

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.789 to 791 of 2015 and 1827 to 1829 of 2015
and M.P.Nos.1 of 2015 in C.M.A.Nos.1827 to 1829 of 2015

R.PandiammalAppellant in C.M.A.No.789/15
/1st respondent in CMA.No.1827/15

V.Perumal KonarAppellant in C.M.A.No.790/15
/1st respondent in CMA.No.1828/15

A.LakshmiAppellant in C.M.A.No.791/15
/1st respondent in CMA No.1829/15

Vs.

1. A.Sheik Jaffar1st respondent in CMA 789 to 791/15
/2nd respondent in CMA Nos.1827 to 1829/15

2. National Insurance Co. Ltd.,
Motor Third Party Claims Cell,
No.751, Anna Salai,
Chennai 600 002
...2nd respondent in CMA 789 to 791/15
/Appellants in CMA Nos.1827 to 1829/15

Civil Miscellaneous Appeals filed under Section 173 of the
Motor Vehicles Act, against the Judgment and decree dated
18.11.2014 passed in M.C.O.P.Nos.1778 to 1780 of 2013 on the
file of the Motor Accidents Claims Tribunal, II Judge, Court of
Small Causes, Chennai.

For Appellant in CMAs.789 to 791/15 &
For 1st Respondent in CMAs.1827 to 1829/15 : Mr.C.Munusamy

For 2nd Respondent in CMAs.789 to 791/15 &
For Appellant in CMAs.1827 to 1829/15 : Mr.J.Chandran

R1 in CMAs.789 to 791/15 & : Set exparte before
R2 in CMAs.1827 to 1829/15 the Tribunal

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR, J.)

While the claimants filed the Civil Miscellaneous Appeal Nos.789 to 790 of 2015, the National Insurance Company Limited filed the Civil Miscellaneous Appeal Nos.1827 to 1829 of 2015, challenging the Judgment and decree dated 18.11.2014 passed in M.C.O.P.Nos.1778 to 1780 of 2013 on the file of the Motor Accidents Claims Tribunal, II Judge, Court of Small Causes, Chennai.

2. The Motor Accident which occurred on 16.01.2013 at 4.15 hours at Kundampatti - Kalkottai Road near Nachiarpuram, Kannimar Temple resulted in three injury cases. As per the claim petitions filed before the Tribunal, it is stated that while the claimants and others were proceeding in the auto rickshaw bearing Registration No.TN-57-W-6438 from West to East direction in Kundampatti-Kalkottai Road, near Nachiarpuram, Kannimar Temple, the driver of the said auto rickshaw drove the same in a rash and negligent manner and took a left turn in the same speed, thereby unable to control the vehicle and the said auto rickshaw capsized. In the resultant accident, all the claimants sustained grievous injuries. The following table gives the MCOP numbers, name, age, and the amount of compensation claimed by the claimants.

Sl .N o.	MCOP No.	Name of the injured/ claimant	Amount of compensation claimed.
1	1778/13	R.Pandiammal, 49 years	Rs.9,00,000/-
2	1779/13	V.Perumal Konar, aged 59 years	Rs.36,00,000/-
3	1780/13	A.Lakshmi, aged 45 years	Rs.9,00,000/-

3. In support of the claim, the claimants were examined as P.W.1, P.W.2 and P.W.3 respectively and one Dr.Amarnath R Sowlee was examined as P.W.4 and Exs.P-1 to Ex.P.16 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Attested copy of FIR
P2	Discharge chit (O.P.No.1778/13)
P3	Outpatient Chit

Ex.No.	Details
P4	Outpatient Card
P5	Wound certificate (O.P.No.1779/13)
P6	Discharge summary
P7	Discharge summary
P8	Outpatient treatment record
P9	Medical bills
P10	Outpatient Chits (O.P.No.1780/13)
P11	Disability Certificate (O.P.No.1778/13)
P12	X-ray film
P13	Disability certificate (O.P.No.1780/13)
P 14	X-ray film
P15	Disability Certificate (O.P.No.1779/13)
P16	X-ray film

On behalf of the Insurance Company, one Damodharan, Junior Assistant, R.T.O., Dindigul was examined as R.W.1 and Mala Parthasarathi, Assistant Manager of Insurance Company was examined as R.W.2 and Exs.R1 to R11 were marked, the details of which are as follows:-

Ex.No.	Details
R1	Letter from RTO Dindigul
R2	Copy of MVI Report
R3	Copy of Registration Certificate of 1st respondent's vehicle
R4	Copy of notice dt.28.8.2014 issued to driver and owner of offending vehicle
R5	Returned Postal cover
R6	Returned Postal cover
R7	Copy of permit for 1st respondent's vehicle
R8	Insurance policy
R9	Copy of Accident Register of Manivel
R10	Copy of driving licence of 1st respondent's vehicle driver
R11	Copy of charge sheet

and the 1st respondent A.Sheik Jaffar remained exparte.

