

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2017

CORAM:

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

C.M.A.Nos.1502 & 1503 of 2017

CMA No.1502 of 2017

Vishnu Nandan ... Appellant/Petitioner

vs.

1. Nazeer Basha
2. Bajaj Allianz Gen. Ins. Co. Ltd.,
Old No.276/277, New No.497/498,
P.H.Road, Arumbakkam,
Chennai - 600 106 Respondents/Respondents

[R1 already set exparte in lower Court]

CMA No.1503 of 2017

N.Ganesh Kumar ... Appellant/Petitioner

vs.

1. Nazeer Basha
2. Bajaj Allianz Gen. Ins. Co. Ltd.,
Old No.276/277, New No.497/498,
P.H.Road, Arumbakkam, सत्यमेव जयते
Chennai - 600 106 Respondents/Respondents

[R1 already set exparte in lower Court]

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the common Order and Decree in MCOP Nos.105 and 106 of 2014 dated 21.07.2016 on the file of Motor Accidents Claims Tribunal (II Judge, Court of Small Causes), Chennai.

For Appellant : Mr.C.Richard Suresh Kumar
in both CMAs

For Respondents: Mr.Srinivasa Ramalingam (for R2)
in both CMAs

COMMON JUDGMENT

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

On 27.11.2013, when Vishnu Nandan [Appellant/claimant in CMA No.1502 of 2017] was riding a motor cycle bearing Regn.No.TN-06-E-2666 from Mylapore to Royapettah High Road, near SBI ATM centre from South to North direction, a TATA ACE vehicle bearing Regn.No.TN07-BS-5571, which came in the opposite direction and driven in a rash and negligent manner, hit against the motorcycle and as a result, the motorcyclist sustained grievous injuries. In the said accident, N.Ganesh Kumar [Appellant/claimant in CMA No.1503 of 2017], who was standing on Royapettah High Road, near SBI ATM, also sustained grievous injuries. In this regard, a case in Crime No.603/AMI/2013 was filed against the driver of the TATA ACE vehicle bearing Regn.No.TN07-BS-5571. For the injuries sustained, both the injured, filed claim petitions before the MACT [II Judge, Court of Small Causes], Chennai in MCOP Nos.105 & 106 of 2014, respectively.

2. They were tried together and a common award has been passed on 21.07.2016, whereby, the driver of the TATA ACE vehicle bearing Regn.No.TN07-BS-5571, was found negligent and the insurer of the said vehicle, the 2nd respondent-insurance Company was fastened with liability to pay compensation. Further, observing that the driver of the vehicle possessed only a Two Wheeler licence and did not possess a valid and effective driving licence to drive a Transport Vehicle, following the decisions of this Court in Shenaz Begum and Others Vs. S.Kaja Mohideen and another, reported in (2012) 5 MLJ 5 and S.Iyyappan Vs. United India Insurance Co. Ltd., and another, reported in (2013) 2 TNMAC 262, permitted the 2nd respondent-insurance company to pay the award amount to the injured/claimants and recover the same, from the 1st respondent-owner of the offending vehicle, without initiating any separate proceedings as per law.

3. On the quantum of compensation, following the judgment of the Hon'ble Supreme Court in R.D.Hattangadi Vs. Pest Control (India) Private Limited, reported in (1995) 1 SCC 551, the tribunal has awarded compensation, as hereunder.

In MCOP No.105 of 2014

Transportation, Nourishment and miscellaneous Expenditure	: Rs. 25,000/-
Medical Expenses	: Rs.3,16,000/-
Future Medical Expenses	: Rs. 14,000/-
Attender Charges	: Rs. 5,000/-

Disability	: Rs.1,80,000/-
Loss of future earning capacity	: Rs.2,80,800/-
Loss of earning during the period of treatment	: Rs. 26,000/-
Damages for pain and suffering and trauma	: Rs. 50,000/-
Loss of amenities	: Rs. 20,000/-

Total	: Rs.9,16,800/-

In MCOP No.106 of 2014

Transportation, Nourishment and miscellaneous Expenditure	: Rs. 25,000/-
Medical Expenses	: Rs.2,75,000/-
Future Medical Expenses	: Rs. 15,000/-
Attender Charges	: Rs. 5,000/-
Disability	: Rs.1,65,000/-
Loss of future earning capacity	: Rs.3,24,000/-
Loss of earning during the period of treatment	: Rs. 20,000/-
Damages for pain and suffering and trauma	: Rs. 50,000/-
Loss of amenities	: Rs. 20,000/-

