,000/-

towards attender charges and Rs.2,000/- towards damages to the clothes. The claimant is bed ridden for more than 6 months and hence, a sum of Rs.30,000/- is awarded towards loss of income instead of Rs.27,000/- granted by the Tribunal and another sum of Rs.10,000/- towards extra nourishment is awarded and totally a sum of Rs.2,00,000/- is awarded towards compensation instead of Rs.86,000/- awarded by the Tribunal. 9. Considering all the above circumstances, the award passed by the Tribunal modified as follows:-

Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court	Award confirmed or enhanced
1	Permanent disability	30,000	1,21,000	enhanced
2	Pain sufferings and	10,000	25,000	enhanced
3	Transportation expenses	3,000	5,000	enhanced
4	Extra Nourishment	10,000	10,000	confirmed
5	Damages to clothes	1,000	2,000	enhanced
6	Attendant charges	5,000	7,000	enhanced
7	Loss of Income	27,000	30,000	enhanced
	Total	86,000	2,00,000	enhanced

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.86,000/- is hereby enhanced to Rs.2,00,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent/ Insurance Company is 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 eight weeks from the date of receipt of a copy of this

judgment. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs as apportioned by the Tribunal. No costs.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

mrp

To:

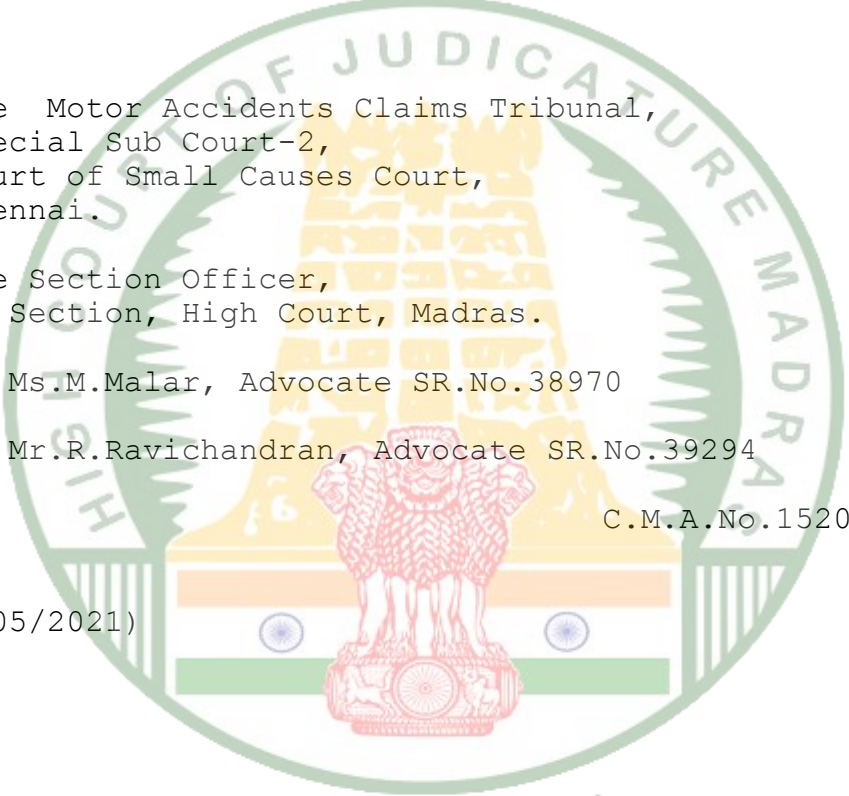
1. The Motor Accidents Claims Tribunal,
Special Sub Court-2,
Court of Small Causes Court,
Chennai.
2. The Section Officer,
VR Section, High Court, Madras.

+1cc to Ms.M.Malar, Advocate SR.No.38970

+1cc to Mr.R.Ravichandran, Advocate SR.No.39294

C.M.A.No.1520 of 2020

SR(CO)
GMY(04/05/2021)



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