



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 18.09.2017
CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.M.A(MD)Nos.93 and 116 of 2015

WEB COPY

R.Senthil Kumar ... Appellant/petitioner in CMA(MD).No.93 of 2015

M.Parthiban ...Appellant/petitioner in CMA(MD).No.116 of 2015

Vs.

1.Correspondent,
Kampen Nursery and Primary School,
Kugiliyamparai,
Dindigul District.

2.The Divisional Manager,
United India Insurance Company Ltd,
12-A, Kovai Road,
PLA Building, 2nd Floor, Karur.

3.M.Kanthasamy

4.K.Senthil

...Respondents/Respondents in both CMAs

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award dated 03.10.2013 passed in MCOP.No.156 and 158 of 2011 respectively, on the file of the Motor Accident Claims Tribunal/Principal Sub Court, Dindigul and allow these appeals.

For Appellant: Mr.S.Mohan Gandhi
(Both cases)

For R-1 : Mr.M.Thirunavukarasu
(Both cases)

For R-2 : Mr.A.S.Mathialagan
(Both cases)

COMMON JUDGMENT

The Civil Miscellaneous Appeals have been filed by the appellant/claimants against the award dated 03.10.2013 passed by the Motor Accident Claims Tribunal (Principal Sub Court), Dindigul, in M.C.O.P.No. 156 and 158 of 2011 respectively.

2.Since the issues involved in both Appeals are one and the same, they are disposed of by way of a common judgment.



3. It is the case of an accident resulting in injury to the claimants which took place on 28.06.2010 at about 17.30 hours on Dindigul - Karur Main near one Kandhasamy's house.

4. It is the case of the claimants before the Tribunal that when one Senthil Kumar was riding TVS.MAX.100 two wheeler along with one Parthiban as pillion rider, on Dindigul - Karur Main Road, the driver of the Mahendra Van bearing Registration No. TN-47 C-1033, drove the vehicle in a rash and negligent manner and dashed against the two wheeler. As a result, Senthil Kumar and Pathiban sustained fractures in both legs and grievous injuries all over the body.

5. The claimants filed applications in M.C.O.P.Nos.156 and 158 of 2011 respectively, on the file of the Motor Accident Claims Tribunal/ Sub Principal Court, Dindigu, seeking compensation.

6. Before the Tribunal, the appellants/claimants examined three witnesses as P.W.1 to P.W.3 and marked eight documents as Ex.P.1 to Ex.P.8 and no oral and documentary evidence was let in by the respondents.

7.The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also on appreciating the evidence on record, held that the accident occurred only due to rash and negligent driving of the driver of the vehicle bearing Registration No.TN-47 C-1033 and directed the first and third respondents to pay sum of Rs.1,01,500/- each to the claimants as compensation.

8. Against which, the appellants/claimants filed the present appeal seeking enhancement of compensation.

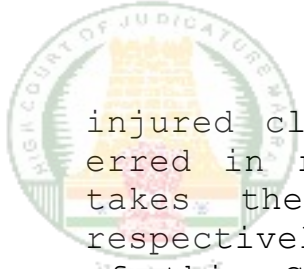
9. The learned counsel appearing for the appellants submitted that due to the injuries sustained in the accident, appellants become functionally disabled and lost their job and therefore, the Tribunal ought to have adopted multiplier method in awarding compensation and the amounts under various heads awarded by the Tribunal are on lower side and therefore, the compensation awarded by the Tribunal has to be enhanced.

10.The learned counsel appearing for the second respondent/ Insurance Company submitted that the Tribunal awarded a just and reasonable compensation and the same does not warrant interference.

11.This Court heard the submissions made on either side and perused the materials available on record.

