

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2017

CORAM:

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.Nos.1588 and 1589 of 2016
and
C.M.P.Nos.2084 and 2085 of 2017

C.M.A.No.1588 of 2016

United India Insurance Co. Ltd.,
134, Silingi Buildings,
Greams Road,
Chennai - 600 006.

... Appellant in both appeals

versus

1. J.Kanchana @ Kalaiselvi ... 1st respondent in
C.M.A.No.1588 of 2016
2. R.Janakiraman ... 1st respondent in
C.M.A.No.1589 of 2016
3. Jayabalan ... 2nd Respondent in
both appeals

These Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the Common Judgment dated 09.03.2016 made in M.C.O.P.Nos.99 and 100 of 2014 on the file of the Motor Accident Claims Tribunal (II Court of Small Causes), Chennai.

For Appellant
in both CMAs : Mr.C.Paranthaman

For R1 in both CMAs : Mr.S.Ravikumar

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COMMON JUDGMENT

These appeals have been filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal in M.C.O.P.Nos.99 and 100 of 2014 on the file of the Motor Accident Claims Tribunal (II Court of Small Causes), Chennai, on 09.03.2016.

2. The claimants are husband and wife. On 21.11.2013 at about 22.30 hrs. when the husband along with his wife were going towards Anna Nagar in a Car bearing Reg.No.TN11 B 9669 at that time, a Tractor bearing Reg.No.TN21 11 5124, driven by its driver in a rash and negligent manner, hit against the car due to which both the claimants sustained injuries. Hence, they filed separate claim petitions before the Motor Accident Claims Tribunal (II Court of Small Causes), Chennai. The wife, aged 45 years, filed a claim petition in M.C.O.P.No.99 of 2014, claiming compensation of Rs.20,00,000/-. The husband, aged 51 years, an Auditor, earning a sum of Rs.1,00,000/- p.m., filed a claim petition in M.C.O.P.No.100 of 2014, claiming compensation of Rs.10,00,000/-.

3. The Tribunal, after considering the oral and documentary evidence, has awarded the compensation of Rs.17,12,000/- in respect of M.C.O.P.No.99 of 2014 and Rs.4,45,000/- in respect of M.C.O.P.No.100 of 2014.

4. The break-up details of compensation awarded in M.C.O.P.No.99 of 2014 are as under:

Transportation, nourishing food and

miscellaneous expenditure	-	Rs. 50,000/-
Medical Expenses	-	Rs. 4,96,000/-
Future Medical Expenses	-	Rs. 20,000/-
Attendant charges	-	Rs. 30,000/-
Damages for pain, suffering and trauma	-	Rs. 50,000/-
Disability	-	Rs. 2,40,000/-
Loss of earning during the period		
of treatment	-	Rs. 40,000/-
Loss of earning capacity/power	-	Rs. 7,56,000/-
Loss of amenities	-	Rs. 30,000/-
Total	-	Rs.17,12,000/-

5. The break-up details of compensation awarded in M.C.O.P.No.100 of 2014 are as under:

Transportation, nourishing food and

miscellaneous expenditure	-	Rs. 50,000/-
Medical Expenses	-	Rs. 1,65,000/-
Attendant charges	-	Rs. 20,000/-
Damages for pain, suffering and trauma	-	Rs. 30,000/-
Disability	-	Rs. 1,20,000/-
Loss of earning during the		
period of treatment	-	Rs. 40,000/-
Loss of amenities	-	Rs. 20,000/-

Total	-	Rs. 4,45,000/-

Challenging the quantum of compensation awarded as excessive, the Insurance Company has filed these appeals.

6. The learned counsel appearing for the appellant Insurance Company submitted that in respect of M.C.O.P.No.99 of 2014, when the claimant is a housewife and there being no documents to prove the income, the Tribunal has erroneously fixed the income of the claimant at Rs.9,000/- p.m. and quantified the compensation towards loss of earning capacity and loss of earning during the period of treatment on the higher side. As the claimant is a housewife, the question of loss of earning does not arise and in the absence of any loss of earning power, the adoption of multiplier method is not justified. Reliance was placed on the decision in New India Insurance Company Ltd., vs. E.Ponnuram (2013 (1) TNMAC 47 DB). It is further contended that when the Tribunal has awarded compensation Rs.7,56,000/- towards loss of earning capacity/power and Rs.40,000/- towards loss of earning during the period of treatment, award of compensation of Rs.2,40,000/- towards disability at the rate of Rs.3,000/- per percentage of disability is unsustainable. Therefore, the compensation is very excessive and it needs to be interfered with. It is further contended that the compensation awarded under other heads are also very excessive and the same needs to be reduced.

