

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 24.11.2016

Date of Verdict : 15.12.2016

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.Nos.2613 and 2666 of 2011

Raghu @ Raghunathan ... Appellant in CMA.2613 of 2011/
Claimant

D.K.Balakrishnan ... Appellant in CMA.2666 of 2011/
Claimant

... Vs ...

1. Vijaya Kumar

2. The United India Insurance Co. Ltd.,
38, Anna Salai,
Chennai-600 002. ... Respondents /Respondents

Prayer in CMA.No.2613 of 2011: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 31.03.2011 made in M.A.C.T.O.P.No. 4164 of 2004, on the file of the Motor Accidents Claims Tribunal, (IV Court of Small Causes), Chennai.

Prayer in CMA.No.2666 of 2011: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 31.03.2011 made in M.A.C.T.O.P.No. 4158 of 2004, on the file of the Motor Accidents Claims Tribunal, (IV Court of Small Causes), Chennai.

For Appellant : Mrs.M.Malar
in both CMAs
For 2nd Respondent : Mr.D.Bhaskaran
in both CMAs
: R1 - Exparte

COMMON JUDGMENT

These civil miscellaneous appeals are directed against the common judgment and decree dated 31.03.2011 made in M.A.C.T.O.P.Nos.4158 and 4164 of 2004, on the file of the Motor

Accidents Claims Tribunal, (IV Court of Small Causes), Chennai.

2. The appellants, namely D.K.Balakrishnan and Raghu @ Raghunathan, as the claimants, have filed claim petitions in M.C.O.P.Nos.4158 and 4164 of 2004, respectively, before the learned Motor Accident Claims Tribunal (IV Court of Small Causes) Chennai, for the injuries sustained by them in the accident that had occurred on 19.05.2004. The Tribunal, after considering the evidence and after hearing the arguments of both sides, awarded a sum of Rs.1,11,000/- each, towards compensation to the appellants. Aggrieved against the said award passed by the Tribunal, the present appeals are preferred by the appellants seeking enhancement of the claim.

3. The learned counsel for the appellants in the both appeals would mainly contend that the trial Court without considering the injuries sustained by the claimants and without giving proper consideration of the disability caused to the claimants erroneously fixed lesser compensation. The Tribunal by fixing the income of the claimants as Rs.3,000/- each per month and awarded very lesser compensation towards loss of income. Further the Tribunal has not awarded proper compensation for pain and sufferings.

4. The learned counsel appearing for the appellants/claimants would further contend that P.W.2-Doctor has assessed the disability suffered by the claimants at 45% each but the Tribunal, without any basis, reduced the disability from 45% to 35% and awarded only a meager sum of Rs.70,000/-each, towards disability.

5. The learned counsel for the appellants further contended that the Tribunal has awarded a meager sum of Rs.20,000/-each towards pain and sufferings, a sum of Rs.9,000/-each towards loss of income, a sum of Rs.2,000/- each towards medical expenses, a sum of Rs.5,000/- each towards Transport to hospital and a sum of Rs.5,000/- each towards extra nourishment and totally awarded a sum of Rs.1,11,000/- each as compensation. Hence, the award amount has to be enhanced as claimed in the claim petitions.

6. The learned counsel appearing for the second respondent- Insurance Company in both appeals would contend that the Tribunal, after appreciating the evidence adduced on either side and after considering the evidence adduced by the Doctor, who has given the disability certificate, fixed the correct percentage of disability and since any income certificate has not been produced by the claimants showing their income, the Tribunal has rightly fixed the income of the claimants and awarded proper compensation under separate heads and hence, there is no illegality or infirmity or perversity in the order

passed by the Tribunal. Further, the order of the Tribunal has to be confirmed and the civil miscellaneous appeals have to be dismissed.

7. This Court has considered the submissions made by the learned counsel on either side and perused the records.

8. On a perusal of the records, it is seen that the Tribunal has awarded compensation under the following heads:-

Permanent disability (35%)	-	Rs.70,000/-
Pain and sufferings	-	Rs.20,000/-
Loss of Income	-	Rs. 9,000/-
Transport to hospital	-	Rs. 5,000/-
Extra nourishment	-	Rs. 5,000/-
Medical expenses	-	Rs. 2,000/-
		Rs.1,11,000/-

9. Admittedly, the Tribunal after considering the evidence and the certificate issued by the Doctor, has fixed 35% of disability and awarded a sum of Rs. 70,000/- towards the compensation for permanent disability. But, the Tribunal has not fixed any compensation towards the loss of earning power to the claimants. Hence, this Court is of the considered view that the claimants are entitled to get compensation for the loss of earning power. Since the claimants were working as painters, they are entitled to get a sum of Rs.40,000/- towards the loss of earning power.

10. Further, the claimants/appellants have not produced any documents for enhancement of the claim for transportation charges to hospital or loss of income. Hence, the argument of the learned counsel for the appellants/claimants that the amount awarded has to be enhanced under these heads, is not acceptable. The Tribunal, after considering the evidence, appropriately awarded compensation under the other heads which are confirmed

11. Considering the facts and circumstances of the case, the compensation awarded to the claimants is to be increased. The amount awarded by the Tribunal under the head of pain and sufferings is enhanced to Rs.30,000/- from Rs.20,000/- each; the amount awarded under the head of medical expenses is enhanced to Rs.5,000/- from Rs.2,000/- each. Accordingly, the compensation payable would be as follows:-

Loss of earning power	-	Rs. 40,000/-
Loss of income	-	Rs. 9,000/-
Transport expenses	-	Rs. 5,000/-
Expenses for nourishments	-	Rs. 5,000/-
Medical expenses	-	Rs. 5,000/-
Pain and sufferings	-	Rs. 30,000/-
Permanent disability (35%)	-	Rs. 70,000/-
		<u>Rs.1,64,000/-</u>

12. In the result, the Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal is enhanced to Rs.1,64,000/- each from Rs.1,11,000/- . Each the second respondent - Insurance company is directed to deposit the enhanced award amount of Rs.1,64,000/- with interest at 7.5% per annum, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. The appellants/claimants are entitled to withdraw the amount deposited on due application. No costs.

s/d-
Assistant Registrar (CS-VI)

//True Copy//

Sub-Assistant Registrar

To

1. The IV Judge,
The Motor Accidents Claims Tribunal,
Small Causes Court, Chennai.
2. The Section Officer,
V.R. Section, High Court
Madras

+2 Ccs to Mrs. M. Malar, Advocate, sr 73156,73154

Judgment in
C.M.A.Nos.2613 and 2666 of 2011

KSI (CO)
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