



C.M.A. Nos.169, 170, 171 & 209 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal Nos.169, 170, 171 & 209 of 2017

V.Ponnusamy	... Appellant/Petitioner in CMA No.169/2017
P.Amutha	... Appellant/Petitioner in CMA No.170/2017
S.Divya	... Appellant/Petitioner in CMA No.171/2017
P.Nithya	... Appellant/Petitioner in CMA No.209/2017

Vs.

1. M/s.Prabakaran & Brothers
Dharapuram Road, Oddanchatiram,
Dindigul District
2. The National Insurance Company Ltd.,
Greens Road, Chennai – Tirupur Branch

... Respondents /Respondents in
all CMAs

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Common Award and Decree dated 30.11.2012 passed in M.C.O.P. Nos.719, 720, 721 & 723 of 2002 on



C.M.A. Nos.169, 170, 171 & 209 of 2017

the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

WEB COPY

For Appellant in all CMAs : Mr. K.Varadhakamaj
For R1 in all CMAs : Ex-parte
For R2 in all CMAs : M/s.N.B.Surekha

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the claimants seeking enhancement of compensation awarded in M.C.O.P.Nos.719, 720, 721 & 723 of 2002, respectively, dated 30.11.2012 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The case of the claimants are that on 21.08.2001 at about 12.00hours, while the petitioner in MCOP No.719/2002 was driving the Car namely Toyota Qualis bearing Registration No.TN 07 U 6181 along with petitioners in MCOP Nos.720, 721 & 723/2002 from Ooty to Pillayarpatti,



while the car reached near Ottanchatiram a Bus bearing Registration No.TN 57 Y 3699 came in rash and negligent manner and hit on the car which resulted causing severe injuries to the petitioners. Subsequently, the petitioners have come forward with the respective claim petitions in M.C.O.P.Nos.719, 720, 721 & 723 of 2002 under Section 166 of the Motor Vehicles Act claiming compensation of Rs.27,000/-, Rs. 5,50,000/-, 5,00,000/- and Rs.20,00,000/- for the injuries sustained by them in the road accident.

4. The first respondent has not contested the claim and was remained ex-parte before the Tribunal. The second respondent has contested the claim and disputed the manner in which the accident had taken place and further contended that the accident had happened only due to the rash and negligent driving on the part of the driver of the car i.e., the petitioner in MCOP No.719/2002 at the same time, the driver of the bus driven with due care and caution the accident had occurred and that the bus driver is not responsible for the accident. Hence the Insurance Company is not liable to pay compensation. They also disputed the age, income, avocation and injury sustained by the petitioners.



5. Based on the evidences placed on record, the Tribunal has held that the accident had happened due to the negligent driving of the driver of the bus and also quantified the compensation and awarded a sum of Rs.4,11,000/-, Rs.1,55,000/- , Rs.1,47,000/- & Rs.4,21,000/- respectively along with interest @ 7.5% per annum from the date of filing of claim petitions till the date of realization.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimants have filed these appeals seeking enhancement of compensation.

7. The learned counsel appearing for the claimants has submitted that the Tribunal has not properly appreciated the evidences placed on record, fixed the notional monthly income and awarded compensation, which is on the lower side. The compensation awarded under various heads is also very meagre and prays to enhance the same.

8. Per contra, the learned counsel appearing for the respondent – Insurance Company has submitted that based on the evidences placed on



record, the Tribunal has rightly fixed the notional income and also awarded just compensation, hence prays to confirm the award of the Tribunal.

9. I have considered the rival submissions made on both sides and also perused the records.

10. It is the case of the claimant in CMA No.169/2017 that the claimant was running Ponnusamy Hotel at Royapettah and was earning a sum of Rs.1,50,000/- per month and due to the injuries sustained he was not able to do his business as earlier. But the claimant had not proved the income and the Tribunal based on the evidence of P.W.1 has fixed the monthly income of Rs.5,000/- per month, considering the date of accident is of the year 2001, this Court is of the view the same is reasonable and the same is hereby confirmed. The claimant has sustained following injuries, recorded in Ex.P5 – Wound Certificate issued by Meenakshi Mission Hospital and Research Centre: “*Severe head injury, right sylvion supra sylvion right side, tentorial magin sub-archanoid haemorrhage with effacement of right lateral ventricle and Type-1 compound communitied fracture shaft of numerus right*”. Ex.P6 – Discharge Summary, shows the



