

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.Nos.2346 & 2347 of 2012

and

M.P.Nos.1 of 2012 & 1 of 2012

Shriram General Insurance Co. Ltd.

No.66, City Centre Complex,

Thirumalai Pillai Road, T. Nagar,

Chennai - 600 017.

... Appellant in both CMAs

/2ND Respondent

...Vs...

1.D.Murugan

2.Rajeswari

... Respondents in C.M.A.No.2346/2012

/ Petitioner in MCOP.No.2015/09 and R1

1.Vijaya Kumari

2.Rajeswari

... Respondents in C.M.A.No.2347/2012

/Petitioner in MCOP.No.2016/09 and R1

R2 Exparte in Lower Court

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 18.08.2011 in M.C.O.P.No.2015 of 2009 and M.C.O.P.No.2016 of 2009 respectively, on the file of the Motor Accidents Claims Tribunal IV Court of Small Causes, Chennai.

For Appellant in: Mr.K.S.Narasimhan

both CMAs

For Respondents : Mr.K.V.Muthvisakan for R1

in both CMAs

COMMON JUDGMENT

The appellant is M/s.Shriram General Insurance Company Limited. They are the respondents in MCOP.Nos.2015, 2016, 2017 and 2018 of 2009 on the file of the IV Court of Small Causes (Motor Accidents Claims Tribunal) at Chennai.

2. The first respondent in CMA.No.2346 of 2012 is the claimant in MCOP.No.2015 of 2009 and the first respondent in CMA.No.2347 of 2012 is the claimant in MCOP.No.2016 of 2009. They filed the above Original Petitions claiming compensation for the injuries sustained by them in a road accident that took place on 21.05.2009.

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

3. The brief facts of the case of the first respondents/claimants:-

On 21.05.2009, the first respondent/claimant in CMA.No.2346 of 2012, was riding an Autorickshaw bearing Registration No.TN-01-P-8130 along EVR Salai and Taylors Road Junction, Kilpuk, Chennai. His wife and two children were traveling in the same auto. A speeding Tempo Travellers Van bearing Registration No.TN-10-T-1622 hit the autorickshaw, as a result of which, all the inmates of the auto sustained injuries. The second respondent is the owner of the Tempo traveller Van and he has insured his vehicle with the appellant herein.

4. The trial Court after analysing the evidence on record, awarded a compensation of Rs.4,81,800/- to the claimant Murugan in CMA.No.2346 of 2012 and sum of Rs.3,83,400/- to the claimant Vijaya Kumari in CMA.No.2347 of 2012. The tabular column extracted hereunder would show the award passed by the Tribunal under various heads:-

S.Nos.	Heads	Amount granted in CMA.No.2346 of 2012	Amount granted in CMA.No.2347 of 2012
1.	Loss of Income	27,000/-	20,000/-
2.	Transport expenses	5,000/-	5,000/-
3.	Extra-nourishment	10,000/-	10,000/-
4.	Damage to clothing	1,000/-	1,000/-
5.	Medical expenses	NIL	NIL
6.	Attender charges	10,000/-	10,000/-
7.	Pain and Sufferings	40,000/-	35,000/-
8.	Permanent Disability	3,88,800/-	3,02,400/-
Total		Rs.4,81,800/-	Rs.3,83,400/-

5. Mr.K.S.Narasimhan, learned counsel appearing for the appellant would contend that when the claimant sustained only a fracture of bones and no operation was performed the tribunal was wrong in applying multiplier method while calculating the loss of earning capacity.

6. A perusal of the records shows that the first respondent in CMA.No.2346 of 2012 has suffered fracture of both bones on right leg and fracture of left humerus. Only

plaster of paris was applied and as rightly contended by the learned counsel for the appellant, no operation was performed on the injured.

7. Per contra, the learned counsel appearing for the respondents would contend that since the first respondent/claimant is an auto driver by profession, he is unable to drive his auto on account of the accident. However, there is no evidence to show that the claimant sustained permanent disability on account of the accident. Though Dr.N.Saichandran, (PW-4) has assessed the disability as 55%. The Tribunal has fixed the partial permanent disability as 40% without assigning any reason.

8. However, the trial Court is wrong in applying the multiplier method, since there is no evidence to show that the first respondent/claimant in the CMA.No.2346 of 2012 had functional disability. At the most, he is entitled to sum of Rs.1,65,000/- towards partial permanent disability(Rs.3000 X 55%).

9. A perusal of the Judgment, shows that the trial Court had awarded a sum of Rs.10,000/- towards Attendander charges in both the appeals and a sum of Rs.40,000/- for pain and sufferings in CMA.No.2346 of 2012 and Rs.35,000/- in CMA.No.2347 of 2012 which in the considered opinion of this Court are on the higher side. Even as per the medical records, the first respondent/claimant in CMA.No.2346 of 2012 had sustained a fracture and therefore, in the facts and circumstances of the present case, awarding compensation of Rs.25,000/- for pain and sufferings in both the appeals and a sum of Rs.2,000/- towards attendander's charges in both appeals would meet the ends of justice. Thus, the total award amount passed by this Court is shown below:

S.Nos.	Heads	Amount granted in CMA.No.2346 of 2012	Amount granted in CMA.No.2347 of 2012
1.	Loss of Income	27,000/-	20,000/-
2.	Transport expenses	5,000/-	5,000/-
3.	Extra-nourishment	10,000/-	10,000/-
4.	Damage to cloths	1,000/-	1,000/-
5.	Medical expenses	NIL	NIL
6.	Attendander's charges	2,000/-	2,000/-
7.	Pain and Sufferings	25,000/-	25,000/-
8.	Permanent Disability	1,65,000/-	1,50,000/-

S.Nos.	Heads	Amount granted in CMA.No.2346 of 2012	Amount granted in CMA.No.2347 of 2012
Total		Rs.2,35,000/ -	Rs.2,13,000/ -

The award passed by the Tribunal is liable to be set aside.

10. Thus, the first respondents/claimants in the CMA.Nos.2346 & 2347 of 2012 are entitled to a sum of Rs.2,35,000/- and Rs.2,13,000/- respectively, together with interest at the rate of 7.5% per annum from the date of filing of the claim petitions till the date of deposit. Since it is submitted that M/s.Shriram General Insurance Company has already deposited the award amount the respective claimants are permitted to withdraw the award amount as per the modified award passed by this Court and the excess amount, if any, withdrawn by them shall be refunded to the Insurance Company.

11. With the above observations, the Civil Miscellaneous Appeals are disposed of. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar(CS iii)

//True Copy//

Sub Assistant Registrar

dna
To

The IV Judge, Court of Small Causes,
(Motor Accidents Claims Tribunal),Chennai.

+1cc to Mr. S.Dhaksnamoorthy, Advocate SR.No. 80781

+1cc to Mr.K.V.Muthvisakan , Advocate SR.No. 81180

C.M.A.Nos.2346 & 2347 of 2012

and

M.P.Nos.1 of 2012 & 1 of 2012

A.SK(12/02/2019)