IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2015

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA Nos.2857 to 2864 of 2014
M.P.Nos.1 of 2014 and
Cross Obj. No.125 & 126 of 2014

M/s.New India Assurance Co. Ltd.,
No.45, Moore Street,
Chennai - 600 001. ...Appellant in all CMAs & 1st Respondent in Cross Obj.Nos.125 & 126 of 2014/ 2nd respondent in MCOP.No.1967/10, 1969, 1970, 1971, 2279, 2579 & 2715/10

vs.

Tmt.Pramila @ Pramila Grace Rani 1st Respondent in CMA No.2857/2014/ Petitioner in MCOP.No.1967/10

Boopathy 1st Respondent in CMA No.2858/2014/ Petitioner in MCOP.1969/10

Tmt.Vasandha 1st Respondent in CMA No.2859/2014/ Pedtitioner in MCOP.1970/10

Devadass
D.Sekar
D.Munniyan
D.Nirmala
D.Siva Respondents in CMA No.2860/2014 & Cross Appellants in Cross Obj.No.125/2014/ Petitioner & Respondent 1&3 in 1971/10

Miss Alamelu 1st Respondent in CMA No.2861/2014/ Petitioner in 2278/10

Tmt.Egavalli 1st Respondent in CMA No.2862/2014/ Petitioner in 2279/10

Lakshmanan 1st Respondent in CMA No.2863/2014 & Appellant in Cross Obj.No.126/2014/ Petitioner in 2579/10

Tmt.Kasiammal 1st Respondent in CMA No.2864/2014/ Petitioner in 2715/10

V.S.Sainarayanan

K.Chandran ... Respondents 2 & 3 in all CMAs & Cross Objections

Common Prayer :- Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree passed by the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai made in MCOP Nos.1967, 1969, 1970, 1971, 2278, 2279, 2579 & 2715 of 2010, dated 18.02.2014 and Cross Objection Nos.125 and 126 of 2014 praying to enhacne the judgmnet and decree of the claims tribunal in its award dt.18.02.2014 made in MCOP Nos.1971 and 2579 of 2010 on the file of the Motor Accident Claims Tribunal, VI Judge, Small Causes Court, Chennai.

For Appellant in all CMAs & 1st Respondent in Cross Obj.Nos. 125 & 126/2014 : Mrs.Harini for Mr.N.vijayaraghavan

For Respondents in alls CMAs & Appellants in Cross Obj.Nos. 125 & 126/2014 : Mr.V.Velu

COMMON JUDGMENT

The Insurance Company has preferred the present appeals against the common award passed by the tribunal in connection with an accident occurred on 23.04.2010 in which the respondents/claimants sustained injuries except a fatal case in CMA No.2860 of 2014. Similarly, the respondents/claimants in CMA Nos.2860 & 2863 of 2014 are before this court by way of cross objection for enhancement.

2. Heard Mrs.Harini, learned counsel appearing for the appellant/insurance company and Mr.Velu, learned counsel appearing for the respondents/claimants.

3. Since all the cases relates to the same accident, this common judgment is passed. There is no dispute with regard the nature of the accident and therefore the question of going into the liability does not arise and the question to be decided in the above appeals are the quantum of compensation awarded by the tribunal.

CMA No.2857 of 2014 [MCOP No.1967/2010]

4. In this case, the claimant sustained head injury with left HOH fracture and left shoulder dislocation. PW10, doctor, based on medical records and examination of the claimant, assessed the disability at 45% but the tribunal fixed the disability at 40%. In the absence of any contra evidence, the tribunal ought not have