claimant has undergone GA open reduction and internal fixation and C.T Scan Report-Ex.P7 shows that “(1) *Subarachnoid haemorrhage seen in right sylvian cistern, tentorial surfaces and right sulcal spaces* (2) *Peterchial Haematoma in the right temporal region and Cerebral odema*”. While awarding compensation for disability, the Tribunal based on the opinion of the Doctor – P.W.2, who assessed the disability and held that the petitioner has sustained partial permanent disability as 55%, the Tribunal has considered the disability and fixed the disability to the extent of 55% and awarded a sum of Rs.2,000/- per percentage of injury is proper and no need for interference of the same and the same is hereby confirmed.

11. The compensation awarded under other heads such as Extra Nourishment, the Tribunal has awarded a sum of Rs.10,000/- and this Court is of the view the same is very meagre and this Court is inclined to enhance the same to the tune of Rs.20,000/- under the head Extra Nourishment. The Tribunal has awarded a sum of Rs.20,000/- under the head Pain and Sufferings and considering the injuries sustained by the claimant, this Court is inclined to grant a sum of Rs.40,000/-. As far as the compensation awarded under other heads are concerned, the same are just and reasonable and the same are hereby confirmed.



12. Thus, the compensation Awarded by the Tribunal under various heads in CMA No.169/2017 is hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Enhanced/ Reduced / Granted / Confirmed
1.	Loss of Income	Rs.30,000/-	Rs.30,000/-	Confirmed
2.	Transportation	Rs.10,000/-	Rs.10,000/-	Confirmed
3.	Extra Nourishment	Rs.10,000/-	Rs.20,000/-	Enhanced
4.	Damages to clothes	Rs.1,000/-	Rs.1,000/-	Confirmed
5.	Medical Expenses	Rs.2,10,000/-	Rs.2,10,000/-	Confirmed
6.	Attender Charges	Rs.5,000/-	Rs.5,000/-	Confirmed
7.	Loss of amenities of life and Mental agony	Rs.25,000/-	Rs.25,000/-	Confirmed
8	Pain and Suffering	Rs.20,000/-	Rs.40,000/-	Enhanced
9	Disability	Rs.1,00,000/-	Rs.1,00,000/-	Confirmed
	Total	Rs.4,11,000/- -	Rs.4,41,000/-	Enhanced by Rs.30,000/-

13. It is the case of the claimant in CMA No.170/2017 that, she is House Wife and she has sustained following injuries recorded in Ex.P13 – Wound Certificate issued by Meenakshi Mission Hospital and Research Centre: “(1) Laceration wound measuring about 8c.m. x 1c.m. Wound present over shoulder region, swelling (2) Tenderness over the right shoulder region (3) Cut laceration over middle finer right side (4) Shoulder



movements painful (5) Fracture right ramus of mandible". The claimant has undergone GA open reduction and internal fixation was also done of fracture mandible. While awarding compensation for disability, the Tribunal based on the opinion of the Doctor – P.W.5, who assessed the disability and held that the petitioner has sustained partial permanent disability to the extent of 30% and the Tribunal has accepted the same and awarded a sum of Rs.2,000/- per percentage of injury is proper. It requires no interference and the same is hereby confirmed.

14. The compensation awarded under other heads such as Extra Nourishment, the Tribunal has awarded a sum of Rs.5,000/-, this Court is of the view the same is very meagre and inclined to enhance to Rs.10,000/-. The Tribunal has awarded a sum of Rs.15,000/- under the head Pain and Sufferings and considering the injuries sustained, and petitioner being a lady and was homemaker, since she has sustained injuries on fracture of right shoulder, her day-to-day work has been affected hence, this Court is inclined to grant a sum of Rs.30,000/- under the head Pain and Sufferings. As far as the compensation awarded under other heads are concerned, the same are just and reasonable and the same are hereby confirmed.



