

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.Nos.1362 and 1363 of 2017
C.M.P.Nos.7207 and 7209 of 2017

Bajaj Allianz General Insurance Co. Ltd.,
Pondicherry. ... Appellants in both appeals/
2nd Respondents

Vs

1. Minor Anindya Chakraborty ... 1st Respondent in
C.M.A.No.1362 of 2017/
Petitioner
2.Minor Ayantika Chakraborty ... 1st Respondent in
C.M.A.No.1363 of 2017/
Petitioner

Both are represented by his father,
Mr.Niloy Chakraborty

3.N.R.Kumar ... 2nd Respondent in both C.M.As/
1st Respondents

Civil Miscellaneous Appeals filed under
Section 173 of Motor Vehicles Act, 1988, against the Order and
Decreetal Order in M.C.O.P.Nos.5258 and 5448 of 2011, dated
27.04.2015, on the file of Motor Accidents Claims Tribunal (Vth
Court of Small Causes), Chennai.

For Appellants : Mr.Srinivasan Ramalingam
For 1st Respondent
in both CMAs. : Mr.V.G.Anbarasu

COMMON JUDGMENT

[Judgment of the Court was made by S.MANIKUMAR, J.]

Both the Civil Miscellaneous Appeals are filed,
challenging the quantum of compensation.

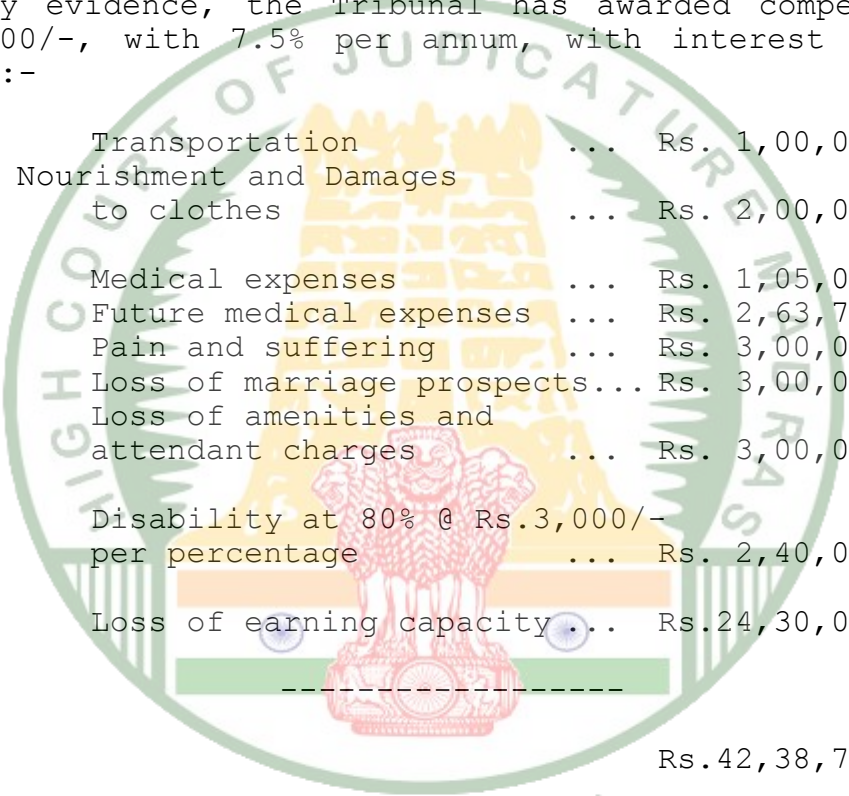
2. Going through the award and the material on record, it could be deduced that, in the accident, which occurred on 11.03.2011, both the respondents/claimants have sustained multiple injuries. Initially, both of them have been admitted in SICK BAY Hospital, Arakonam and given treatment.

3. Insofar as M.C.O.P.No.5258 of 2011 is concerned, Ex.P26 - Treatment Summary, shows that the respondent/claimant had pain and bleeding from right great toe and multiple abrasions and bruises in the left knee. As per Ex.P27 - Discharge Summary, she had sustained a compound fracture in both bones right leg, crush injury in the right big toe and due to non-viability, big toe has been removed completely.

4. PW.2, Doctor, who clinically examined the respondent/claimant, found that both bones had united, in an expanded manner, causing pain, swelling and there was restriction in movement of right leg. He has further found that due to the muscle stiffness in the right leg, its rotation is reduced by 20 Degrees, from the normal 120 Degrees and therefore, he has assessed the functional disability as 40%. Taking note of the removal of right big toe, PW.2, Doctor, has assessed another 15% disability and issued Ex.P32 - Disability Certificate. Following a decision of the Hon'ble Apex Court in Master Mallikarjun v. Divisional Manager, National Insurance Co. Ltd., reported in CDJ 2013 SC 740, the Claims Tribunal has awarded Rs.4,00,000/- towards disability. That apart, the Claims Tribunal has awarded Rs.50,000/- for transportation, nutrition and other miscellaneous expenditure, Rs.5,000/- for medical expenses and Rs.5,000/- for attendant charges. Altogether, the Claims Tribunal has awarded Rs.4,60,000/-, as total compensation, with interest at the rate of 7.5% per annum, from the date of claim, till deposit.

