

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1365 and 1366 of 2016

K.Pugazharasan .. Appellant in C.M.A.No.1365 of 2016

P.Prema ... Appellant in C.M.A.No.1366 of 2016

Vs.

1.G.Vijayalakshmi

2.Shriram General Insurance Co. Ltd.,
No.66, 22nd Floor, City Centre,
Thirumalai Pillai Road,
T.Nagar, Chennai - 600 017.

... Respondents in both C.M.As.

Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.02.2016 made in M.C.O.P.Nos.2531 and 2491 of 2013 on the file of Motor Accidents Claims Tribunal, Special Sub Court - I, Chennai.

For Appellants : Mr.S.Parthasarathy
For R1 : Vacated
For R2 : Mr.S.Dhakshnamoorthy

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed for enhancement of compensation granted by the award dated 18.02.2016 made in M.C.O.P.Nos.2531 and 2491 of 2013 on the file of Motor Accidents Claims Tribunal, Special Sub Court - I, Chennai.

2.The appellants are the respective claimants in M.C.O.P.Nos.2531 and 2491 of 2013 on the file of Motor

Accidents Claims Tribunal, Special Sub Court - I, Chennai. They filed the above said claim petitions claiming a sum of Rs.10,00,000/- each as compensation for the injuries sustained by them in the accident that took place on 29.09.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the van belonging to the first respondent and directed the second respondent/Insurance Company to pay a sum of Rs.7,63,622/- and Rs.2,42,000/- as compensation to the respective appellants/claimants.

4.Not being satisfied with the award amount granted by the Tribunal, the appellants have come out with the present appeals seeking enhancement of compensation.

5.The learned counsel appearing for the appellants contended that the Tribunal has failed to consider the fact that the appellant in C.M.A.No.1365 of 2016 was working as a heavy vehicle driver and the appellant in C.M.A.No.1366 of 2016 was working as a tailor and both were earning a sum of Rs.30,000/- per month. The appellant in C.M.A.No.1365 of 2016 has produced R.C.Book of the lorry. The Tribunal has fixed only a sum of Rs.5,500/- per month as notional income for each of the appellants. The reason given by the Tribunal for reducing the disability at 5% is not correct. The amounts awarded by the Tribunal towards pain and suffering is meager. The Tribunal has failed to see that both the appellants have to undergo future medical expenses and has erred in not awarding any amount under this head and prayed for enhancement of compensation in both the appeals.

6.Per contra, the learned counsel appearing for the second respondent/Insurance company contended that both the appellants have not produced any document with regard to their avocation and income to show that they were earning a sum of Rs.30,000/- per month as mentioned in the claim petitions. In the absence of any evidence with regard to income, the Tribunal has fixed notional income of the appellants at Rs.5,500/- per month, which is reasonable. The Tribunal has given valid reason for reducing 5% of disability. The amounts awarded by the Tribunal under different heads are not meager and prayed for dismissal of the appeals.

7.Heard the learned counsel appearing for the appellants as well as the second respondent and perused all the materials available on record.

8. From the materials available on record, it is seen that the appellant in C.M.A.No.1365 of 2016 has claimed that he was working as a driver of heavy vehicle, while the appellant in C.M.A.No.1366 of 2015 claimed that she was working as a tailor and they were earning a sum of Rs.30,000/- per month. Both the appellants have not let in any evidence to substantiate their claim that they were working as a driver and as a tailor respectively and they were earning a sum of Rs.30,000/- per month. In the absence of any evidence to prove their income, the Tribunal has fixed notional income of the appellants at Rs.5,500/- per month. The accident took place on 29.09.2012 and the notional income of Rs.5,500/- fixed by the Tribunal to each of the appellants are meager and the same are hereby enhanced to a sum of Rs.7,500/- per month in C.M.A.No.1365 of 2016 and Rs.6,500/- per month in C.M.A.No.1366 of 2016. In C.M.A.No.1365 of 2016, the amount of Rs.44,000/- granted by the Tribunal towards loss of earning during the treatment period for eight months is hereby enhanced to Rs.60,000/- (7500 X 8). In C.M.A.No.1366 of 2016, the amount of Rs.33,000/- granted by the Tribunal towards loss of earning during the treatment period for six months is hereby enhanced to Rs.39,000/- (6500 X 6).

8(i) The amounts awarded by the Tribunal towards extra nourishment and attendant charges are meager in both the appeals and the same are hereby enhanced to Rs.20,000/- from Rs.10,000/- and Rs.25,000/- from Rs.8,000/- respectively in C.M.A.No.1365 of 2016 and Rs.20,000/- from Rs.10,000/- and Rs.15,000/- from Rs.6,000/- respectively in C.M.A.No.1366 of 2016.

8(ii) The Tribunal has reduced the percentage of disability by 5% in both the appeals on the ground that the percentage of disability fixed may vary by 5% from Doctor to Doctor. The Tribunal has not given any finding that percentage of disability assessed by the Doctor in the present case is excessive by 5%, except stating that percentage of disability is excessive. The appellants are entitled to get compensation towards disability for 50% and 40% respectively as assessed by the Doctor. Therefore, the amounts awarded by the Tribunal towards disability are hereby enhanced to Rs.1,50,000/- (Rs.3,000/- X 50%) in C.M.A.No.1365 of 2016 and Rs.1,20,000/- (Rs.3,000/- X 40) in C.M.A.No.1366 of 2016 by awarding Rs.3,000/- per percentage of disability.

