

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2017

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.Nos.2899 & 2900 of 2013

C.Pachiappan ... Appellant in C.M.A.2899 of 2013/
Petitioner

S.Siva Kumar ... Appellant in C.M.A.2900 of 2013/
Appellant

...Vs...

1. B.Gopi

2. Reliance GL. Insurance Co. Ltd.,
Reliance House,
Haddows Road,
Nungambakkam,
Chennai-600 034. ... Respondents in both Appeals

Civil Miscellaneous Appeals have been filed under Section 173 of Motor Vehicles Act, 1988, against the common judgment and decree, dated 08.03.2013, made in M.C.O.P.Nos.5255 & 5256 of 2011 on the file of the Motor Accident Claims Tribunal (IV Court of small Cuses), Chennai.

For Appellants : Mr.P.T.Salim Fathima

For Respondents : Mr.S.Arunkumar (For R2)
R1-Experte

COMMON JUDGMENT

R. SUBBIAH, J.,

Both the above appeals have been filed by the claimants/injured seeking for enhancement of compensation amounts awarded by the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai, in and by award dated 08.03.2013 made in M.C.O.P.Nos.5255 & 5256 of 2011.

2.Since the above appeals have been filed only questioning the quantum of compensation, it is not necessary for this Court to deal with the other aspects of the award passed by the Tribunal.

3.For the sake of convenience, hereinafter the appellant in C.M.A.No.2899/2013 (MCOP.No.5255/2011) will be referred to as 1st claimant and the appellant in C.M.A.No.2900/2013 (MCOP.No.5256/2011) will be referred to as 2nd claimant.

4.So far as C.M.A.No.2890/2011 (MCOP.No.5255/2011) is concerned, it is the case of the 1st claimant Pachiappan that on account of the accident that had occurred on 22.11.2011 involving the van bearing Reg.No.TN 22 K 7020 owned by the 1st respondent herein and insured with the 2nd respondent herein/Insurance Company, he had sustained fracture of right clavicle right and tenderness over left knee and blood aspirated from both knees. He was treated as inpatient from 22.11.2011 to 26.11.2011 at Hindu Mission Health Services and was treated conservatively. Subsequently also, he was treated as inpatient from 12.02.2012 to 13.02.2012 at Srichakra Multispeciality Hospital. Before the Tribunal, in order to prove the disability suffered by the claimants, one Dr.Amamath R Sowlee was examined as P.W.3, who had assessed the disability at 25% as partial permanent disability. The Disability Certificate and X-ray taken at the time of his examination were marked as Ex.P.12 & Ex.P.13 respectively. The 1st claimant, who examined himself as P.W.1 before the Tribunal, had stated in evidence, that he was working as Lathe Machine Operator and also doing water distribution in M/s.Ambal Turning works at the time of accident and after the accident, he is unable to do his turner work. However, the Tribunal by awarding a sum of Rs.2,000/- for each percentage of disability has passed an award granting a sum of Rs.50,000/- under the head of Disability. That part, the Tribunal has awarded a sum of Rs.18,000/- for loss of income for three months at the rate of Rs.6,000/- per month. Further, the Tribunal has awarded a sum of Rs.3,000/-, a sum of Rs.2,000/- for extra-nourishment, a sum of Rs.19,074/- for Medical Expenses, a sum of Rs.1,000/- for damages to clothes, a sum of Rs.5,000/- for attender charges and another sum of Rs.25,000/-. Thus, the Tribunal has passed an award for a total sum of Rs.1,23,074/- as compensation to the 1st claimant. Not being satisfied with the compensation amount, the 1st claimant has filed the appeal in C.M.A.No.2899/2013, seeking enhancement of compensation amount.

5.Now, it is submitted by the learned counsel for the 1st claimant that on account of disability suffered by him in the accident, he finds it very difficult to carry on his normal avocation as he was doing before the accident; under such

circumstance, the Tribunal ought to have made the calculation to award compensation, by applying multiplier method. But, the Tribunal has awarded Rs.2,000/- for each percentage of disability, which resulted in awarding an inadequate compensation.

6.As regards the 2nd claimant (CMA.No.2900/2013 - MCOP.5256/2011), it is the case of the 2nd claimant that on account of the accident, he had sustained fracture of left zygomatic and fracture of shaft of right femur. He was treated as inpatient from 22.11.2011 to 29.11.2011 at Hindu Mission Health Services. P.W.3 Dr.Amarnath R.Sowlee, who examined the 2nd claimant, has assessed the disability suffered by the 2nd claimant at 40% as partial permanent disability. His Disability Certificate and X-ray taken at the time of his examination were marked as Ex.P.14 & Ex.P.15 respectively. The 2nd claimant (P.W.2) stated in his evidence that he is the Proprietor of Sri Annai Automobiles, dealing with two wheeler mechanic works, at the time of accident, and after the accident, he is unable to do his two wheeler mechanic works. The Tribunal, by awarding Rs.2,000/- for each percentage of disability, has awarded a sum of Rs.80,000/- under the head of Disability. That part, the Tribunal has awarded a sum of Rs.15,000/- for loss of income for three months, a sum of Rs.4,000/- for transportation, a sum of Rs.3,000/- for extra-nourishment, a sum of Rs.67,774.60 for medical expenses, a sum of Rs.1,000/- for damages to clothes, a sum of Rs.2,000/- for attender charges and another sum of Rs.25,000/- for pain and sufferings. Thus, the Tribunal has passed an award for a total sum of Rs.1,97,774, rounded off to Rs.1,97,800/- as compensation to the 2nd claimant. Not being satisfied with the quantum of compensation, the 2nd claimant has filed the present appeal in C.M.A.No.2900/2013 seeking enhancement of compensation.

