

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.05.2008

CORAM:

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

C.M.A.No.848 of 2003

K.Devakumar

... Appellant/Claimant

Vs.

1.A.Raja

2.The Oriental Insurance Company Limited,  
No.8, Esplanade, Chennai-108. ... Respondents/Respondents

Prayer: Appeal filed against the Judgment and Decree dated 14.08.2001 made in M.A.C.T.O.P.No.2375 of 1999 on the file of the Motor Accidents Claims Tribunal (4<sup>th</sup> Judge, Small Causes Court) Chennai.

For Appellant : Mr.A.Viswanatha Rao for  
Mr.S.Rathinamani

For 2<sup>nd</sup> Respondent : Mr.M.Vijayaraghavan

JUDGMENT

The Civil Miscellaneous Appeal is filed by the claimant as appellant as against the award dated 14.08.2001 passed by the Motor Accidents Claims Tribunal viz., 4<sup>th</sup> Judge, Court of Small Causes, Chennai in M.A.C.T.O.P.No.2375 of 1999 granting a total compensation of Rs.5,97,000/- along with interest at 9% per annum from the date of filing of the petition till date of payment.

2.The appellant/claimant has filed the claim petition claiming a total compensation of Rs.15,00,000/- under various heads, for the grievous injuries sustained by him in a road accident.

3.Being dissatisfied with the award passed by the Tribunal, the claimant has projected this appeal before this Court.

4.The brief facts to the claim are as follows:-

On 12.01.1999 at about 20.40 hours when the appellant/claimant was standing in T.H. Road, near Tondiarpet bus depot the motorcycle bearing Registration No.TN.04.Y.7366 was driven by its driver in a rash and negligent manner endangering public safety came in the

direction from south to north on the main road and dashed against him, as a result of which the claimant sustained grievous injuries. The first respondent is the owner of the vehicle and the second respondent being the insurer are jointly and severely liable to pay compensation to the claimant with interest and costs.

The pleas of the second respondent Insurance Company are that the first respondent neither reported the accident nor he produced the records pertaining to the motorcycle TN.04.Y.7366 that was alleged to have been involved in the accident on 12.01.1999 and the driving licence of the rider concerned in the accident and it does not admit the accident and even if there was any, it denies that the accident was as result of rash and negligent driving of the motorcycle by its rider. As a matter of fact, the Insurance Company does not admit the injuries alleged to have been sustained by the claimant has also the alleged disability.

Before the Tribunal on the side of claimant witnesses P.Ws.1 to 3 were examined and Exs.P.1 to P.10 were marked and on the side of second respondent, no witness was examined and no documents were marked.

On an appreciation of oral and documentary evidence, the Tribunal has awarded a total compensation of Rs.5,97,000/- along with interest at 9% per annum from the date of filing of the petition till date of payment. The Tribunal has fixed the lawyer's fee at Rs.12,970/-.

5.To prove the aspect of negligence the claimant has examined himself as P.W.1. In his evidence as P.W.1, he has deposed that on 12.01.1999 at about 8.30 p.m. in the night he was standing in the Tondiarpet bus depot and at that time the motorcycle TN.4.Y.7366 proceeding to Thiruvottriyur from Tondiarpet came and dashed against him as a result of which he fell down and sustained fracture below the left leg knee and in an auto he went to Government Stanley Hospital and that he was operated upon on his right leg. Ex.P.3 is the certified copy of FIR in which the P.W.1, the claimant figures as the complainant and the accused name is mentioned as motorcycle driver TN.04.Y.7366. A perusal of Ex.P.3-FIR reveals that in Cr.No.9/H3/99 a case has been registered by the Washermanpet Traffic Police under Section 337 I.P.C. R/w.184 M.V. Act. The evidence of P.W.1, the claimant is quite in tune with the averments found in the FIR, in regard to the manner and happening of accident. Admittedly, the appellant/claimant has sustained grievous injuries arising out of the accident resulting in disability. In fact, the appellant, as per Ex.P.7 discharge order dated 03.05.2000, has been discharged from service on medical grounds. He has been found unfit to drive vehicles. There is no contra testimony to discredit the version of

P.W.1 in regard to the occurrence of accident. In short, the evidence of P.W.1, the claimant as to the manner of occurrence is unambiguous, convincing and natural. Therefore, this Court accepts the unassailable evidence of P.W.1 in regard to the happening of occurrence as worthy of credence and holds that the accident took place because of the negligent driving of the motorcycle TN.04.Y.7366 by its driver in a high speed and that the driver of the motorcycle is responsible for causing the accident and the finding is rendered accordingly.

