

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

C.M.A.Nos.1463 and 1464 of 2014

M.P.Madeswaran ...Appellant/Claimant in
C.M.A.1463 of 2014

M.N.Uma Appellant/Claimant in
C.M.A.1464 of 2014

Vs.

1.Thambi @ Kanakraj
2.Gandhimathi
3.Tata AIG General Insurance
Limited, Chennai
Rep. By its Branch Manager
1057, Avinasi Road, 3rd floor
Jaya Enclave, Coimbatore Taluk
Coimbatore District

... Respondents/Respondents
in both C.M.As

Civil Miscellaneous Appeals filed under Section 173 of Motor
Vehicles Act, 1988 against the judgment and decree passed by the
Motor Accident Claims Tribunal, Subordinate Judge,
Gobichettipalayam in M.C.O.P.Nos.251 & 252 of 2012 dated
08.01.2014.

For Appellants : Mr.A.Kumar

For Respondents : Exparte -R1 and R2
R3- No appearance

COMMON JUDGMENT

(Judgment of the Court was delivered by HULUVADI G. RAMESH,J.)

The injured claimants, who are husband and wife have filed
the above appeals seeking enhancement of the compensation.

2. Heard the learned counsel representing the appellants/claimants.

3. In spite of notice being served and the name of the 3rd respondent printed in the cause list, none appears on behalf of the third respondent/Insurance Company. Hence, considering the averments and arguments made on behalf of the appellants, the following order is passed.

4. It is a case of injury. On 04.11.2012, at about 3 p.m., while the appellant in CMA.1463/2014 was proceeding in his Motor Bike bearing Reg.No.TN-36-M-5136 with his wife/appellant in CMA.1464/2015 as a pillion rider on Kavundhapadi to Erode Main Road from west to east on the extreme left side of the road, a water tanker lorry bearing Reg.No.TN-27-V-0879, driven in a rash and negligent manner, dashed behind the motor cycle, due to which, the appellants herein sustained grievous injuries. The appellants/claimants filed claim petitions in M.C.O.P.Nos.251 and 252 of 2012 seeking compensation of Rs.2,50,000/- and Rs.3,00,000/- respectively.

5. In support of the claim, the claimants examined themselves as P.Ws.1 and 2 and Doctors viz., Thambiraj and Prakash, who treated them were examined as P.Ws.3 and 4 and one Subramaniam was examined as P.W.5 and Exhibits P.1 to P.35 were marked. On behalf of the Insurance Company, R.W.1/Krishnakumar, Assistant Manager of the Insurance Company was examined and R.W.1/Fine receipt with M.V.I report was marked.

6. The Tribunal, after taking note of the oral evidence of P.Ws.1 and 2 and Exhibits P.1 to P.5, held that the accident occurred due to the rash and negligent driving by the driver of the 1st respondent and consequently, fixed the liability on the third respondent/Insurance Company to compensate the claimants.

7. Insofar as C.M.A.No.1463/2014 is concerned, the injured is viz., M.P.Madheswaran, in which case, the Tribunal, taking note of the evidence of P.W.3 and the medical records, pointed out that the injured M.P.Madheswaran had sustained an abrasion over his right knee, a lacerated injury over the left side of his forehead, abrasions over the dorsum of his left forearm, abrasions over his toe, tenderness over his left wrist and pain and for mobility of 2 teeth in his upper jaw and 2 teeth in his lower jaw, root canal treatment was given. The evidence of P.W.3/the doctor further revealed that circumference of the right knee and left hand wrist joint of M.P.Madheswaran were limited. Further Ex.P.23-Permanent disability certificate shows the right knee disfunction at 20% and left wrist disfunction at

16% and totally partial permanent disability at 36%. M.P.Madheswaran was working as CNC Machine Operator at Geekey Engineering Company, Coimbatore and was earning Rs.25,000/- per month. Hence, the Tribunal, by fixing the income at Rs.7000/- per month and the age of the claimant at 24 years, assessed the permanent disability at 35% and awarded compensation towards "loss of earning" in a sum of Rs.5,29,200/- (Rs.7,000 x 12 x 18 x 35% = Rs.5,29,200/-).

