

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.Nos.528 to 530 of 2015

Mahendran

S/o Subramani

... Appellant in C.M.A.No.528 of 2015

S.Pichaiah

... Appellant in C.M.A.No.529 of 2015

K.Kotteswaran

... Appellant in C.M.A.No.530 of 2015

-vs-

1. Bhupinder Singh

... 1st Respondent in all the C.M.A's

2. The Oriental Insurance Co.,
No.115/216, Prakasam Street
Chennai 600 108

... 2nd Respondent in all the C.M.A's

Memorandum of Grounds of Civil Miscellaneous Appeals under Section 173 of the Motor Vehicles Act, 1988 against the fair and decretal order dated 23.08.2013 made in M.C.O.P.Nos.161, 162 & 268 of 2011 on the file of the Motor Accidents Claims Tribunal, VI Judge, Court of Small Causes, Chennai.

For Appellants :: Mr.S.Parthasarathy

For Respondents :: Mr.J.Raja Rao for R1
Mr.S.Manohar for R2

JUDGMENT

Three claimants have separately filed three civil miscellaneous appeals, assailing the impugned common award passed by the Motor Accident Claims Tribunal, VI Judge, Court of Small Causes, Chennai in M.C.O.P.Nos.161, 162 & 268 of 2011 dated 23.8.2013 awarding a sum of Rs.1,08,500/-, Rs.70,000/- and Rs.45,000/- respectively, for enhancement.

2. Heard the learned counsel for the parties.

3. In all these appeals, it is not in dispute that the second respondent insurance company has not questioned the quantum or liability. Therefore, it is an admitted case of both sides that the accident took place on 27.6.2009 at about 13.00 hours, when all the three injured claimants, being pedestrians, were walking along the Puzhal Service Line in GNT Road from east to west direction. While they were nearing the puzhal cycle shop, the offending container lorry bearing Registration No.HR 38 L 6107 driven by its driver, which was coming behind, dashed against them and caused multiple injuries. Therefore, when claims were made by all the injured, after answering who was negligent in causing the accident, the Tribunal has saddled the liability on the insurance company, which has taken insurance coverage on the offending vehicle, to pay the compensation. In the case of Mr.Mahendran, the appellant in C.M.A.No.528 of 2015, the Tribunal has fixed 35% disability and accordingly awarded a compensation of Rs.35,000/- towards partial permanent disability. But the grievance of the injured claimant is that when the xerox copies of the medical bills constituting a sum of Rs.18,880/- were produced before the Tribunal, it has awarded a sum of Rs.10,000/- alone towards the medical expenses, in the absence of the originals. It was contended that at the time of filing of the medical bills, the insurance company has not raised any objection, therefore, after admission of the documents, at the time of trial, they cannot take a 'U' turn for denying the same. Moreover, the Tribunal, without even considering the factor that the claim under the medical bills was not objected to by the second respondent, it is not open to the Tribunal to reject the bunch of medical bills for a sum of Rs.18,880/-. Adding further, he submitted that when Mr.Mahendran, aged about 54 years, has sustained fracture of two bones in his right leg and steel plate with screws have been implanted during surgery and that Dr.K.J.Mathiazhagan, who was examined as P.W.4, has rightly deposed that in view of the multiple injuries in his right leg, he had sustained fracture, for which a surgery was done and the steel plate and screws were fixed inside his right leg, the Tribunal, having fixed 35% disability, has wrongly fixed a sum of Rs.1,000/- per percentage of disability and on this basis a sum of Rs.35,000/- alone has been allowed under the head partial permanent disability. When the injured appellant has sustained multiple injuries, for which he had also undergone surgery and in the said surgery steel plate with screws have been fixed, he would have undergone heavy pain and sufferings, hence a sum of Rs.3,000/- per percentage of disability ought to have been fixed. Therefore he pleaded that under this head, a reasonable amount of compensation should be fixed. In the case of the other two claimants in C.M.A.Nos.529 & 530 of 2015 also, namely, Mr.S.Pichaiah and K.Koteswaran are concerned, the learned counsel submitted that the Tribunal, after accepting the evidence of the doctor, has wrongly fixed a

sum of Rs.1,000/- per percentage of disability for 30% & 20% disability respectively.

