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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2362 and 2363 of 2015
and C.M.P.No.17744 of 2018

Sisubalan .. Appellant in C.M.A.No.2362/2015

Subramani .. Appellant in C.M.A.No.2363/2015

Vs.

1.Hussain Farook

2.Reliance General Insurance Co. Ltd.,
Rai's Tower, 2nd Floor,
No.2054, 2nd Avenue,
Anna Nagar,
Chennai 600 040.

.. Respondents in both C.M.As.
(R1 set exparte before the Tribunal)

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 14.07.2015 made in M.C.O.P.Nos.2615 and 2619 of 2012 respectively on the file of V Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Ms.M.Malar (in both C.M.As.)

For R2 : Mr.S.Arunkumar

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

These Civil Miscellaneous Appeals have been filed for enhancement of the compensation awarded by the order dated 14.07.2015 made in M.C.O.P.Nos.2615 and 2619 of 2012 respectively on the file of V Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

2.Both the appeals are arising out of the common award and hence, they are disposed of by this common judgment. The parties are referred to as per their rank in the claim petitions.



3.The appellants are the claimants who filed M.C.O.P.Nos.2615 and 2619 of 2012, claiming a sum of Rs.15,00,000/- each as compensation for the injuries suffered by them in the accident that took place on 02.06.2011.

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4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the vehicle belonging to the 1st respondent and directed the 2nd respondent to pay the compensation of Rs.1,02,000/- and Rs.9,00,000/- to the appellants/claimants in M.C.O.P.Nos.2615 and 2619 of 2012 respectively.

5.Not being satisfied with the compensation granted by the Tribunal, the claimants have come out with the above appeals.

6.The learned counsel appearing for the claimant in M.C.O.P.No.2615 of 2012 (C.M.A.No.2362 of 2015) sustained injuries and he has taken treatment as in-patient. The claimant examined the Doctor as P.W.3, who has certified that the claimant has suffered 75% of disability. The Tribunal erroneously reduced the percentage of disability to 20% and awarded a sum of Rs.1,02,000/- as compensation, against their claim of Rs.15,00,000/-, without properly accepting the evidence of P.W.2. The claimant is working as a Mason in Chamber brick work and earning a sum of Rs.1000/- per day. But, the Tribunal erroneously fixed a meager amount of Rs.7,500/- per month as notional income and awarded Rs.6,500/- being the loss of income for one month. The Tribunal without properly appreciating the nature of injuries and permanent disability suffered by the claimant, reduced the disability from 75% as assessed by P.W.3, Doctor and fixed the same at 20%. The Tribunal ought to have awarded compensation separately under the head of permanent disability and loss of earning capacity.

7.As far as C.M.A.No.2363 of 2015 (M.C.O.P.No.2619 of 2012) is concerned, the learned counsel appearing for the claimant contended that the claimant took treatment for more than one year as in-patient in different periods. P.W.3, Doctor assessed the disability as 95% and the Tribunal erred in reducing the same to 62%. The Tribunal ought to have awarded compensation separately under the head of permanent disability and for loss of earning capacity. The amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

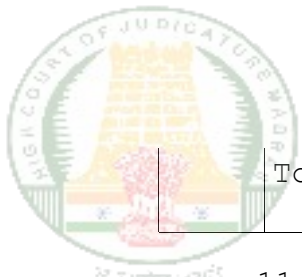
8.The learned counsel for the claimants submitted that the 1st respondent remained exparte before the Tribunal and no notice is necessary for the 1st respondent.



9. Heard the learned counsel for the claimants and perused the materials on record.

10. From the materials on record, it is seen that the claimant in M.C.O.P.No.2615 of 2012 (C.M.A.No.2362 of 2015) was in-patient only for 2 days. He has not suffered any fracture or grievous injuries. P.W.3, Doctor is not the Doctor who treated him. From the cross examination of P.W.3, Doctor, it was elucidated that he has certified permanent disability as 75%, without considering the relevant documents, including X-ray, as no document was filed based on which he could assess the permanent disability. In such circumstances, the Tribunal has fixed the permanent disability at 20% by giving valid reason. There is no error to interfere with the said finding. In the absence of any record with regard to monthly income of the claimant, the Tribunal has fixed the monthly income of the claimant at Rs.7500/-, which is reasonable. The Tribunal after fixing Rs.7,500/- per month as notional income, granted only Rs.6,500/- instead of Rs.7,500/- towards loss of income. Hence, the monthly income fixed is corrected as Rs.7,500/-. The appellant has not let in any evidence to show that he could not do any work as he was doing earlier and suffered loss of earning capacity. In view of the same, the Tribunal has not awarded any amounts for loss of earning capacity. The amounts granted under all other heads are confirmed. Thus, the compensation granted by the Tribunal is modified as follows:

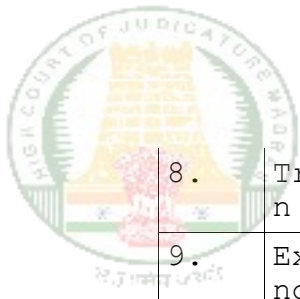
S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Transportation, nourishing food and miscellaneous expenditure	10,000/-	10,000/-	confirmed
2.	Attender charges	500/-	500/-	confirmed
3.	Medical expenses	5,000/-	5,000/-	confirmed
4.	Disability	60,000/-	60,000/-	confirmed
5.	Loss of earning	6,500/-	7,500/-	corrected
6.	Pain and suffering	10,000/-	10,000/-	confirmed
7.	Loss of amenities	10,000/-	10,000/-	confirmed



Total	1,02,000/-	1,03,000/-	Enhanced by Rs.1,000/-
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11.C.M.A.No.2363 of 2015 (M.C.O.P.No.2619 of 2012) is concerned, the contention of the learned counsel for the claimant is that the claimant was taking treatment as in-patient for more than one year in different period. P.W.3, Doctor had certified that claimant suffered 95% of disability. The Tribunal considering both oral and documentary evidence, reduced the same to 62% and granted compensation by giving valid reason and awarded compensation at the rate of Rs.3,000/- per percentage. The Tribunal in the absence of any evidence with regard to monthly income of the claimant, fixed the notional income of the claimant at Rs.7,500/- per month and granted a sum of Rs.90,000/- towards loss of income for 12 months. Considering the contention of the learned counsel for the claimant that the claimant was in hospital for more than one year, the appellant is entitled to a sum of Rs.1,35,000/- for 18 months as loss of income. The amounts granted by the Tribunal for transportation, nourishing food and miscellaneous expenditure is set aside. However, a sum of Rs.10,000/- and Rs.75,000/- are granted under the heads of transportation and extra nourishment respectively. The amounts granted under loss of amenities, attender charge and pain and suffering are meager and they are enhanced. The amounts granted under all other heads are confirmed. Thus, the compensation granted by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Transportation, nourishing food and miscellaneous expenditure	50,000/-	-	set aside
2.	Attender charges	30,000/-	1,00,000/-	enhanced
3.	Medical expenses	4,44,000/-	4,44,000/-	confirmed
4.	Disability	1,86,000/-	1,86,000/-	confirmed
5.	Loss of earning	90,000/-	1,35,000/-	enhanced
6.	Pain and suffering	50,000/-	1,00,000/-	enhanced
7.	Loss of amenities	50,000/-	1,00,000/-	enhanced



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8.	Transportation	-	10,000/-	granted
9.	Extra nourishment	-	75,000/-	granted
	Total	9,00,000/-	11,50,000/-	Enhanced by Rs.2,50,000/-

12. In the result, both the Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal in M.C.O.P.No.2615/2012 is enhanced to Rs.1,03,000/- with interest and costs and the compensation awarded by the Tribunal in M.C.O.P.No.2619/2012 is enhanced to Rs.11,50,000/- with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount, with interest, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellants/claimants are permitted to withdraw the award amount with interest and costs respectively, after adjusting the amount, if any, already withdrawn. No costs. Consequently, in C.M.P.No.17744 of 2018, no further order is necessary.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

gsa

To

1.The V Judge,
Small Causes Court,
(Motor Accidents Claims Tribunal), Chennai.

2.The Record Keeper,
VR Section, High Court, Madras.

+2cc to Ms.M.Malar, Advocate sr.82103 & 82102

C.M.A.Nos.2362 and 2363 of 2015
and C.M.P.No.17744 of 2018

gp(co)
nr 25/09/2019