6.The learned counsel for the appellant urges that the Tribunal has erred in awarding a low sum of Rs.5,97,000/- as compensation as against a claim of Rs.15,00,000/- and that the Tribunal has committed an error in determining a sum of Rs.3,000/- as monthly loss when in fact the claimant was removed from service as driver and that the future loss of earnings should have been calculated at the rate of Rs.5,593/- per month for another 16 years, which was not done admittedly in this case by Tribunal and therefore, prays for allowing the appeal.

7.It is represented on behalf of the appellant that the Tribunal ought to have awarded the interest at 12% per annum from the date of petition rather than 9% per annum awarded by it.

8.The Tribunal has opined that the two hands of the claimant are in good condition and therefore, with these two hands is capable of earning a sum of Rs.2,593/- at present and a balance sum of Rs.3,000/- only there is likelihood of prospective loss towards income and has determined the dependency at Rs.3,000/- per month, per year it works out to Rs.36,000/-. By adopting the multiplier of 15, Rs.36,000 x 15, it has arrived at a figure of Rs.5,40,000/-. The Tribunal has awarded a sum of Rs.5,000/- towards transport expenses. Towards pain and suffering it has awarded a sum of Rs.50,000/-. It has awarded a sum of Rs.2,000/- towards medical expenses. In all the Tribunal has awarded a total compensation of Rs.5,97,000/- along with interest at 9% per annum from the date of filing of the petition till date of payment in favour of the appellant/claimant.

9.P.W.1, the claimant in his evidence has stated that at the time of accident he has been a driver. In the Metropolitan Transport Corporation, getting a pay of Rs.5,593/- per month and that after the accident he is unable to go for work continuously and from 12.01.1999 to 31.03.2000 he has not gone for work and he has been on a loss of pay for 15 months, resulting in a loss of Rs.83,985/- and that the loss of pay certificate is Ex.P.5 and that he has been discharged from service on the recommendation of medical committee and that he has been relieved on his duties from 09.05.2000 and the discharge



order dated 03.05.2000 is Ex.P.7 and that he has still 15 years of service to spare and he has chance of getting promotion as driving inspector as higher pay and every 5 years the salary will increase.

10.It is the further evidence of P.W.1 that he is not able to work and finds it difficult to move about and is unable to go to bathroom singly and he cannot put cross legs to sit and that his life has become miserable and that he is unable to provide education to his children.

11.P.W.2-Doctor in his evidence has deposed that the appellant cannot drive big vehicle and that the appellant cannot drive a bus and that he has fixed the disability of the appellant at 50% as per Ex.P.8.

12.P.W.3-Chidambaram, the staff of Transport Corporation in his evidence has deposed that the date of birth of the claimant on 31.05.1958 and that the claimant has met with an accident on 12.01.1999 and that thereafter he has not attended duties and his monthly salary is at Rs.5,808.30 and that the claimant has been discharged from service on the basis of medical board's report on 03.05.2000 as per Ex.P.7 and that the claimant has still a service of 16 years and one month to serve and he is to retire on 31.05.2016 and that the claimant has sustained bonus loss of Rs.96,000/-, a sum of Rs.11,15,193.60 towards loss of income and that per year the claimant has suffered a loss of Rs.600/- towards performance incentive, which has to be calculated for 16 years and that the claimant has suffered a loss of daily batta of Rs.4/- which comes to Rs.38,400/- for 16 years and that there is a possibility for the claimant to become a driving inspector on promotion in future and by this there will be an increase of 5% in basic pay.