7.Now, it is the submission of the learned counsel for the 2nd claimants that considering the nature of the injuries and disability suffered by the 2nd claimant, the Tribunal ought to have awarded the compensation by applying multiplier method. Further, the Tribunal has not awarded any amount under the head of loss of amenities. Thus, the learned counsel sought for proper enhancement of the compensation amount.

8.Per contra, the learned counsel appearing for the Insurance Company submitted that the injuries sustained by the victims/claimants in both the cases are simple in nature and the compensation amounts awarded by the Tribunal are just and proper and the same need no enhancement.

9.Keeping the submissions made on either side, We have carefully gone through the entire materials available on record.

10. On perusal of the materials available on record, We find that absolutely no evidence was produced on the side of the claimants to show that on account of the injuries sustained by them, the claimants/victims in both the cases suffered functional disability. Unless it is established by cogent and convincing evidence that the victim suffered functional disability, the question of applying the multiplier method does not arise. In fact, We find that the amount awarded by the Tribunal under various heads appears to be very reasonable. However, We are of the opinion that the compensation amount under the head of Disability needs to be enhanced by awarding Rs.3,000/-, instead of Rs.2,000/-, for each percentage of disability. If so awarded, in the case of the 1st claimant (CMA.No.2899/2013 - MCOP.No.5255/2011), the compensation amount of Rs.50,000/- awarded by the Tribunal under the head of Disability, for 25% disability, is hereby enhanced to Rs.75,000/- (25 x 3000 = 75,000). Similarly, in the case of the 2nd claimant (CMA.No.2900/2013 - MCOP.No.5256/2011), the compensation amount of Rs.80,000/- awarded by the Tribunal under the head of Disability, for 40% disability, is hereby enhanced to Rs.1,20,000/- (40 x 3000 = 1,20,000). Except these modifications, the compensation amounts awarded by the Tribunal under other heads remain unaltered.

11. Consequently, the total compensation amount of Rs.1,23,100/- passed by the Tribunal in the case of the 1st claimant (CMA.No.2899/2013 - MCOP.No.5254/2011) is enhanced to Rs.1,48,100/-. The breakup details of the same are as follows_

1. Loss of income for three months at the rate of Rs.6,000/- per month	= Rs.	18,000/-
2. Transportation	= Rs.	3,000/-
3. Extra-nourishment	= Rs.	2,000/-
4. Medical expenses	= Rs.	19,000/-
5. Damages to Clothes	= Rs.	1,000/-
6. Attender charges	= Rs.	5,000/-
7. Pain and suffering	= Rs.	25,000/-
8. Disability at 25% at the rate of Rs.3,000/- per percentage	= Rs.	75,000/-

Total		Rs.1,48,000/-

Similarly, the total compensation amount of Rs.1,97,800/- passed by the Tribunal in the case of the 2nd claimant (CMA.No.2900/2013 - MCOP.No.5256/2011) is enhanced to Rs.2,37,800/-. The breakup details of the same are as follows-

1.Loss of income for three months at the rate of Rs.4,500/- per month	= Rs. 15,000/-
2.Transportation	= Rs. 4,000/-
3.Extra-nourishment	= Rs. 3,000/-
4.Medical expenses	= Rs. 67,774/-
5.Damages to Clothes	= Rs. 1,000/-
6.Attender charges	= Rs. 2,000/-
7.Pain and suffering	= Rs. 25,000/-
8.Disability at 25% at the rate of Rs.3,000/- per percentage	= Rs. 1,20,000/-

Total	Rs.2,37,774.60

(rounded off to Rs.2,37,800/-)

12.In fine, the appeals are allowed in part and the total compensation amount of Rs.1,23,100/- passed by the Tribunal in the case of the 1st claimant (CMA.No.2899/2013 - MCOP.No.5254/2011) is enhanced to Rs.1,48,100/-. Similarly, the total compensation amount of Rs.1,97,800/- passed by the Tribunal in the case of the 2nd claimant (CMA.No.2900/2013 - MCOP.No.5256/2011) is enhanced to Rs.2,37,800/-. The Insurance Company is directed to deposit the entire compensation amount with interest at the rate of 7.5% pa from the date of petition till the date of deposit before the Tribunal, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimants are entitled to withdraw their respective compensation amount by making necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

ssv

To

The Motor Accidents Claims Tribunal/
IV Court of Small Causes,
Chennai.

+2cc's to Mr.M.Swamikannu, Advocate, S.R.Nos.67298 & 67299

C.M.A.Nos.2899 & 2900 of 2013

GJ II(CO)
EU(22/11/2017)