4. The Tribunal, on an analysis of evidence and the materials placed before it, pointing out that the evidence of R.W.1, R.W.2 and Exs.R1 to R11 being the sufficient proof that the driver of A.Sheik Jaffar, 1st respondent in M.C.O.P.Nos.789 to 790 of 2015 had no valid badge at the time of accident and drove the vehicle exceeding the seating capacity, gave a finding that the driver of the offending vehicle is responsible for the accident. On such finding, the Tribunal held that since the vehicle is covered by an Insurance Policy on the date of the incident and the driver violated the policy conditions, the Insurance Company, being the insurer, though not liable, so far as the third party is concerned, is liable to pay the compensation initially and then recover the same from the owner of the vehicle. Challenging the quantum of compensation awarded, while the appeals are filed by the Insurance Company for reduction, the claimants have preferred the appeals seeking enhancement of compensation.

5. The amount of compensation awarded under different heads for each of the claimants are as follows:-

Sl. No.	Head	Amount granted by the Tribunal (OP.789/15) (Rs)	Amount granted by the Tribunal (OP 790/15) (Rs)	Amount granted by the Tribunal (OP 791/15) (Rs)
1	Loss of income	18,000/-	36,000/-	18,000/-
2	Transportation	10,000/-	15,000/-	10,000/-
3	Extra Nourishment	15,000/-	20,000/-	15,000/-
4	Damage to clothes	1,000/-	1,000/-	1,000/-
5	Medical Expenses	10,000/-	2,60,000/-	15,000/-
6	Attender charges	7,000/-	25,000/-	7,000/-
7	Loss of amenities of life	15,000/-	40,000/-	20,000/-
8	Pain and Suffering	40,000/-	50,000/-	40,000/-
9	Disability and loss of earning power	1,18,800/-	2,52,000/-	1,40,400/-
10	Future medical expenses	-	40,000/-	-
11	Mental agony to the claimant	-	25,000/-	-
	Total	2,34,800/-	7,64,000/-	2,66,400/-

6. It is represented by Mr.J.Chandran, learned counsel for the National Insurance Company Limited that the compensation awarded to the respective claimants are highly excessive, exorbitant and unsustainable in law. He would further plead that the Tribunal, considering the evidence of R.W.2, that the owner of the vehicle knowing that the driver had no valid driving license allowed him to drive the vehicle and to carry passenger exceeding the seating capacity committed multiple violations against the RC, Permit, terms and conditions of insurance policy, Motor Vehicles Act, ought to have held that the Insurance Company is not liable. The learned counsel for the Insurance company also pleaded that the findings arrived at by the Tribunal shows that the assessment is purely on its discretion rather than on the basis of either oral or documentary evidence available on record. One other plea raised is that the Tribunal ought to have disbelieved the evidence of the Doctor and the disability certificates issued by him since there is no record to show that they suffered disability after treatment also and there is inability to continue their occupation. Hence, he prayed for allowing of the Civil Miscellaneous appeals filed by the Insurance Company.

7.1 On the other hand, the learned counsel appearing for the claimants submitted that the award of the Tribunal for each of the claimants is too inadequate.

7.2 As far as the claimant in O.P.No.1778 of 2013 is concerned, according to the learned counsel for the claimant she suffered fracture at the lower end of right radius besides severe injuries, for which, she took treatment for months together as evidenced by Exs.P2 to P4 and she is now also taking treatment as outpatient and even after the prolonged treatment, the injured is not in a position to do her normal avocation and day to day affairs owing to the physical disabilities. Therefore, the Tribunal is erred in not awarding any sum towards future medical treatment. That apart, according to him, when the Doctor has assessed the disability at 25% and marked the disability certificate and X rays as Exs.P11 and P12, the Tribunal ought not to have reduced the percentage of disability on its own without any reason.