reduced the disability from 45% to 40% and since the determination is based on medical records and PW10, doctor's evidence, the same cannot be interfered with. Therefore, this Court, re-determines the disability at 45% and by awarding a sum of Rs.3000/- per percentage of disability, a sum of 1,35,000/- is awarded under this head. Since the claimant is aged about 35 years and is an organiser in Palvadi School, the tribunal fixed the monthly income of the claimant at Rs.4500/- and adopting multiplier 13 and taking into consideration the loss of earning capacity @ 25%, awarded a sum of Rs.1,75,500/- [4500x12x13x25%]. Rs.80,000/- awarded by the tribunal for 40% disability is hereby deleted. Rs.27,000/- awarded by the tribunal towards loss of income during the period of treatment, Rs.40,000/- towards transportation, Extra nourishment & damage to clothes, Rs.5,000/- towards medical expenses and Rs.25,000/- towards loss of amenities are all reasonable and hence the same are confirmed. Since Rs.3,000/- per percentage was awarded by this Court for calculating disability, the question of awarding loss of future income, that too to the tune of Rs.1,75,500/- is unwarranted and the same is hereby deleted. Similarly, Rs.10,000/- awarded towards loss of longevity of life is also deleted. Towards pain & suffering, a sum of Rs.40,000/- was awarded and the same is reduced to Rs.25,000/-. Similarly, towards attender charges, only a sum of Rs.2,500/- was awarded and the same is enhanced to Rs.5,000/-. In the result, Rs.4,05,000/- awarded by the tribunal is hereby reduced to Rs.2,62,000/-, break-up as follows -

1.	Disability at 45% @ Rs.3000/- per percentage of disability	...	Rs.1,35,000/-
2.	Loss of income	...	Rs. 27,000/-
3.	Transportation, Extra nourishment, and damage to clothes	...	Rs. 40,000/-
4.	Medical expenses	...	Rs. 5,000/-
5.	Loss of amenities	...	Rs. 25,000/-
6.	Pain & Sufferings	...	Rs, 25,000/-
7.	Attender charges	...	Rs. 5,000/-
	Total	...	Rs.2,62,000/-

In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

CMA No.2858 of 2014 [MCOP No.1969/2010]

5. In this case also, the first respondent/claimant who was aged 62 years and carpenter by profession, sustained head injury. Even though, PW9 doctor spoke about the disability at 40% based on examination of the claimant and medical records, the tribunal fixed the disability at 30%. For 30% disability, the tribunal awarded Rs.45,000/- taking into consideration Rs.1500/- per percentage of disability. Moreover, applying multiplier 7, loss of future earning capacity was determined at Rs.1,26,600/- taking Rs.6000/- as the monthly income for 25% disability which would amount to double payment. Hence, Rs.45,000/- awarded by the tribunal towards disability is hereby deleted. Similarly, Rs.25,000/- awarded towards loss of longevity of life is also deleted. A sum of Rs.2,01,600/- is awarded by this Court towards loss of future earning capacity by taking into consideration Rs.6,000/- as the monthly income and by applying multiplier 7 as per the age of the injured for 40% disability. [6000 x 12 x 7 x 40%]. Rs.25,000/- awarded towards loss of amenities is hereby enhanced to Rs.50,000/- and Rs.40,000/- awarded towards pain & sufferings is enhanced to Rs.50,000/-. Rs.8,000/- awarded towards attender charges, Rs.5,000/- towards medical expenses, Rs..36,000/- towards loss of income, Rs.40,000/- towards transportation, extra nourishment and damage to clothes awarded by the tribunal appears to be reasonable and hence the same are confirmed. In the result, Rs.3,50,000/- awarded by the tribunal is hereby enhanced to Rs.3,90,600/-, re-appreciating the evidence on records under Order 41 Rule 33 of C.P.C., break-up as follows -

(1) Loss of income for 6 months	... Rs.	36,000/-
(2) Transportation, extra nourishment & damage to clothes	... Rs.	40,000/-
(3) Medical expenses	... Rs.	5,000/-
(4) Attender charges	... Rs.	8,000/-
(5) Pain & Sufferings	... Rs.	50,000/-
(6) Loss of amenities	... Rs.	50,000/-
(7) Loss of future earning capacity	Rs.	2,01,600/-
Total	... Rs.	3,90,600/-

In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

CMA No.2859 of 2014 [MCOP No.1970/2010]