8(iii) From the materials available on record, it is seen that both the appellants underwent surgeries and took treatment as in-patients in two different hospitals. The Tribunal has not granted any amount towards future medical expenses. Considering the nature of injuries and treatment, both the appellants are entitled to a sum of Rs.10,000/- each towards future medical expenses. The amounts awarded by the Tribunal under all the other heads are hereby confirmed. Thus, the compensation awarded by the Tribunal in both the appeals is modified as follows:

M.C.O.P.No.2531 of 2013 (C.M.A.No.1365 of 2016):

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Expenses relating to treatment, hospitalisation and medicines	4,55,622	4,55,622	confirmed
2.	Loss of earning during treatment	44,000	60,000	enhanced
3.	Extra Nourishment	10,000	20,000	enhanced
4.	Attendant charges	8,000	25,000	enhanced
5.	Damages to clothing articles	1,000	1,000	confirmed
6.	Disability	1,35,000	1,50,000	enhanced
7.	Pain and sufferings	50,000	50,000/-	confirmed
8.	Loss of future amenities	50,000	50,000	confirmed
9.	Transportation	10,000	10,000	confirmed
10.	Future medical expenses	-	10,000	granted
	Total	7,63,622	8,31,622	Enhanced by Rs.68,000/-

M.C.O.P.No.2491 of 2013 (C.M.A.No.1366 of 2016):

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning during treatment	33,000	39,000	enhanced
3.	Transportation	6,000	6,000	confirmed
4.	Extra nourishment	10,000	20,000	enhanced
5.	Damages to clothing articles	2,000	2,000	confirmed
6.	Disability	1,05,000	1,20,000	enhanced
7.	Pain and sufferings	40,000	40,000/-	confirmed
8.	Loss of future amenities	40,000	40,000	confirmed
9.	Attendant charges	6,000	15,000	enhanced
10.	Future medical expenses	-	10,000	Granted
	Total	2,42,000	2,92,000	Enhanced by Rs.50,000/-

9. In the result, both the Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal at Rs.7,63,622/- is enhanced to a sum of Rs.8,31,622/- in C.M.A.No.1365 of 2016 and a sum of Rs.2,42,000/- is enhanced to a sum of Rs.2,92,000/- in C.M.A.No.1366 of 2016, with interest at the rate of 7.5% per annum from the date of petitions till the date of realisation. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants are permitted to withdraw their respective award amount with proportionate interest and costs, after adjusting the amount, if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

krk/kj

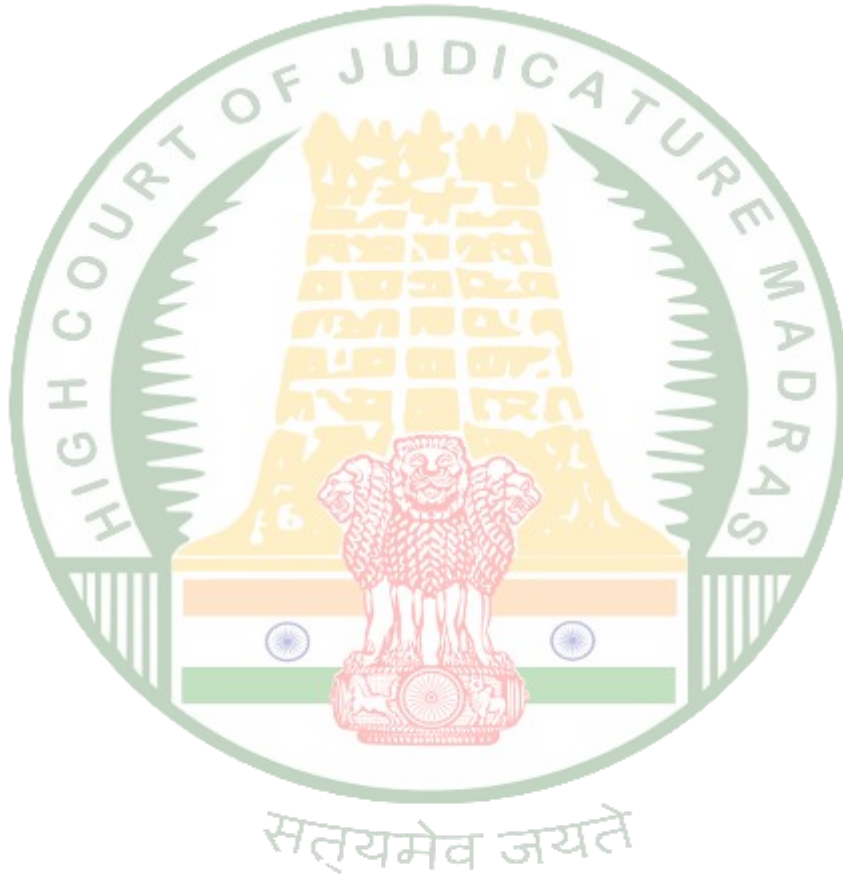
To

The Motor Accidents Claims Tribunal,
The Special Subordinate Judge - I, Chennai.

+2cc to Mr.S.Parthasarathy , Advocate SR.No.86840,86841
+2cc to Mr.S.Dhakshnamoorthy , Advocate SR.No. 87011,87012

C.M.A.Nos.1365 and 1366 of 2016

A.SK (28/03/2019)



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