5. Insofar as M.C.O.P.No.5448 of 2011, is concerned, the respondent/claimant underwent post traumatic amputation below knee right, which is evident from Ex.P4 - Wound Certificate. Ex.P6 - Discharge Summary, issued by SICK BAY Hospital, Arakonam, shows that the respondent/claimant had sustained right leg amputation, complete compressed fracture right tibia and fibula, all the muscles were completely shattered and that there was a lacerated wound in the left leg. After the accident, she has been taken to Government Stanley Hospital, Chennai and given treatment for the crush injury, in her right leg and degloving injury, in the left leg. Ex.P7 - Discharge Summary issued by the said hospital shows that the

respondent/claimant had sustained a crush injury in her right leg, to an extent of 6 cms, fracture of tibia exposed and tibial pulses were absent. Her right leg has been amputated below knee and wound debridement has been done. At request, she has been discharged on 14.03.2011. Later, on the same day, she has been admitted in Military Hospital, Chennai, for further management and discharged on 06.04.2011, for treatment at the Military Hospital, Pune. Ex.P8 - Discharge Summary, issued by Military Slip, Pune, shows that she was hospitalised from 08.04.2011 to 23.04.2011. Ex.P10 - Medical Certificate issued by the said hospital shows that due to amputation of right leg below knee, she was permanently disabled. On the basis of oral and documentary evidence, the Tribunal has awarded compensation of Rs.42,38,700/-, with 7.5% per annum, with interest and costs, as follows:-



Transportation	...	Rs. 1,00,000/-
Extra Nourishment and Damages to clothes	...	Rs. 2,00,000/-
Medical expenses	...	Rs. 1,05,000/-
Future medical expenses	...	Rs. 2,63,700/-
Pain and suffering	...	Rs. 3,00,000/-
Loss of marriage prospects	...	Rs. 3,00,000/-
Loss of amenities and attendant charges	...	Rs. 3,00,000/-
Disability at 80% @ Rs.3,000/- per percentage	...	Rs. 2,40,000/-
Loss of earning capacity	...	Rs.24,30,000/-

		Rs.42,38,700/-

Heard the learned counsel appearing for the parties and perused the materials available on record.

6. Insofar as C.M.A.No.1362 of 2017 (M.C.O.P.No.5258 of 2011) is concerned, considering the nature of injuries, period of treatment, disability assessed, we are of the view that the respondent/injured is entitled to be compensated under various heads and duly considered by the Tribunal. We find no error. After explaining the manner, in which, the Tribunal has computed the quantum of compensation, both the learned counsel for the parties also consented that there is no need to reduce the same. Hence, quantum of

compensation of Rs.4,60,000/-, with interest, at the rate of 7.5% per annum, from the date of claim, till deposit, is confirmed.

7. Insofar as C.M.A.No.1363 of 2017 (M.C.O.P.No.5448 of 2011), is concerned, we have perused the documents, including visa details. Though the Tribunal has taken 100% disability, for the purpose of computing the loss of earning capacity, having regard to the guidelines laid down in Rajkumar v. Ajay Kumar reported in 2011 (1) SCC 343, nature of injuries, evidence of PW.2, Doctor and co-relating the same to the avocation pleaded, we are of the view that it is suffice to assess the loss of earning capacity at 70%. Functional disability can also be fixed at 70% and taking note of the date of accident, award Rs.2,500/- per percentage of disability. There would be a reduction of Rs.50,000/-, from the head, 'loss of marriage prospects'. Considering the cost of living, cost of artificial limbs, and the expenses likely to be incurred for periodical replacement of the artificial limb, in addition to the amount awarded, another sum of Rs.2,63,700/- is awarded under the head, "future medical expenses".