7.3 As far as the claimant V.Perumal Konar in O.P.No.1779 of 2013 is concerned, according to the learned counsel for the claimant he suffered Bilateral rib 3rd to 10th fracture with pneumohaemothorax, fracture shaft of humerus left with fracture scapula bilateral, laceration on the left maxillary region, laceration on the tip of the nose, laceration on the chest, abrasions on the medical aspect of the left knee, tenderness

present on the right and left chest and swelling, tenderness and deformity of the left arm besides severe injuries, for which, he took treatment as inpatient for months together and undergone several surgeries besides he incurred more than a sum of Rs.3,00,000/- towards medical expenses as evidenced by Exs.P5 to Ex.P9 and even now he is taking treatment as outpatient and even after the prolonged treatment, the injured is not in a position to do his normal avocation and day to day affairs owing to the physical disabilities. Therefore, according to the learned counsel, the Tribunal has erred in not awarding any sum towards future medical treatment. That apart, according to him, when the Doctor has assessed the disability at 80% and marked the disability certificate and X rays as Exs.P15 and P16, the Tribunal ought not to have reduced the percentage of disability on its own without any reason.

7.4 As far as the claimant A.Lakshmi in O.P.No.1780 of 2013 is concerned, according to the learned counsel for the claimant she suffered fracture at the lower end of left radius besides severe injuries, for which, she took treatment for months together as evidenced by Ex.P.10 and she is now also taking treatment as outpatient and even after the prolonged treatment, the injured is not in a position to do her normal avocation and day to day affairs owing to the physical disabilities. Therefore, the Tribunal is erred in not awarding any sum towards future medical treatment. That apart, according to him, when the Doctor has assessed the disability at 25% and marked the disability certificate and X rays as Exs.P13 and P14, the Tribunal ought not to have reduced the percentage of disability on its own without any reason.

7.5 The learned counsel for the claimants further submitted that the Tribunal has erred in awarding meager sum towards extra nourishment without considering the nature of injuries and the prolonged treatment and resultant physical disability suffered by the claimants. He would further plead that the Tribunal ought to have considered and awarded separately under the heads Permanent disability and loss of earning power instead of clubbing together since both are distinct and different heads.

7.6 The learned counsel for the claimants has further submitted that the award amount under the other heads also are very meager.

Based on the above, the learned counsel for the claimants has sought for enhancement of the compensation.

8. Heard the learned counsel on either side and perused the available papers placed on record.

9. As far as the claimant R.Pandiammal is concerned, according to her, she is 49 years old and she is an agricultural worker. Considering Ex.P2, and her evidence, the Tribunal has fixed her age as 54. Since there was no proof for her avocation and income, the Tribunal has rightly fixed the monthly income at Rs.6,000/-, though according to the claimant she was earning Rs.9,000/- to Rs.10,000/-. Further, the Tribunal is right in fixing the disability at 15% though the Doctor's assessment was 25%, since there was an admission by the Doctor that he did not give treatment to the injured. Thus, the compensation awarded under the head disability and loss of earning power is just and reasonable. As far as the compensation awarded under the head loss of income for 3 months is concerned, the Tribunal is right in granting the amount of Rs.18,000/- as she took 3 days inpatient treatment and then took outpatient treatment for 3 months. That apart, on a perusal of the compensation awarded under the other heads viz., Transportation, Extra nourishment, damage to clothes, medical expenses, attender charges, loss of amenities of life and pain and suffering are concerned, we are of the view that the Tribunal is justified in awarding compensation under those heads.

In view of the above, we confirm the award of the Tribunal in so far as the claimant R.Pandiammal is concerned. Hence, both the CMA Nos.789 of 2015 and 1827 of 2015 are dismissed.

10. As far as the claimant V.Perumal Konar is concerned, it is stated that he is aged 59 years and was doing agricultural work and building construction work. After the accident, it is evident from the records that he was treated in the hospital and discharged. It is contended that the Tribunal ought not to have fixed the disability at 80%, based on the erroneous plea that the disability is continuing. The contention of the Insurance Company is that there is no record to show that the disability is continuing and there was no further treatment after the first round of treatment. On going through the materials placed on record, we find that the quantum of compensation awarded by the Tribunal based on the evidence on record, by applying the multiplier is just and reasonable. Therefore, we find no reason to reduce or enhance the compensation awarded by the Tribunal. Hence, both the appeals viz., C.M.A.No.790 of 2015 and C.M.A.No.1828 of 2015 are dismissed.