6. In this case, the injured aged about 35 years is a flower

merchant and she sustained right elbow open fracture of distal humerus olecranon for which open reduction with 'K' wire fixation was done. Even though PW10, doctor has assessed the disability at 90%, the tribunal fixed the same at 80% and awarded a sum of Rs.1,60,000/- under this head by calculating a sum of Rs.2,000/- per percentage of disability. Similarly, Rs.5,40,000/- has been awarded under the head loss of future earning capacity. The above said amount would amount to double payment and therefore Rs.1,60,000/- awarded by the tribunal towards disability is hereby deleted. However, taking into consideration the disability sustained by the respondent/claimant at 80%, this court re-determines the same as 100% and applying multiplier 16 and fixing the monthly income at Rs.4500/-, a sum of Rs.8,64,000/- [4500 x 12 x 16] is awarded under the head loss of future earning capacity. Rs.36,000/- awarded towards loss of income, Rs.10,000/- towards transportation, Rs.40,000/- towards extra nourishment, Rs.2,000/- towards damages to clothes, Rs.5,000/- towards medical expenses and Rs.50,000/- towards pain & sufferings appears to be reasonable and the same are confirmed. Since no amount has been awarded towards loss of amenities, this court awards a sum of Rs.50,000/- under this head. Similarly, Rs.10,000/- awarded towards attender charges is hereby enhanced to Rs.25,000/-. Thus, Rs.8,53,000/- awarded by the tribunal is hereby enhanced to Rs.10,82,000/-/. Invoking Order 41 Rule 33 of CPC by re-appreciating the evidence on record, break-up as follows -

(1) Loss of income	...	Rs.	36,000/-
(2) Transportation	...	Rs.	10,000/-
(3) Extra nourishment	...	Rs.	40,000/-
(4) Damages to clothes	...	Rs.	2,000/-
(5) Medical expenses	...	Rs.	5,000/-
(6) Attender charges	...	Rs.	25,000/-
(7) Pain & Sufferings	...	Rs.	50,000/-
(8) Loss of future earning capacity	...	Rs.	8,64,000/-
(9) Loss of amenities	...	Rs.	50,000/-
Total	...	Rs.10,82,000/-	

In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

CMA No.2860/2014 & Cross Obj.No.125/2014 [MCOP No.1971/2010]

7. This is a fatal case in which one Vijaya, aged about 43 years working as a tailor died. Though Rs.12,000/- was claimed as the monthly income of the deceased, the tribunal fixed Rs.6,000/- as the monthly income and after adding 30% towards future prospects and deducting 1/4th towards personal expenses and adopting appropriate multiplier 14, awarded a sum of Rs.8,33,960/-, rounded off to

Rs.8,34,000/- under the head loss of dependency. However, it is found that determination of Rs.6,000/- as the monthly income is on the lower side and therefore taking into consideration Rs.6,500/- as the monthly income and after adding 30% towards future prospects, deducting 1/4th towards personal expenses, applying multiplier 14, this court awards a sum of Rs.10,64,784/- under the head loss of dependency [Rs.6,500 + 30% x 3/4 x 12 x 14]. Rs.25,000/- awarded towards funeral expenses, Rs.1,00,000/- towards loss of love & affection and mental agony, Rs.16,000/- towards loss of estate appears to be very reasonable and hence the same are confirmed. However, Rs.25,000/- awarded towards loss of consortium to the first respondent seems to be very low. As per the judgment of the Hon'ble Supreme Court in Rajesh & Ors. vs. Rajbir Singh & ors. reported in 2013 (3) CTC 883, atleast Rs.1,00,000/- has to be awarded towards loss of consortium. In view of the above, Rs.25,000/- awarded by the tribunal towards loss of consortium is hereby enhanced to Rs.1,00,000/-. Thus, Rs.10,00,000/- awarded by the tribunal is hereby enhanced to Rs.13,06,000/-, break-up as follows -

(1) Loss of dependency	...	Rs.10,64,784/-
(2) Funeral expenses	...	Rs. 25,000/-
(3) Loss of love & affection and Mental agony	...	Rs. 1,00,000/-
(4) Loss of consortium	...	Rs. 1,00,000/-
(5) Loss of estate	...	Rs. 16,000/-
Total	...	Rs.13,05,784/-

Rounded off to Rs.13,06,000/-.