Total	: Rs.8,99,000/-

4. Not satisfied with the quantum of compensation, though the injured/claimants have filed separate appeals, seeking enhancement under various heads, learned counsel for the appellants / injured insisted, upward revision of compensation, only under three heads in MCOP No.105 of 2014 viz., Attender charges, loss of future earning capacity and pain & suffering. Insofar as MCOP No.106 of 2014, is concerned, in addition to the above said heads, enhancement is sought for under future medical expenses also.

5. Going through the award and material on record, we are of the view that both the appellants/injured have sustained multiple fractures and undergone treatment in private hospitals for a considerable period and that compensation awarded needs to be enhanced. Hence, we have requested the learned counsel for both parties to consider the various heads under which compensation could be enhanced, on the principle of just compensation.

6. Going through the same, learned counsel for the parties on consensus, agreed that compensation awarded by tribunal

should be enhanced to Rs.11,82,400/- and Rs.13,38,000/-, respectively, as hereunder:

In MCOP No.105 of 2014

Transportation, Nourishment and miscellaneous Expenditure	: Rs. 25,000/-
Medical Expenses	: Rs. 3,16,000/-
Future Medical Expenses	: Rs. 14,000/-
Attender Charges	: Rs. 10,000/-
Disability	: Rs. 1,80,000/-
Loss of future earning capacity	: Rs. 4,91,400/-
Loss of earning during the period of treatment	: Rs. 26,000/-
Damages for pain and suffering and trauma	: Rs. 1,00,000/-
Loss of amenities	: Rs. 20,000/-

Total	: Rs.11,82,400/-
Compensation awarded by the tribunal	: Rs. 9,17,000/-

Amount now enhanced	: Rs. 2,65,400/-

In MCOP No.106 of 2014

Transportation, Nourishment and miscellaneous Expenditure	: Rs. 25,000/-
Medical Expenses	: Rs. 2,75,000/-
Future Medical Expenses	: Rs. 75,000/-
Attender Charges	: Rs. 10,000/-
Disability	: Rs. 1,65,000/-
Loss of future earning capacity	: Rs. 6,48,000/-
Loss of earning during the period of treatment	: Rs. 20,000/-
Damages for pain and suffering and trauma	: Rs. 1,00,000/-
Loss of amenities	: Rs. 20,000/-

Total	: Rs.13,38,000/-
Compensation awarded by the tribunal	: Rs. 8,99,000/-

Amount now enhanced	: Rs. 4,39,000/-

7. In the light of consensus arrived, appellant/ injured in MCOP No.105 of 2014, is entitled to compensation of Rs.11,82,400/- as against Rs.9,17,000/-, awarded by the tribunal, with interest, at the rate of 7.5% per annum, from the date claim till deposit. Similarly, appellant/ injured in MCOP No.106 of 2014, is entitled to compensation of Rs.13,38,000/- as

against Rs.8,99,000/-, awarded by the tribunal, with interest, at the rate of 7.5% per annum, from the date claim till deposit

8. It is represented by the learned counsel for the Insurance company that the amount awarded by the tribunal with proportionate interest and costs has already been deposited to the credit of concerned MCOPs.

9. In view of the above, we direct the Bajaj Allianz General Insurance Company Limited, the 2nd respondent herein, to deposit the balance enhanced amount now arrived at by this Court, with interest, at the rate of 7.5% per annum, from the date of claim till deposit and costs, less the amount already deposit, if any, to the credit of MCOP Nos.105 & 106 of 2014 on the file of Motor Accidents Claims Tribunal (II 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, the appellants/claimants are permitted to withdraw the same, by making necessary applications before the tribunal.

10. The Civil Miscellaneous Appeals are allowed as indicated above. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

+2cc to Mr.C.Richard Suresh Kumar, Advocate,
S.R.No.39826,39827

+2cc to Mr.Srinivasa Ramalingam, Advocate,
S.R.No.39941,39942

C.M.A.Nos.1502 & 1503 of 2017

KJ(CO)
CS/23/06/17