8. Insofar as C.M.A.No.1464/2014 is concerned, the injured is viz., M.N.Uma, in which case, the Tribunal pointed out she is aged 34 years, working as a Teacher at Sri Dharmasastha Matriculation Higher Secondary School, Coimbatore, and was earning a sum of Rs.10,000/- per month. She deposed before the Tribunal that due to the accident, she has sustained a blunt injury over her head, contusion over the back side of her head, abrasion over her back, abrasion over her right knee, her eye sight has been affected, often experiencing giddiness and head ache and she is constrained to take leave. Ex.P.19/Pay Certificate revealed that subsequent to the accident, the injured/M.N.Uma was removed from service or that she has sustained loss of pay. The Tribunal, considering the nature of head injury, fixed 18% as permanent disability and a sum of Rs.1,000/- is awarded as compensation per percentage of disability.

9. Accordingly, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum for both the appellants:-

Sl. No.	Head	Amount granted by the Tribunal in CMA.1463/2014	Amount granted by the Tribunal in CMA.1464/2014
1	Pain and suffering	Rs. 25,000/-	Rs. 30,000/-
2	Mental agony and shock	Rs. 5,000/-	Rs. 5,000/-
3	Transport to hospital	Rs. 5,000/-	Rs. 5,000/-
4	Extra nourishment	Rs. 5,000/-	Rs. 9,000/-
5	Medical expenses	Rs. 21,380/-	Rs. 43,785/-
6	Permanent disability	----	Rs. 18,000/-
	Total	Rs. 61,380/-	Rs. 1,10,785/-

10. The learned counsel for the injured claimants/appellants submitted that the Tribunal has not awarded any amount for the

loss of income during the period of treatment in both the claim petitions. He also submitted that the amounts awarded under other heads are also very meagre and thus, sought for enhancement of compensation.

11. We have given our anxious consideration to the submissions made on behalf of the appellants/claimants and also perused the award passed by the Tribunal.

12. On a perusal of the Wound Certificate pertaining to M.P.Madheswaran/appellant in CMA.1463/2014, it is seen that the injured had taken treatment from 04.11.2012 to 08.11.2012 i.e, 5 days and the doctor opined that Injury Nos.1 to 8 are simple and Injury No.9 is grievous in nature. Learned counsel for the appellant also produced medical bills for Rs.43,784.95 in that regard. Considering these aspects, this court is inclined to award a sum of Rs.25,000/- under the head "Conveyance and future medical expenses" and Rs.10,000/- under the head "Extra Nourishment and Nursing charges" and a further sum of Rs.10,000/- under the head "Loss of income during the period of treatment". Altogether, Rs.50,000/- is enhanced over and above the compensation already awarded by the Tribunal.

13. While coming to C.M.A.No.1464 of 2014, the appellant herein viz., M.N.Uma was finally diagnosed by the Kovai Medical Centre, Erode that she is suffering from Contusion Brain and Conservative Treatment to be given. Even the Wound Certificate shows that she has taken treatment in hospital from 04.11.2012 to 10.11.2012 and as regards the 4 injuries sustained by her, Injury No.1 is grievous and Injury Nos.2, 3 and 4 are simple. Taking note of all the above, this court is inclined to award Rs.25,000/- under the head "conveyance and future medical expenses", another sum of Rs.25,000/- towards "loss of enjoyment of life" and Rs.20,000/- towards "loss of amenities". Altogether, Rs.70,000/- is awarded over and above the compensation already granted by the Tribunal.

14. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Compensation granted by the Tribunal
in C.M.A.No.1463/2014 : Rs. 61,380/-

Compensation granted by the Tribunal
in C.M.A.No.1464/2014 : Rs.1,10,785/-

Award granted by this Court in CMA.No.1463/2014:- Rs.1,11,380/-

Award granted by this Court in CMA.No.1464/104:-Rs.1,80,785/-

15. In the result, the Civil Miscellaneous Appeals are partly allowed as stated infra:-

- (i) The award of the Tribunal is enhanced to Rs.1,11,380/- from Rs.61,380/- in C.M.A.No.1463/2014. In C.M.A.No.1464/2014, the award is enhanced to Rs.1,80,785/- from Rs.1,10,785/-.
- (ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.
- (iii) In view of the compensation, being enhanced by this court, the 3rd respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest and cost to the credit of M.C.O.P.Nos.251 and 252/2012 within a period of three months from the date of receipt of a copy of this order.
- (iv) On such deposit, the claimants are permitted to withdraw the same. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on filing of necessary application.
- (v) There will be no order as to costs in this appeal.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

nvsri

To

The Motor Accidents Claims Tribunal,
Subordinate Judge,
Gobichettipalayam.

+1cc to Mr.A.Kumar, Advocate, S.R.No.27149

C.M.A.Nos.1463 and 1464 of 2014

RSY(CO)
CA(18/05/2016)