<https://hcservices.ecourts.gov.in/hcservices/>

12.As rightly contended by the learned Counsel for the appellants, while P.W.3 - Doctor determining the disability of the



injured claimants at 41% and 42% respectively, the Tribunal has erred in reducing the same to 35% and 35%. Hence, this Court takes the disability of the appellants as 41% and 42 % respectively , as determined by P.W.3 - Doctor. In the judgment of this Court in **National Insurance Company Ltd. rep. by its Branch Manager v. G.Ramesh and another** reported in **2013 (2) TNMAC 583**, for each percentage of disability, a sum of Rs.3,000/- has been awarded. By relying upon the said decision, this Court is also inclined to grant a sum of Rs.3,000/- for 1% disability. Hence, for disability, a sum of Rs.1,23,000/- (Rs.3000x41) and Rs.1,26,000/- (Rs.3000 X 42) is awarded respectively. The Tribunal awarded Rs. 6,000/-towards loss of income and the same is enhanced to Rs.10,000/- and The Tribunal awarded Rs.10,000/- towards pain and sufferings and the same is enhanced to Rs.50,000/- and Rs.25,000/- respectively. The Tribunal awarded Rs.5,000/- towards nutritious food and the same is enhanced to Rs.10,000/-. The Tribunal has awarded Rs.500/- towards transportation and the same is confirmed and The tribunal has awarded Rs.10,000/- towards future medical expenses and as far as CMA(MD).93 of 2015 is concerned, since the steel plate was not removed, further medical expense will not arise and hence, the same is set aside and as far as CMA(MD).No.116 of 2015 is concerned, since the learned counsel for the petitioner submitted that surgery was conducted and the steel plate was removed, Rs.25,000/- is awarded towards future medical expenses.

13. This Court modifies the award of the Tribunal by enhancing the compensation as under:-

CMA (MD) .No.93 of 2015 (MCOP.No.156 of 2011)

S.No	Description	By Tribunal (Rs)	By this Court (Rs)	Result
1	For disability	70,000	1,23,000	enhanced
2	pain and sufferings	10,000	50,000	enhanced
3	nutritious food	5,000	10,000	enhanced
4	loss of income	6,000	10,000	Enhanced
5	Transportation	500	500	confirmed
6	Future medical expenses	10,000	--	Set aside
	Total	1,01,500/-	1,93,500	By enhancing Rs.92,000

CMA(MD).No.116 of 2015 (MCOP.No.158 of 2011)

S.No	Description	By Tribunal (Rs)	By this Court (Rs)	Result
1	For disability	70,000	1,26,000	enhanced
2	pain and sufferings	10,000	25,000	enhanced
3	nutritious food	5,000	10,000	enhanced
4	loss of income	6,000	10,000	Enhanced
5	Transportation	500	500	confirmed
6	Future medical expenses	10,000	25,000	enhanced
	Total	1,01,500/-	1,96,500	By enhancing Rs.95,000

14. In the result,

(i) The Civil Miscellaneous Appeals are partly allowed, by enhancing the awards of the Tribunal from Rs.1,01,500/- (Rupees one lakh one thousand and five hundreds only) to a sum of Rs.1,93,500 /- (Rupees one lakh ninety three thousand and five hundreds only) and Rs.1,96,500 (Rupees one lakh ninety six thousand and five hundred only) passed in MCOP.Nos.156 and 158 of 2011 respectively along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(ii) The first and third respondents are directed to deposit the entire award amounts with accrued interests and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants/ claimants are permitted to withdraw the respective shares with accrued interests and costs as apportioned by the Tribunal, without filing any formal application before the Tribunal. No Costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal /
Principal Sub Court, Dindigul.

COPY TO:

The Section officer,

<https://hse-res-sects.gov.in/hse-mad> Madurai Bench of Madras High Court, Madurai.



+1cc to M/S.A.S.MATHIALAGAN, Advocate SR.No.79483
+2cc to M/S.S.M.MOHAN GANDHI, Advocate SR.No.79554&79555
+1cc to M/S.M.O.THEVAN KUMAR, Advocate SR.No.79477
+1cc to M/S.M.THIRUNAVUKKARASU, Advocate SR.No.79476

WEB COPY

dsk/rmk

MAS/JC/SAR2:09.10.2017:5P-8C

C.M.A(MD) Nos. 93 &
116 of 2015
18.09.2017