11. As far as the claimant Lakshmi in CMA 791 of 2015 is concerned, she is aged 45 years and she was working as Agricultural worker and also doing building construction work. Due to the accident, there is fracture on the left wrist and the disability is assessed at 25%. However, there is no continuous medical record or document to show that consequent to the

fracture of the left wrist, there is an inability to continue her occupation. Therefore, the appellant/Insurance Company is justified in saying that multiplier method cannot be applied. Hence, considering the nature of injury sustained by her, we are inclined to grant Rs.75,000/- as against the compensation of a sum of Rs.1,40,400/- under the head Permanent disability. Thus, the appeal filed by the Insurance Company in C.M.A.No.1289 of 2015 is allowed in part and the award is reduced to a sum of Rs.2,01,000/- from Rs.2,66,400/- and the appeal filed by the claimant in C.M.A.No.791 of 2013 is dismissed.

12. Since there is no dispute with regard to the interest granted at 7.5% p.a., the same is confirmed.

13. In the result, the appeals filed by the claimants in CMA Nos.789 to 791 of 2015 and the appeals filed by the Insurance Company in C.M.A.Nos.1827 and 1828 of 2015 are dismissed and the appeal in C.M.A.No.1829 of 2015 is partly allowed.

(i) The award of the Tribunal as far as O.P.Nos.1778 and 1779 of 2013 are concerned, they are confirmed. As far as O.P.No.1780 of 2013 is concerned, the award of the Tribunal is reduced to Rs.2,01,000/- from Rs.2,66,400/-

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) The appellant/Insurance Company is directed to deposit the respective award amount as ordered by this Court to the credit of M.C.O.P.Nos.1778 to 1780 of 2013 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai, within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit, the respective claimants are permitted to withdraw their respective award amount as ordered by this Court on filing necessary application before the Tribunal.

(v) There will be no order as to costs in these appeals.

Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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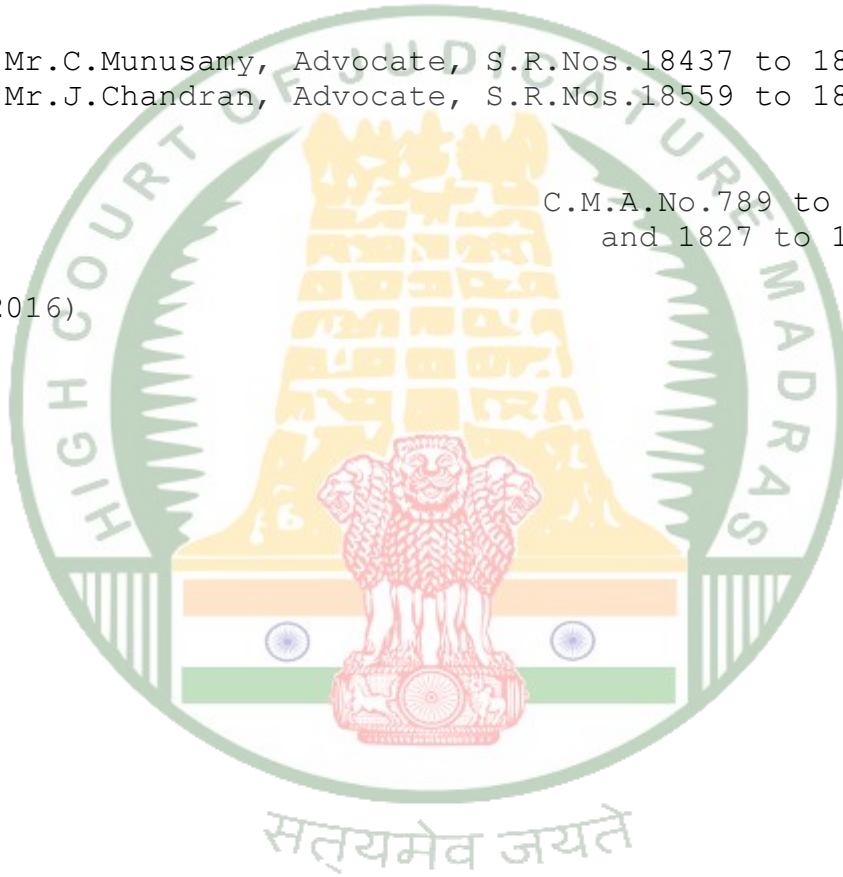
1.The Registrar,
II Court of Small Causes
(The Motor Accidents Claims Tribunal)
Chennai.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+3cc's to Mr.C.Munusamy, Advocate, S.R.Nos.18437 to 18439
+3cc's to Mr.J.Chandran, Advocate, S.R.Nos.18559 to 18561

C.M.A.No.789 to 791 of 2015
and 1827 to 1829 of 2015

GJ(CO)
CA(22/04/2016)



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