WEB COPY 15. Thus, the compensation Awarded by the Tribunal under various heads in CMA No.170/2017 is hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Enhanced/ Reduced / Granted / Confirmed
1.	Transportation	Rs.5,000/-	Rs.5,000/-	Confirmed
2.	Extra Nourishment	Rs.5,000/-	Rs.10,000/-	Enhanced
3.	Damages to clothes	Rs.1,000/-	Rs.1,000/-	Confirmed
4.	Medical Expenses	Rs.44,000/-	Rs.44,000/-	Confirmed
5.	Attender Charges	Rs.5,000/-	Rs.5,000/-	Confirmed
6.	Loss of amenities of life and Mental agony	Rs.20,000/-	Rs.20,000/-	Confirmed
7.	Pain and Suffering	Rs.15,000/-	Rs.30,000/-	Enhanced
8	Disability	Rs.60,000/-	Rs.60,000/-	Confirmed
	Total	Rs.1,55,000/-	Rs.1,75,000/-	Enhanced by Rs.20,000/-
		-		

16. The claimant in CMA No.171/2017, was aged about 14 years and was a student at the time of accident, she has sustained following injuries recorded in Ex.P16 – Accident Register Copy issued by Meenakshi Mission Hospital and Research Centre and Ex.P17 – Wound Certificate and Ex.P18 – Discharge Summary issued by Malar Hospitals, Chennai: “*Sutured wound*



left side of forehead, left eyelid and infra orbital region and undisplaced fracture left zygoma” and the claimant has undergone GA Exploration, removal of F.B. While awarding compensation for disability, the Tribunal based on the opinion of the Doctor – P.W.6, who assessed the disability, held that the petitioner has sustained patial permanent disability to the extent of 30%, and awarded a sum of Rs.2,000/- per percentage of injury, and this Court finds no reason for interference, and the same is hereby confirmed.

17. The compensation awarded under other heads such as Extra Nourishment, the Tribunal has awarded a sum of Rs.5,000/- and this Court is if the view the same is very meagre and enhanced to Rs.10,000/-. The Tribunal has awarded a sum of Rs.20,000/- under the head Pain and Sufferings and considering the injuries sustained by her, this Court is inclined to grant a sum of Rs.40,000/- under the head Pain and Sufferings. As far as the compensation awarded under other heads are concerned, the same are just and reasonable and the same are hereby confirmed.

18. Thus, the compensation Awarded by the Tribunal under various



heads in CMA No.171/2017 is hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Enhanced/ Reduced / Granted / Confirmed
1.	Transportation	Rs.5,000/-	Rs.5,000/-	Confirmed
2.	Extra Nourishment	Rs.5,000/-	Rs.10,000/-	Enhanced
3.	Damages to clothes	Rs.1,000/-	Rs.1,000/-	Confirmed
4.	Medical Expenses	Rs.31,000/-	Rs.31,000/-	Confirmed
5.	Mental Agony, Loss of amenities, Attender Charges, Loss of Education	Rs.25,000/-	Rs.25,000/-	Confirmed
6.	Pain and Suffering	Rs.20,000/-	Rs.40,000/-	Enhanced
7.	Disability	Rs.60,000/-	Rs.60,000/-	Confirmed
	Total	Rs.1,47,000/- -	Rs.1,72,000/-	Enhanced by Rs.25,000/-

19. The claimant in CMA No.209/2017 was aged about 17 years and was a student at the time of accident, she has sustained following injuries recorded in Ex.P21 – Wound Certificate issued by Meenakshi Mission Hospital and Research Centre: “(1) Laceration over right upper eyelid, forehead measuring 12c.m length – bone depth with depressed fracture beneath (2) Laceration left eyebrow upto forehead, root of nose, bone depth 10c.m length (3) Irregular multiple laceration over left side nect (4)



Laceration over left hand with complete rupture of extensor digitorum tendon of ring finger and partial rupture on middle finger (5) Severe head injury – right frontal and comminuted depressed fracture, fractures involving nasal bone, roof of orbit, planum sphenoidale, pterygoid plate, anterior and posterolateral wall of right maxilla, haemorrhagic contusion right frontal bone and airpockets in brain” and the claimant has undergone surgery on wound debridement and elevation of depressed fracture and closure of all laceration, left hand extensor, digitorum tendon complete rupture of right finger and partial tear of middle finger was also debrided and tendon suturing done by Orthopaedic Surgeon”. While awarding compensation for disability, the Tribunal based on the opinion of the Doctor – P.W.6, who assessed the disability and fixed the disability at 70% partial permanent disability and awarded a sum of Rs.2,000/- per percentage of injury is proper, same requires no interference and the same is hereby confirmed.