7. In respect of M.C.O.P.No.100 of 2014, the learned counsel appearing for the appellant has put forth his arguments stating that as the Doctor, who issued the disability certificate assessing the disablement at 40%, has not treated the claimant, the Tribunal has erroneously awarded compensation in respect of 40% disablement compensation at Rs.1,20,000/-, at the rate of Rs.3,000/- per percentage of disability, which is also

unsustainable. Therefore, the same requires interference. The compensation awarded under other heads are also very excessive and the same needs to be reduced.

8. The learned counsel appearing for the claimants/1st respondent in both the appeals submitted that the Tribunal has awarded compensation only after considering the materials available on record as well as the evidence adduced on both sides. Hence, the award is justifiable one and it does not require any interference.

C.M.A.No.1588 of 2016 (M.C.O.P.No.99 of 2014)

9. A perusal of the award passed by the Tribunal reveals that the claimant in M.C.O.P.No.99 of 2014 was admitted in Government Hospital on 22.11.2013 from where, she was shifted to MIOT Hospital as inpatient from 22.11.2013 to 09.12.2013, i.e. for a period of 18 days. Further, she was diagnosed with injuries on the head, chest and other grievous injuries all over the body. The claimant also suffered multiple fractures. Multiple surgeries were performed on the claimant on various dates. The claimant underwent further treatment at MIOT Hospital from 21.12.2013 to 26.12.2013.

10. The claimant in M.C.O.P.No.99 of 2014 examined herself as P.W.1. She deposed in her evidence that after the accident, she is not able to do her personal work and she was bedridden for the past 10 months, due to which, she requires the assistance of a nurse and for the said attendant she had to pay Rs.10,000/- p.m. Therefore, she suffered loss of income at Rs.1,00,000/-. She further deposed that before the accident, she was running a boutique shop and thereby, earning a sum of Rs.50,000/- p.m. and after the accident, she was not able to continue that work. Hence, she sustained permanent loss of income. The claimant suffers from frequent giddiness, head ache, vomiting due to the injuries sustained by her. The deposition of the claimant reveals that the claimant has also deposed about the difficulties faced by her due to the injuries suffered by her. The above evidence of P.W.1 was corroborated by the evidence of P.W.3, the Doctor, who issued the disability certificate by assessing the disability at 80%.

11. However, the Tribunal, after considering the nature of injuries, impact of injuries and period of treatment, in the absence of any documentary evidence to prove the income, fixed the income of the claimant at Rs.9,000/- p.m. Though the doctor had assessed the disability at 80%, the Tribunal, considering the nature of injuries, has fixed the functional disability at 50% and adopted multiplier of 14 on the basis of the ratio laid down in Sarla Verma's case reported in 2009 (5) LW 561 and awarded compensation towards loss of earning capacity at Rs.7,56,000/-. Furthermore, considering the number of surgeries, period of treatment and nature of job performed by

the claimant, the Tribunal has awarded the compensation towards loss of earning during the treatment period at Rs.40,000/-. The Tribunal has also awarded disablement compensation at Rs.2,40,000/- at the rate of Rs.3,000/- per percentage of disability (80%).

12. On a careful analysis of the entire materials available on record, this Court is of the considered view that the contention of the learned counsel for the appellant insofar as award of disablement compensation is justified. It is well settled that once the compensation has been awarded under the head loss of earning capacity, compensation towards disability does not arise, as the disability is taken into consideration for quantifying the compensation towards loss of earning capacity. In such view of the matter, this Court is of the considered view that the compensation awarded towards disablement compensation cannot be sustained and, accordingly, the same is deleted.