8. Though the Tribunal has awarded consolidated sum of Rs.2,00,000/- towards extra nourishment and damages to clothes, this Court is inclined to reduce the same to Rs.1,00,000/- towards extra nourishment and Rs.2,500/- for damages to clothes and articles. Consolidated compensation of Rs.3,00,000/- towards loss of amenities and attendant charges, is also excessive and therefore, the same is reduced to Rs.1,50,000/- towards loss of amenities and Rs.40,000/- under the head, attendant charges. Considering the nature of injuries and period of treatment, Rs.3,00,000/- awarded under the head, Pain and suffering, is reduced to Rs.2,50,000/-. Hence, the compensation awarded by tribunal be reduced to Rs.34,00,900/-, as hereunder:

सत्यमेव जयते

Transportation	...	Rs. 1,00,000/-
Extra Nourishment	...	Rs. 1,00,000/-
Medical expenses	...	Rs. 1,05,000/-
Future medical expenses	...	Rs. 5,27,400/-
Pain and suffering	...	Rs. 2,50,000/-
Loss of marriage prospects	...	Rs. 2,50,000/-
Loss of amenities	...	Rs. 1,50,000/-
Attendant charges	...	Rs. 40,000/-
Damages to clothes	...	Rs. 2,500/-
Loss of earning capacity	...	Rs.17,01,000/-
(Rs.11,250/- x 12 x 18 x 70%)		

Disability at 70% @ Rs.2,500/-
per percentage ... Rs. 1,75,000/-

Rs.34,00,900/-

Compensation awarded by the Tribunal ... Rs.42,38,700/-

In the light of consensus,
amount reduced is

... Rs.8,37,800/-

9. The appellant-Insurance Company is directed to deposit the compensation amount, now determined by this Court, in both the appeals, with interest, at the rate of 7.5% per annum, from the date of claim till deposit and costs, less the statutory deposit, to the credit of M.C.O.P.Nos.5258 and 5448 of 2011, dated 27.04.2015, on the file of Motor Accidents Claims Tribunal (Vth Court of Small Causes), Chennai, within a period of four weeks from the date of receipt of a copy of this order. The Tribunal shall deposit the same, in any one of the Nationalised Banks, under a fixed deposit scheme, initially for a period of three years. Father of the respondent/claimant is permitted to withdraw the medical expenses awarded in both the claim petitions and rest of the amount shall be in the deposit. The interest accruing on the share of the minors shall be paid to the guardian once in three months, till they attain majority.

10. C.M.A.No.1362 of 2017 is dismissed and C.M.A.No.1363 of 2017 is partly allowed, as indicated above. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

WEB COPY

skm

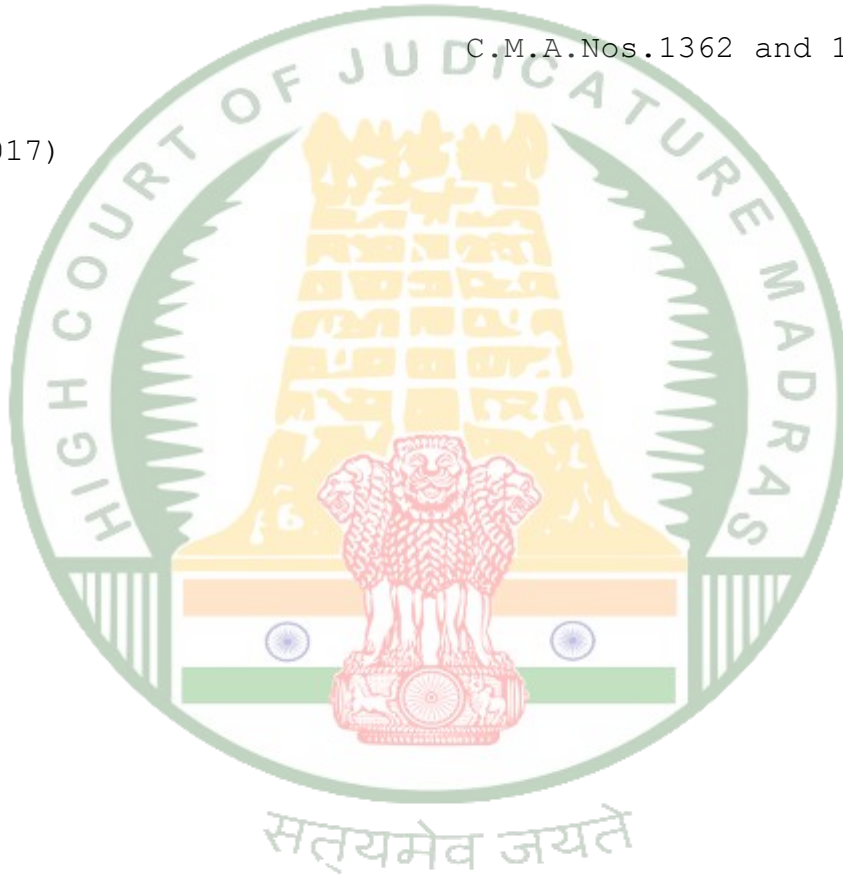
To

The Motor Accidents Claims Tribunal
(Vth Court of Small Causes), Chennai.

+2cc to Mr.Srinivasan Ramalingam, Advocate Sr. 24404, 24405
+2cc to Mr.V.G.Anbarasu, Advocate Sr. 24814, 24815

C.M.A.Nos.1362 and 1363 of 2017

SKS (CO)
VR(31/8/2017)



WEB COPY