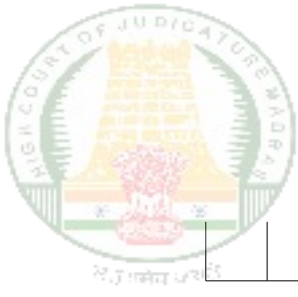
20. The compensation awarded under other heads such as Loss of Education and Loss of Amenities the Tribunal has awarded a sum of Rs.25,000/- and this Court is of the view the same is very meagre and this



Court is inclined to enhance the same to the tune of Rs.40,000/-. The Tribunal has awarded a sum of Rs.25,000/- under the head Pain and Sufferings and considering the injuries sustained by her, this Court is inclined to grant a sum of Rs.40,000/- under the head Pain and Sufferings. As far as the compensation awarded under other heads are concerned, the same are just and reasonable and the same are hereby confirmed.

21. Thus, the compensation Awarded by the Tribunal under various heads in CMA No.209/2017 is hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Enhanced/ Reduced / Granted / Confirmed
1.	Transportation	Rs.10,000/-	Rs.10,000/-	Confirmed
2.	Extra Nourishment	Rs.10,000/-	Rs.10,000/-	Confirmed
3.	Damages to clothes	Rs.1,000/-	Rs.1,000/-	Confirmed
4.	Medical Expenses	Rs.1,00,000/-	Rs.1,00,000/-	Confirmed
5.	Attender Charges	Rs.10,000/-	Rs.10,000/-	Confirmed
6.	Mental agony, Loss of amenities of life and Loss of Education	Rs.25,000/-	Rs.40,000/-	Enhanced
7.	Pain and Suffering	Rs.25,000/-	Rs.40,000/-	Enhanced
8.	Disability	Rs.1,40,000/-	Rs.1,40,000/-	Confirmed
9.	Loss of Earning Power	Rs.1,00,000/-	Rs.1,00,000/-	Confirmed
	Total	Rs.4,21,000/-	Rs.4,51,000/-	Enhanced by



C.M.A. Nos.169, 170, 171 & 209 of 2017

		-		Rs.30,000/-
--	--	---	--	--------------------

WEB COPY

22. The Tribunal has also held that the petitioners are not entitled for interest for the default period from 30.01.2006 to 29.01.2007 and from 05.04.2007 to 05.07.2010 and this Court is incline to accept the same and the same is hereby confirmed and the claimants are not entitled for interest for the delay in filing this appeal.

23. In the result,

(1) C.M.A.No.169/2017 is partly allowed and the compensation awarded by the Tribunal is at Rs.4,11,000/- is hereby enhanced to Rs.4,41,000/- [Rupees Four Lakhs and Forty One Thousand only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any.

(2) C.M.A.No.170/2017 is partly allowed and the compensation awarded by the Tribunal is at Rs.1,55,000/- is hereby enhanced to Rs.1,75,000/- [Rupees One Lakh and Seventy Five Thousand only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period,



if any.

WEB COPY

(3) C.M.A.No.171/2017 is partly allowed and the compensation awarded by the Tribunal is at Rs.1,47,000/- is hereby enhanced to Rs.1,72,000/- [Rupees One Lakh and Seventy Two Thousand only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any.

(4) C.M.A.No.209/2017 is partly allowed and the compensation awarded by the Tribunal is at Rs.4,21,000/- is hereby enhanced to Rs.4,51,000/- [Rupees Four Lakhs and Fifty One Thousand only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any.

(5) The second respondent – Insurance Company is directed to deposit the 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 to the credit of M.C.O.P.Nos.719, 720, 721 & 723 of 2002 respectively, on the file of the



C.M.A. Nos.169, 170, 171 & 209 of 2017

Motor Accident Claims Tribunal, II Small Causes Court, Chennai. On such deposit, the claimants are permitted to withdraw the award amount, now determined by this Court, along with proportionate interest and costs, less the amount, if any, already withdrawn. The Tribunal shall disburse the amount by directly giving credit to the Savings Bank Account of the claimants. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

21.07.2023

ssi

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



WEB COPY



C.M.A. Nos.169, 170, 171 & 209 of 2017

To:

1. The II Judge,
Small Causes Court,
Motor Accident Claims,
Chennai.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.



WEB COPY



C.M.A. Nos.169, 170, 171 & 209 of 2017

K. RAJASEKAR, J.

ssi

C.M.A. Nos.169, 170, 171 & 209 of 2017

21.07.2023