

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2016

CORAM

THE HON'BLE MR.JUSTICE T.MATHIVANAN

C.M.A.Nos.855 and 881 of 2011

Mangala Devi ... Appellant/Petitioner
in CMA No.855 of 2011

Palaniappan ... Appellant/Petitioner
in C.M.A.No.881 of 2011

VS

1. Prasath

- 2. Bajaj Allianz General Insurance Company Limited
Pagavbathi Palace, 2nd Floor
3rd Avenue, Anna Nagar East
Chennai -600 102

(R1-exparte in Lower Court Hence, dispensed with)

... Respondents/Respondents
in both the appeals

Prayer: Both the Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the common award dated 15.12.2009 and made in the claim petitions in M.C.O.P.Nos.156 and 157 of 2008 on the file of the Motor Vehicles Accident Claims Tribunal (Sub-Court), Hosur.

For Appellants : Mr.M.Selvam

For Respondents : Mr.N.Vijayaraghavan for R2

ORDER

The Civil Miscellaneous Appeals are filed under section 173 of M.V.Act 1988 to set aside the common Award dt.15.12.2009 and made in the Claim Petitions in M.C.O.P.Nos.156 & 157 of 2008, on the file of the Motor Vehicles Accident Claims Tribunal (Sub-Court), Hosur.

2. Seeking enhancement of compensation, the Claimants in the claim Petition in M.C.O.P.Nos.156 & 157 of 2008 have filed these appeals under section 173 of M.V.Act.

3. The appellants in both the appeals are the husband and wife whereas the respondents 1 & 2 are the owner and the insurer of the offending vehicle.

4. With the issue in both these appeals is one and the same and the parties to the appeals are also one and the same, both the appeals have been consolidated together, heard jointly and disposed of in this common Judgment.

5. Heard M/s.M.Selvam Learned counsel for the Appellants and Mr.N.Vijayaraghavan Learned Counsel for the 2nd respondent. 1st respondent remained exparte.

7. The appellants had moved the Claims Tribunal with their respective claim petitions in M.C.O.P.No.156 & 157 of 2008 claiming a sum of Rs.10 lakhs and 15 lakhs respectively for the injuries sustained by them in a road traffic accident alleged to have been taken place on 29.07.2007 involving a car bearing registration No.TN-02-L-9031 near Koneripalli (NH-7), Soolagiri.

8. In the said accident the appellant in C.M.A.No.855 of 2011 (Claimant in M.C.O.P.No 156 of 2008) had sustained the following injuries:

- a. Fracture of right ankle knee bone and ankle bone
- b. Fracture of left fore-arm bone.
- c. Fracture of Left Elbow.

The appellant in C.M.A.No.881 of 2011 (Claimant in M.C.O.P.No.157/2008) had sustained the following injuries:

- a. Abrasions on the scalp.
- b. An incised wound over the right eye brow measuring 1cm x 1cm.
- c. Fracture over the right thigh with swelling.
- d. Fracture over the right hip with contusion.
- e. Multiple injuries on all over the body.

9. The 1st respondent being owner of the vehicle remained exparte before the Tribunal. The 2nd respondent being the insurer of the offending vehicle alone had contested both the Claim Petitions on the following grounds:

- a) The driver of the Hyundai car bearing registration No.TN-22-L-9031 was not having valid and effective driving license to drive the vehicle at the time of accident.
- b) Since the appellants were allowed to travel in the said car as passengers, the 1st respondent who is the owner of the vehicle had violated the policy conditions.
- c) As per section 134 (C) of M.V.Act 1988, it is mandatory on the part of the 1st respondent to furnish all the required details, but he had miserably failed to comply with the provisions of the above section of Law.
- d) The car bearing registration No.TN-02-L-9031 was not involved in the said accident.
- e) The owner and the insurer of the tipper lorry against which the car is said to have been rammed are necessary and proper parties to be impleaded in the claim petitions. The claim petitions are therefore bad for non-joinder of necessary parties.
- f) Compensation claimed under various heads is untenable in Law.

10. The Claims Tribunal on appreciation of evidences both oral and documentary had proceeded to pass the award as detailed below :

MCOP No.156 of 2008 : -

a. For pain and sufferings	-	20,000/-
b. For permanent disability	-	90,000/- (45X2000)
c. Medical Expenses	-	9,500/-
d. For Nutritious food	-	5,000/-
e. For Transport Expenses	-	5,000/-

Total 1,29,500

MCOP 157 OF 2008 :

a. Pain and Sufferings and Mental Agony	15,000/-
b. For permanent disability at 45%	90,000/- (45X2000/-)
c. For Medical Expenses	80,000/-
d. Towards Nutritious Food	5,000/-

Total 1,90,000

11. The claims Tribunal had therefore directed the 2nd respondent to pay this amount in favour of the appellants along with interest at 7.5% per annum within a period of 2 months from the date of award. Not being satisfied with the award passed by the Tribunal the appellants being the claimants stand before this court with these appeals.

12. When these appeals are taken up for hearing today the Learned Counsel for the appellants/claimants has filed two calculation Memorandum's and thereby requested this court to enhance the award amount as detailed in the Memorandums. The Learned Counsel Mr.N.Vijayaraghaven appearing for the 2nd respondent Insurance Company has got no objection to modify and enhance the impugned award passed by the Tribunal. Accordingly the award of the Tribunal is enhanced in the following manner:

MCOP 156 OF 2013 :

• Disability (45 X 2000)	-	90,000/-
• Pain and Suffering	-	25,000/-
• Extra Nourishment	-	15,000/-
• Transport to Hospital	-	15,000/-
• Attender Charges	-	15,000/-
• Medical Expenses (Ex.P7)	-	10,000/-
• Loss of Amenities	-	25,000/-
• Loss of Income during Treatment period 5000 x 3	-	15,000/-
Total		2,10,000

MCOP 157 OF 2013 :-

• Disability (60 X 2000)	-	1,20,000
• Pain and Suffering	-	25,000
• Extra Nourishment	-	15,000
• Transport to Hospital	-	15,000
• Attender Charges	-	15,000
• Medical Expenses (Ex.P7)	-	80,000
• Amenities	-	25,000
• Loss of Income during The treatment period 5000 x 3	-	15,000
Total		3,10,000

The calculation Memorandum's filed by the appellants Counsel are recorded. The 2nd respondent, Insurance Company is directed to deposit the above said award amounts to the credit of the claim petitions MCOP.No.156 & 157 of 2008, if not deposited earlier, within a period of 4 weeks from the date of receipt of a copy of this judgment.

On such deposit being made the appellants are entitled to withdraw the entire amount along with the interest & costs without actually filing any formal application seeking permission of the Tribunal. However there shall be no order as to cost.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Sub Court,
Motor Accident Claims Tribunal,
Hosur.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+2cc to Mr.M.B.Gopalan, Advocate Sr. 44722

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C.M.A.No.855 & 881 of 2011

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SKS (CO)

VR(28/10/2017)