

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.Nos.2204 & 2214 of 2011

1. B.Shankar ... Appellant in CMA.No.2204/2011
2. A.Babu ... Appellant in CMA.No.2214/2011

Vs.

1.N.Rajaram

2.The New India Assurance Co. Ltd.,
No.45, Moore Street, V Floor,
Chennai - 1. Respondents in both CMAs

Common Prayer:- Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act against the judgment and decree made in MCOP.No.4871/2003 and MCOP.No.4870/2003 dated 25.11.2008 and 04.12.2008 respectively on the file of the Fast Track Court No.I, Chennai / Motor Accident Claims Tribunal, Chennai.

For Appellant : Mr.R.Ponnusamy
(in both CMAs) for M/s.Anand and Suryas
For Respondent : R1 - Ex parte
(in both CMAs) Mr.S.Manohar [for R2]

COMMON JUDGMENT

1. On 28.7.2003, at about 9.30 p.m. the appellant in CMA.No.2214 of 2011 was travelling as a passenger in an auto rickshaw driven by the appellant in CMA.No.2204 of 2011 along Erukkanchery High Road when a van bearing No. TN05-E-5990 driven by the first respondent and insured with the second respondent dashed against the auto rickshaw, owing to which both the appellants suffered extensive injuries. Both of them moved the Tribunal for compensation for the injuries suffered. The Tribunal has determined the compensation for the appellant in CMA.No.2204 of 2011 (arising from MCOP.No.4871 of 2003 before MACT, Fast Track Court -I, Chennai) at Rs.47,000/- and that of the appellant in CMA.No.2214 of 2011 (arising from MCOP.No.4870 of 2003 before MACT, Fast Track Court -I, Chennai) at Rs.91,560/-. Aggrieved by the per se inadequacy of the amount awarded, the appellants have come before this Court.

CMA.No.2204 of 2011 :

2.1 The appellant herein was the driver of the auto rickshaw at that relevant time. He has suffered fractures to his right side of the sixth rib, besides injuries to right knee and multiple injuries all over the body.

2.2 Based on Ext.P9, Disability certificate and taking it along with Ext.P6 Discharge summary, the Trial Court has fixed the disability at 20% and fixing Rs.2,000/- for every percentage of disability, has awarded Rs.40,000/- on the head of partial permanent disability. Adding other non-pecuniary heads of compensation, the Tribunal has determined the compensation at Rs.47,000/-. The break-up details of the award determined by the Tribunal reads as below :

Heads	Amount Awarded (Rs.)
Towards disability	40,000/-
Pain and suffering	5,000/-
Conveyance expenditure	1,000/-
Nutritional diet	1,000/-
Total :	47,000/-

3. Given the nature of the injury suffered by the claimant and the impact it might have in driving, this Court considers that the disability as determined by the doctor may have to be accepted at 40% and accordingly, the compensation payable on this heads is enhanced to Rs. 80,000/-. It must be stated that the Tribunal has literally halved the percentage of disability as determined by the physician, but has not supported the decision with justifiable explanation. On the head of pain and suffering, this Court grants another Rs.5,000/- and towards conveyance and extra nourishment diet, the amount is enhanced to Rs.1,500/- and Rs.2,500/- respectively. Thus, in final, the award amount is enhanced from Rs.47,000/- to Rs.94,000/- in CMA.No.2204 of 2011.

CMA.No.2214 of 2001 :

4.1 The appellant herein was the passenger of the said auto rickshaw and was a Goldsmith by profession at that relevant time. He has suffered fracture to right eye, fracture to left forearm, fracture on the base of the third and forth metacarpal bones on the right hand, fracture to the shaft of right little finger besides other multiple injuries all over the body.

4.2. Based on Ext.P1, Disability certificate and taking it along with Ext.P3 Discharge summary, the Trial Court has fixed the disability at 40% and fixing Rs.2,000/- for every percentage of disability, has awarded Rs.80,000/- on the head of partial permanent disability. Adding other non-pecuniary

heads of compensation, the Tribunal has determined the compensation at Rs.91,560/-.