13.Ex.P.4 is the salary certificate dated 13.07.1999 shows that the appellant is getting a salary of Rs.5,593.80 per month (inclusive of pay and allowances). Ex.P.6 is the relieving letter dated 09.05.2000 issued by the Metropolitan Transport Corporation, Tondiarpet, Chennai to the appellant and where from it is evident that the appellant is discharged and relieved of his duties on the afternoon of 09.05.2000 and he has been directed to hand over all the properties entrusted to him. Ex.P.7 is the discharge order dated 03.05.2000 issued by the employer of the appellant to the appellant. It is seen therefrom that the appellant has been found unfit to drive vehicles because of the substantial fracture (right) leg cross reduction sustained by him in the road traffic accident, hit by a motorcycle. Ex.P.8 is the discharge certificate issued by the doctor P.W.2 wherein the disability of the appellant has been assessed at 50% and as permanent. Ex.P.10 is the service record of the appellant on the date of medical invalidation viz., 03.05.2000, the age of the

appellant has been 41 years /11 months. The appellant/claimant's date of birth is 31.05.1958, as seen from Ex.P.10-service record. In Ex.P.10-service record, the gross salary drawn by the appellant at the time of his invalidation is mentioned as Rs.5,808.30. Admittedly, the appellant/claimant has left over service of 16 years and one month. The appellant has collection batta, per day is entitled to get a minimum batta of Rs.4/- and that it is also mentioned in Ex.P.10 that the increase of batta amount in this regard will depend on the collection amount. Approximately, the appellant will be getting a sum of Rs.600/- per year as performance incentive. Towards bonus and ex-gratia approximately the appellant will be getting Rs.6000/- per year.

14.As far as the present case is concerned, the life of the appellant/claimant has been rendered absolutely miserable and he is unable to perform his day to day duties as a normal individual. Bearing in mind the nature of injury sustained by the appellant it is quite clear that he has to depend on others also in doing his day to day normal duties.

15.The learned counsel for the appellant relies on the decision Cholan Roadways Corporation Limited, rep. by its Managing Director, Kumbakonam V. Ahmed Thambi and others, 2006 (4) CTC 433 wherein the Full Bench of this Court has inter alia observed that

'the approach of the Tribunal in awarding compensation should be on larger perspective of justice, equity and good conscience and technical issues should be eschewed and that the quantum of damages should be in accordance with injury and injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses and that it is open to the Tribunal to award different sums of damages higher than those claimed under particular head of damage so long as Tribunal does not exceed total amount claimed and that the damages awarded for non-pecuniary damages for pain, suffering and loss of amenities cannot be reduced even if quantum of pecuniary damages payable is high and that the Motor Accidents Claim Tribunal should itemize award under each of head namely Pecuniary Losses and Non-Pecuniary Losses - Under head Non-Pecuniary Losses Tribunal shall consider (a) pain and suffering; (b) loss of amenity; (c) loss of expectation of life, hardship, mental stress, etc.; and (d) loss of prospect of marriage and under head Pecuniary Losses, Tribunal shall consider loss of earning capacity and loss of future earnings as one component apart from medical and other expenses and loss of earning if any from date of accident till date of trial and when loss of

earning capacity is compensated as also non-pecuniary losses under (a) to (d) permanent disability need not be separately itemized".

16.He also cites the Division Bench decision of this Court the Oriental Insurance Company Limited, rep. by its Branch Manager, Pondicherry Union, Pondicherry V. K.Balasubramanian and others, 2008 (I) CTC 142 at 143, wherein it is observed that 'in case of loss of earning capacity is separately assessed without awarding lump sum amount for permanent disability as such, there is no prohibition for separately assessing compensation for loss of amenities in life caused by the permanent disability'.

17.It is to be borne in mind that when a Court of law awards compensation the same neither must be punitive against whom it is passed nor it ought to be a source of profit of the individual in whose favour it is awarded, in the considered opinion of this Court.

18.Bearing in mind the aforesaid principles for the loss of pay for 15 months from 12.01.1999 to 31.03.2000 at the rate of Rs.5,593/- (salary per month), this Court awards a sum of Rs.83,895/- to the appellant/claimant. It is seen from Ex.P.7-discharge order dated 03.05.2000 that the appellant has been ordered to be given one month salary at the time of his relief. Obviously the appellant would have received that one month salary. This Court calculates the left over service of the appellant as 16 years which comes to 192 months. Already this Court has determined the loss of pay for 15 months as aforesaid at Rs.83,895/-. After bearing in mind the one month salary, the appellant would have received at the time of his relief on 09.05.2000 then the balance of left over service of the appellant comes to 176 months. The loss of pay for the appellant in respect of 176 months is calculated by this Court at the rate of Rs.5,808.30 on the basis of last salary at the time of his relief (as per Ex.P.10) which works out to Rs.10,22,261/-. Thus the appellant/claimant has sustained loss of income for 191 months which is fixed at Rs.11,06,156/- (Rs.10,22,261/- + Rs.83,895/-). After deducting 1/3rd towards his personal expenses then it comes to Rs.7,37,437/-. Therefore, towards loss of income on account of permanent disability and consequent discharge from service, the appellant is entitled to receive a sum of Rs.7,37,437/- (Rupees seven lakhs thirty seven thousand four hundred and thirty seven only).