In the result, this Civil Miscellaneous Appeal filed by the insurance company is dismissed. Consequently, cross objection filed by the claimants is partly allowed. Connected Miscellaneous Petition is also closed.

CMA No.2861/2014 [MCOP No.2278/2010]

8. The victim aged 19 years old, a flower merchant sustained right frontal fracture in the accident. The doctor who examined the claimant, determined the disability at 15% The tribunal fixing Rs.2,000/- per percentage of disability, awarded a sum of Rs.30,000/- under the head disability. As far as disability is concerned, the tribunal has rightly determined the disability at 15% and awarded Rs.30,000/-. However, taking Rs.6,000/- as the monthly income of the claimant and awarding a sum of Rs.24,000/- towards loss of income is on the higher side and hence the same is hereby reduced to Rs.12,000/-. Similarly, Rs.25,000/- awarded towards transportation, extra nourishment & damages to clothes is on the higher side and the

same is reduced to Rs.10,000/-. Rs.5,000/- towards medical expenses, Rs.1,000/- towards attender charges, Rs.25,000/- towards pain & sufferings and Rs.20,000/- towards loss of amenities are all reasonable and hence the same are confirmed. Thus, Rs.1,30,000/- awarded by the tribunal towards compensation is hereby reduced to Rs.1,03,000/-, break-up as follows -

1.	Disability at 15% @ Rs.2000/- per percentage of disability	...	Rs. 30,000/-
2.	Loss of income	...	Rs. 12,000/-
3.	Transportation, Extra nourishment, and damage to clothes	...	Rs. 10,000/-
4.	Medical expenses	...	Rs. 5,000/-
5.	Attender charges	...	Rs. 1,000/-
6.	Pain & Sufferings	...	Rs, 25,000/-
7.	Loss of amenities	...	Rs. 20,000/-
	Total	...	Rs.1,03,000/-

In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

CMA No.2862/2014 [MCOP No.2279/2010]

9. The victim aged 36 years old, a vegetable vendor sustained nasal bone fracture in the accident. Based on doctor's evidence, 15% was assessed as disability and the tribunal has rightly awarded a sum of Rs.30,000/- fixing Rs.2,000/- per percentage of disability. However, Rs.24,000/- awarded towards loss of income during the period of treatment is on the higher side and hence the same is hereby reduced to Rs.12,000/-. Similarly, Rs.25,000/- awarded towards transportation & extra nourishment is on the higher side and the same is reduced to Rs.15,000/-. Rs.1,000/- towards damage to clothes, 5,000/- towards medical expenses, Rs.5,000/- towards attender charges, Rs.25,000/- towards pain & sufferings and Rs.20,000/- towards loss of amenities are all reasonable and hence the same are confirmed. Thus, Rs.1,35,000/- awarded by the tribunal towards compensation is hereby reduced to Rs.1,13,000/-, break-up as follows -

1.	Disability at 15% @ Rs.2000/- per percentage of disability	...	Rs. 30,000/-

2.	Loss of income	... Rs.	12,000/-
3.	Transportation & Extra nourishment	Rs.	15,000/-
4.	Damages to clothes	... Rs.	1,000/-
5.	Medical expenses	... Rs.	5,000/-
6.	Attender charges	... Rs.	5,000/-
7.	Pain & Sufferings	... Rs,	25,000/-
8.	Loss of amenities	... Rs.	20,000/-
	Total	...	Rs.1,13,000/-

In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

CMA No.2863/2014 & Cross Obj.No.126 of 2014[MCOP No.2579/2010]