4. This Court also finds merit in his submissions. As deposed by the doctor, P.W.4 in his evidence, when the injured Mr.Mahendran has sustained multiple grievous injuries and fracture of two bones in his right leg, for which he has also undergone surgery and steel plate with screws have been implanted, this Court is inclined to fix Rs.3,000/- per percentage of disability for 35% disability, instead of Rs.1,000/- per percentage fixed by the Tribunal. With regard to medical bills, as rightly argued by the learned counsel for the appellants, at the time of filing, as no objection was raised by the insurance company, having not raised any objection for receipt of documents, this Court is not able to find how the Tribunal could reject a bunch of medical bills for a sum of Rs.18,880/-. Therefore this Court, accepting the medical bills, is inclined to award a sum of Rs.18,880/- under this head, instead of Rs.10,000/- fixed by the Tribunal. Similarly, in the case of Mr.S.Pitchaiah, the appellant in C.M.A.No.529 of 2015, as deposed by Dr.K.J.Mathiazhagan, P.W.4 in his evidence, when the injured has sustained fracture of bone in his left knee, for which he had taken treatment in the Stanley Government Hospital, Chennai as an in-patient and is not able to still sit cross legged, walk and there is also mal-union of the bones, this Court is inclined to fix Rs.3,000/- per percentage of disability for 30% partial permanent disability. Likewise, in the case of Mr.K.Kotteswaran, the appellant in C.M.A.No.530 of 2015, again the doctor, P.W.4 has deposed that the injured has sustained fracture of bone in his right toe and has taken treatment as an in-patient at Stanley Government Hospital, Chennai from 27.6.2009 to 30.6.2009 and thereafter at Government Kilpauk Medical College and Hospital, Chennai. He has also further deposed that the injured was unable to walk without a walker, sit comfortably and unable to perform his day to day activities and therefore assessed the disability at 30%. However, the Tribunal has fixed the disability at 20% and fixed Rs.1,000/- per percentage of disability. Considering the nature of injuries, this Court is inclined to fix a sum of Rs.3,000/- per percentage of disability for 20% disability. Accordingly, so far as the appellant in C.M.A.No.528 of 2015 is concerned, while enhancing the award amount under the head of 'medical expenses' from Rs.10,000/- to Rs.18,880/- and under the head of 'Disability' at the rate of Rs.3,000/- per percentage for 35% disability from Rs.35,000/- to Rs.1,05,000/-, the rest of the amounts awarded under the other heads by the Tribunal shall remain unaltered. So far as the appellant in C.M.A.No.529 of 2015 is concerned, while enhancing the award amount under the head of 'Disability' at the rate of Rs.3,000/- per percentage

for 30% disability from Rs.30,000/- to Rs.90,000/-, the rest of the amounts awarded under the other heads by the Tribunal shall remain unaltered. So far as the appellant in C.M.A.No.530 of 2015 is concerned, while enhancing the award amount under the head of 'Disability' at the rate of Rs.3,000/- per percentage for 20% disability from Rs.20,000/- to Rs.60,000/-, the rest of the amounts awarded under the other heads by the Tribunal shall remain unaltered. Since the entire award amount in each case has already been deposited, the second respondent insurance company is directed to deposit the enhanced amount of compensation in each case together with interest at the rate of 7.5% per annum to the credit of the M.C.O.P.No.161, 162 & 268 of 2011 respectively, on the file of the Motor Accident Claims Tribunal, VI Judge, Court of Small Causes, Chennai within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant/claimant in each case is entitled to withdraw the entire amount with accrued interest by moving appropriate application before the Tribunal, after complying with the formalities. With this modification, the appeals are disposed of accordingly. No costs. Additional Court fee shall also be paid.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ss
To

The VI Judge
Court of Small Causes
Motor Accident Claims Tribunal
Chennai

Copy to

The Section Officer,
VR Section, High Court, Madras.

+3cc to Mr.S.Parthasarathy, Advocate Sr.66986

+3cc to Mr.S.Manohar, Advocate Sr.66908 to 66910

C.M.A.Nos.528 to 530 of 2015

ksj[co]
srg 12/01/2017