19.In regard to the loss of performance incentive calculated at the rate of Rs.600/-, for 16 years it works out to Rs.9,600/- and this Court awards a sum of Rs.9,600/-in this regard to the appellant. Towards the loss of daily collection batta calculated at the rate of Rs.4/- per day then it works out to Rs.120/- per month and for 16



years, the loss in this regard comes to Rs.23,040/- and accordingly, this Court grants the said sum of Rs.23,040/- to the appellant. It is relevant to point out that though the appellant/claimant claims a loss of bonus and ex-gratia at the rate of Rs.6,000/- per year, for 16 years it works out to Rs.96,000/- and in this regard this Court grants only a sum of Rs.80,000/- (Rupees eighty thousand only) towards the loss of bonus, etc. to the appellant, since ex gratia cannot be claimed as a matter of right. Towards transport expenses this Court awards a sum of Rs.5,000/-. For extra nourishment this Court awards a sum of Rs.2,000/-. This Court grants a sum of Rs.2,000/- towards medical expenses. For pain and suffering this Court awards a sum of Rs.15,000/- only.

20.Thus, the appellant/claimant is entitled to get a sum of Rs.8,74,077/- as total compensation. Accordingly, this Court awards a sum of Rs.8,74,077/- (Rupees eight lakhs seventy four thousand and seventy seven only) as total compensation along with interest at 9% per annum from the date of petition till date of payment, payable by the second respondent Insurance Company. On the facts and circumstances of the case, this Court is of the considered view that no case is made out by the appellant for claiming interest at 12% per annum. Resultantly, this Court is of the considered view that the Tribunal has not looked into the entire gamut of the matter in a proper perspective and therefore, a sum of Rs.5,97,000/- awarded by the Tribunal is on the lower side and inadequate on the facts and circumstances of the case.

21.The lawyer's fee is fixed at Rs.15,591/-. Already a sum of Rs.12,970/- as lawyer's fee for the award amount of Rs.5,97,000/- has been fixed by the Tribunal. Now, this Court has awarded a sum of Rs.8,74,077/- along with interest at 9% per annum from the date of petition till date of deposit. Therefore, the difference in lawyer's fee comes to Rs.2,621/-.

22.Already the Tribunal has awarded a sum of Rs.5,97,000/- along with interest at 9% per annum. If the award amount of Rs.5,97,000/- along with interest at 9% per annum from the date of petition till date of deposit has already been deposited by the second respondent Insurance Company, then the difference sum of Rs.2,77,077/- (Rupees two lakhs seventy seven thousand and seventy seven only) along with interest at 9% per annum (as enhanced compensation) is directed to be paid by the second respondent Insurance Company by means of deposit into the Motor Accidents Claims Tribunal viz., 4<sup>th</sup> Judge, Court of Small Causes, Chennai to the credit of M.A.C.T.O.P.No.2375 of 1999 within a period of two months from the date of receipt of the copy of this order. In regard to the lawyer's fee, the difference sum of Rs.2,621/- (Rupees two thousand six hundred and twenty one only) is also directed to be deposited by the second respondent Insurance

Company. On such deposit, a liberty is given to the appellant/claimant to receive the balance sum by projecting a necessary payment out application in accordance with law.

In fine, the Civil Miscellaneous Appeal is allowed in above terms and resultantly, the award dated 14.08.2001 passed by the Motor Accidents Claims Tribunal viz., 4<sup>th</sup> Judge, Court of Small Causes, Chennai in M.A.C.T.O.P.No.2375 of 1999 is modified. The Tribunal is directed to ensure proper payment of Court fee by the appellant. Having regard to the facts and circumstances of the case, the respective parties are directed to bear their own costs.

Sd/-  
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sgl

To

- 1.The 4th Judge,  
Court of Small Causes,  
Motor Accidents Claims Tribunal,  
Chennai.
- 2.The Record Keeper VR Section, High Court, Madras.
- + 1 CC To Mr.M.Vijayaraghavan Advocate SR NO.24839

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Judgment in  
C.M.A.NO.848 OF 2003

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