10. The claimant aged 55 years old, a painter sustained fracture of neck of right scapula in the accident occurred on 23.04.2010. PW10, doctor assessed the disability at 40% however, the tribunal has rightly fixed the same at 30% and awarded a sum of Rs.30,000/- by fixing Rs.1,000/- per percentage of disability. Though Rs.12,000/- was claimed as the monthly income of the claimant, the tribunal rightly determined the monthly income at Rs.6,000/- in the absence of any proof regarding income and awarded a sum of Rs.36,000/- as loss of income during the treatment period. Rs.25,000/- awarded towards transportation & extra nourishment, Rs.500/- towards damages to clothes, Rs.5,500/- towards medical expenses, Rs.2,000/- towards attender charges, Rs.25,000/- towards pain & sufferings and Rs.16,000/- towards loss of amenities appears to be reasonable and hence the same are confirmed. Thus, Rs.1,40,000/- awarded by the tribunal as compensation to the claimant is justifiable and hence the same is neither enhanced nor reduced. The award passed by the tribunal is confirmed.

In the result, this Civil Miscellaneous Appeal filed by the insurance company as well as the cross objection filed by the claimant are dismissed Consequently, connected Miscellaneous Petition is closed.

CMA No.2864/2014 [MCOP No.2715/2010]

11. The victim aged 35 years old, a flower merchant sustained mesentrica tear with liver laceration grade - I and spleen injury, laceration over fore head 10 x 10 x 1 cm. in the accident occurred on 23.04.2010. P.W.10, doctor assessed the disability at 80%, the tribunal rightly fixed the same at 50% and fixing Rs.2,000/- per percentage of disability awarded a sum of Rs.1,00,000/- for 50% disability which is very reasonable. Though Rs.10,000/- was claimed as the monthly income by the claimant, in the absence of any positive evidence regarding income, the tribunal rightly fixed Rs.6,000/- as the monthly income and awarded as sum of Rs.36,000/- as loss of income during treatment period. Since 50% was determined as the disability, there will be loss of earning capacity to the tune of 50% and therefore the tribunal has rightly applied multiplier method by applying appropriate multiplier 15 and fixing Rs.6,000/- as monthly income, has awarded a sum of Rs.5,40,000/- which is justifiable. Rs.40,000/- awarded towards transportation, extra nourishment and damages to clothes, Rs.4,000/- towards medical expenses, Rs.10,000/- towards attender charges, Rs.50,000/- towards pain & sufferings and Rs.50,000/- towards loss of amenities appears to be reasonable and hence the same are confirmed. Thus, Rs.8,30,000/- awarded by the tribunal appears to be very reasonable and hence the same is confirmed.

12. The rate of interest awarded by the tribunal in all the above cases shall remain unaltered.

13. In the result, Civil Miscellaneous Appeal filed by the transport corporation in CMA Nos.2857, 2861 & 2862 of 2014 are partly allowed. CMA Nos.2858, 2859 2860, 2863 & 2864 of 2014 are dismissed. Consequently, Cross Objection filed by the claimants in Cross Obj.No.125 of 2014 is partly allowed and Cross Objection filed by the claimant in Cross Obj.No.126 of 2014 is dismissed. Connected Miscellaneous Petitions are also closed. No costs.

14. The Insurance company is directed to deposit the entire compensation amount alongwith interest and costs, as per the order of this Court, payable to the respondents/claimants, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondents/claimants are permitted to withdraw the amount except in CMA No.2860 of 2014, where the respondents/claimants are permitted to withdraw their share amount alongwith proportionate interest, on the basis of ratio fixed by the tribunal.

10. The learned counsel for the respondents/claimants is directed to pay the requisite court fee for the enhanced compensation within a period of ten days from the date of receipt of a copy of

this order.

Sd/-
Deputy Registrar

True Copy

Sub Assistant Registrar

To

The VI Judge,
Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.

Copy to:
The Section Officer,
V.R.section, High Court, Madras.

+8 cc's to Mr.V.Velu, Advocate,SR.20069 to 20076

+8 cc's to Mr.N.Vijayaraghavan, Advocate,SR.20308.

Sai(co)
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CMA Nos.2857 to 2864 of 2014
and Cross Obj. No.125 & 126 of 2014