Heads	Amount Awarded (Rs.)
Towards disability	80,000/-
Pain and suffering	5,000/-
Conveyance expenditure	2,000/-
Nutritional diet	2,000/-
Medical bills	2,560/-
Total	91,560/-

5. Given the nature of the injury suffered by the claimant and its adverse impact it had on the livelihood and his future earning, this Court considers that the disability as determined by the doctor may have to be accepted at 55%, fixing the percentage of disability at Rs.2,500/- for 1% and accordingly, the compensation payable on this head is enhanced to Rs.1,37,500/-. This Court felt that the compensation awarded on the head of pain and suffering is too low, this Court grants another Rs.25,000/- and towards conveyance and extra nourishment diet, the amount is enhanced to Rs.5,250/- each. Thus, in final, the award amount is enhanced from Rs.91,560/- to Rs.1,80,560/- in CMA.No.2214 of 2011.

6. Since both the appeals were taken on file in the year 2011, whereas the award was passed on 25.11.2008 and 04.12.2008 respectively, there was a the delay of nearly two years. Hence, there shall not be any interest for the period of delay in filing the appeals.

7. In the result, both the appeals are partially allowed and the award amount of the Tribunal is enhanced from Rs.47,000/- to Rs.94,000/- in CMA.No.2204 of 2011 and whereas in CMA.No.2214 of 2011, it is enhanced from Rs.91,560/- to Rs.1,80,560/-. The second respondent/insurance company in both the appeals are directed to pay the entire amount of enhanced compensation payable with 9% interest per annum, less if any already deposited within a period of four months from the date of receipt of a copy of the order. The claimants/appellants are directed to pay the necessary Court fee for the enhanced portion of the award amount, if any. As already stated above, the claimants/appellants are not entitled to the interest during the period of delay in filing the appeals. No costs.

Sd/-

Assistant Registrar(co)

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To:

1.The Additional District and Sessions Judge,
Fast Track Court No.I
Motor Accident Claims Tribunal
Chennai.

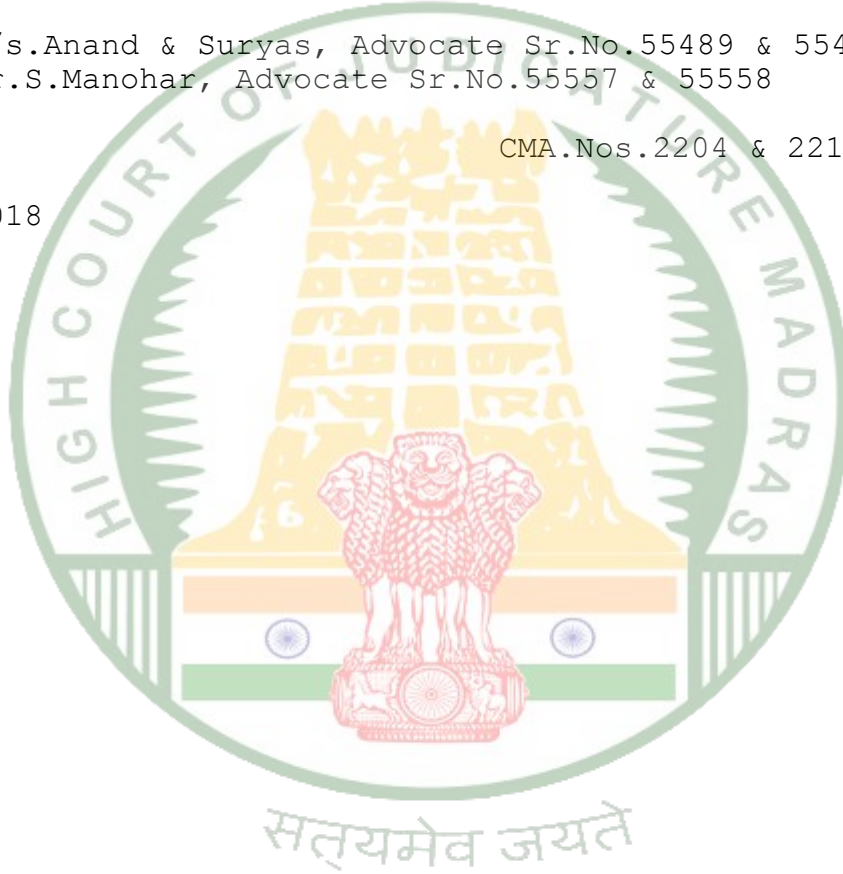
2. The Section Officer,
V.R.Section,
High Court,
Madras.(2 copies)

+2cc to M/s.Anand & Suryas, Advocate Sr.No.55489 & 55490

+2cc to Mr.S.Manohar, Advocate Sr.No.55557 & 55558

CMA.Nos.2204 & 2214 of 2011

RJ(CO)
sm:14.3.2018



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