13. Insofar as the compensation awarded under the other heads are concerned, the Tribunal, after considering the oral and documentary evidence, awarded the compensation, which, in the considered opinion of this Court is just and reasonable. The nature of injuries suffered, the period of treatment and the impact of the injuries on the future life of the claimant clearly warrants confirmation of the compensation awarded by the Tribunal under the various other heads.

14. Accordingly, the break-up details of the restructured compensation in respect of M.C.O.P.No.99 of 2014 reads as follows:

Transportation, nourishing food and miscellaneous expenditure	-	Rs. 50,000/-
Medical Expenses	-	Rs. 4,96,000/-
Future Medical Expenses	-	Rs. 20,000/-
Attendant charges	-	Rs. 30,000/-
Damages for pain, suffering and trauma	-	Rs. 50,000/-
Loss of earning during the period of treatment	-	Rs. 40,000/-
Loss of earning capacity/power	-	Rs. 7,56,000/-
Loss of amenities	-	Rs. 30,000/-
	-	-----
Total	-	Rs.14,72,000/-
	-	-----

C.M.A.No.1589 of 2016 (M.C.O.P.No.100 of 2014)

15. In respect of M.C.O.P.No.100 of 2014, the claimant was admitted at Government Hospital on 22.11.2013, from where he was shifted to MIOT Hospital as inpatient from 22.11.2013 to 29.11.2013. The claimant suffered fracture on the legs and also suffered other injuries all over his body. Multiple surgeries were performed on the claimant, including bone grafting. Once again, the claimant was admitted at MIOT Hospital from 21.01.2014 to 27.01.2014. Due to the injuries sustained, the claimant finds difficulty in walking, climbing steps, sitting cross legged/squatting. The Doctor has assessed the disability at 40% and issued disability certificate.

16. It is claimed by the claimant that he is an Auditor and earning a sum of Rs.1,00,000/- p.m. In order to prove the same, he has produced Ex.P10 Sales Tax Practitioner's Certificate and Ex.P11- Practitioner's income tax related documents. Considering the materials placed, the Tribunal fixed the income of the claimant at Rs.20,000/- p.m.

17. Considering the nature of injuries sustained by the claimant, period of treatment and also impact of the injuries over the earning capacity, the Tribunal fixing the disability at 40% awarded Rs.1,20,000/- towards partial permanent disability at the rate of Rs.3,000/- per percentage of disability.

18. It is the main contention of the learned counsel for the appellant that the doctor who issued the disability certificate had not treated the injured and hence, the disability assessed by the doctor is not correct and therefore, based on the disability, the compensation awarded under the head disability and other heads are very high and excessive.

19. The evidence available on record reveals that the claimant suffered 40% disability. The avocation of the claimant necessitates him to sit for longer time. However, due to the injuries sustained by him, sitting for a longer time is difficult, as is evident from the deposition of the claimant as well as the doctor. Considering the said evidence, the Tribunal has fixed the disability at 40% and, accordingly, awarded compensation towards disability. On an overall consideration of the injuries suffered by the claimant coupled with the deposition on the side of the claimant, this Court is of the considered view that the compensation awarded towards disability at Rs.3,000/- per percentage of disability cannot be said to be excessive or disproportionate. Accordingly, the same deserves to be confirmed.

20. A perusal of the break-up details of the compensation

awarded to the claimant reveals that the Tribunal, after considering the nature of injuries, has awarded the reasonable compensation towards transportation, nourishing food and miscellaneous expenditure together at Rs.50,000/-, medical expenses based on the bills at Rs.1,65,000/-, damages for pain, suffering and trauma at Rs.30,000/- and loss of earning during the period of treatment at Rs.40,000/- and loss of amenities at Rs.20,000/-. Further, the Tribunal has awarded a sum of Rs.20,000/- towards attendant charges. However, considering the nature of injuries sustained by the claimant, the period of treatment and the impact of the injuries on the day-to-day activities of the claimant, this Court is of the considered view that the compensation awarded towards attendant charges is not a justifiable addition. Accordingly, the said compensation is deleted.

21. The break-up details of the restructured compensation reads as follows:

Transportation, nourishing food and miscellaneous expenditure	-	Rs. 50,000/-
Medical Expenses	-	Rs. 1,65,000/-
Damages for pain, suffering and trauma	-	Rs. 30,000/-
Disability	-	Rs. 1,20,000/-
Loss of earning during the period of treatment	-	Rs. 40,000/-
Loss of amenities	-	Rs. 20,000/-
Total	-	Rs. 4,25,000/-

22. In the result, both the appeals are allowed in part reducing the compensation from Rs.17,12,000/= to Rs.14,72,000/= in CMA No.1588 of 2016 and from Rs.4,45,000/- to Rs.4,25,000/- in CMA No.1589 of 2016. No costs. Consequently, connected miscellaneous petition is closed.

23. The Insurance Company is directed to deposit the compensation of Rs.14,72,000/- in CMA No.1588 of 2016 and Rs.4,25,000/- in CMA No.1589 of 2016, awarded by this Court, less the amount, if any, already deposited, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, to the credit of the respective claim petitions, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposits being made, the Tribunal

shall transfer the same to the Bank Account of the respective claimants directly, through RTGS, within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ogy/GLN

To

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

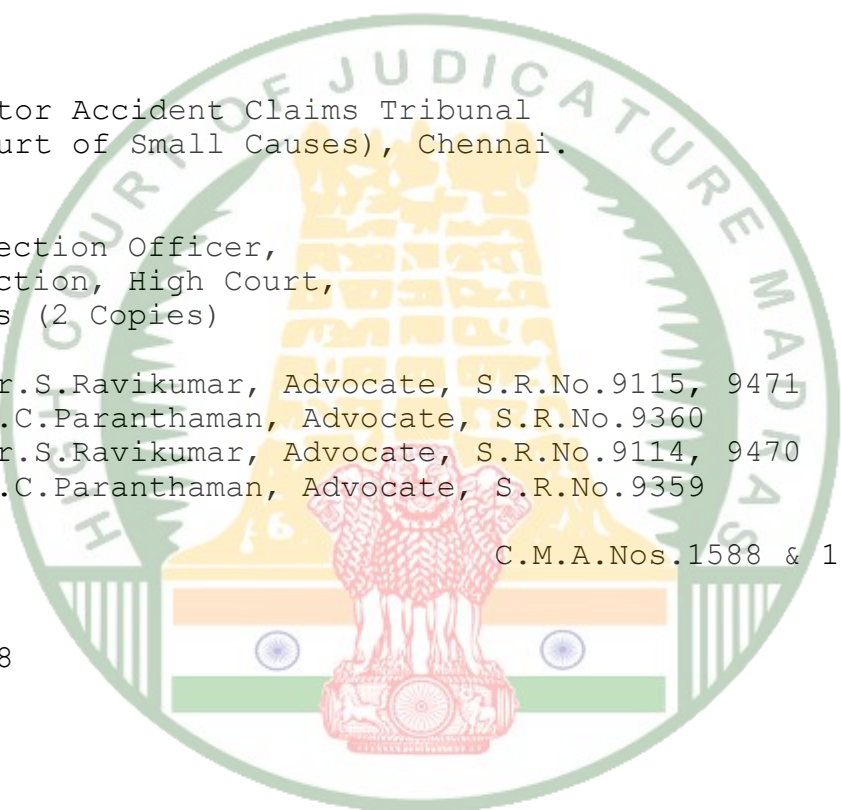
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+2ccs to Mr.S.Ravikumar, Advocate, S.R.No.9115, 9471
+1cc to Mr.C.Paranthaman, Advocate, S.R.No.9360
+2ccs to Mr.S.Ravikumar, Advocate, S.R.No.9114, 9470
+1cc to Mr.C.Paranthaman, Advocate, S.R.No.9359

C.M.A.Nos.1588 & 1589 of 2016

MG(CO)
CS/25/04/18

The seal of the High Court of Madras is a circular emblem. It features a central golden temple gopuram (tower) with a red elephant standing in front of it. The elephant is facing left and has a red saddle. The gopuram is set against a background of a green and white striped field. The entire emblem is encircled by a green border containing the text 'HIGH COURT OF JUDICATURE MADRAS' in white capital letters. Below the emblem, the Sanskrit motto 'सत्यमेव जयते' (Satyameva Jayate) is written in Devanagari script.

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