

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2607 & 2608 of 2015

M.Rajesh .. Appellant in C.M.A.No.2607/2015

V.Mahesh .. Appellant in C.M.A.No.2608/2015

Vs.

1.M.Pavan Garia
(R1 remained exparte before the Tribunal
hence his presence may be dispensed with)

2.Reliance General Insurance Company Limited
plot No.2054, Anna nagar
Chennai-40.

.. Respondents in
both CMAs.

Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.09.2013 made in M.C.O.P.Nos.1656 & 2108 of 2013 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.F.Terry Chella Raja
For R1 : Exparte vide EB
For R2 : No Appearance

COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed for enhancement of compensation granted by the Tribunal by award dated 19.09.2013

made in M.C.O.P.Nos.1656 & 2108 of 2013 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

2.Both the appeals are arising out of the same accident and common award and hence, they are disposed of by this common judgment.

3.The appellants are claimants in M.C.O.P.Nos.1656 & 2108 of 2013 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai. The appellants filed the said claim petitions claiming a sum of Rs.6,00,000/- and Rs.15,00,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 09.02.2013.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the riders of both the motorcycles belonging to the first respondent as well as the appellant in C.M.A.No.2607 of 2015 and fixed 10% negligence on the part of the appellant in C.M.A.No.2607 of 2015 and 90% negligence on the part of the first respondent and directed the second respondent being the insurer of the first respondent to pay a sum of Rs.87,225/- i.e.,

90% of the award amount as compensation to the appellant in C.M.A.No.2607 of 2015 and a sum of Rs.1,76,104/- as compensation to the appellant in C.M.A.No.2608 of 2015.

5. Not being satisfied with the award amount granted by the Tribunal, the appellant/claimant has come out with C.M.A.No.2607 of 2015 challenging 10% contributory negligence fixed on him as well as for enhancement of compensation. The appellant/claimant has come out with C.M.A.No.2608 of 2015 seeking enhancement of compensation.

6. The learned counsel appearing for the appellants contended that the Doctor has assessed the disabilities of the appellants at 40% and 60% respectively. But the Tribunal erred in reducing the same to 25% and 50% respectively, without any basis. The amounts granted by the Tribunal towards disability and loss of income are very meagre. The appellants have suffered permanent disability. The Tribunal ought to have awarded compensation separately under the heads of permanent disability and loss of earning power. The Tribunal erred in fixing 10% contributory negligence on the part of the appellant in C.M.A.No.2607 of 2015 on the ground that he has consumed alcohol at the time of accident.

No test was conducted on the appellant in C.M.A.No.2607 of 2015 to measure the level of alcohol. The second respondent has not examined any witness to show that the appellant in C.M.A.No.2607 of 2015 has also contributed negligence for the accident. The amounts granted by the Tribunal under different heads are meagre and prayed for enhancement of compensation and setting aside 10% contributory negligence fixed on the part of the appellant in C.M.A.No.2607 of 2015.

7.The first respondent remained exparte before the Tribunal. Though notice was served on the second respondent/Insurance Company and their name is printed in the cause list, there is no representation on behalf of them either in person or through counsel.

8.Heard the learned counsel appearing for the appellants and perused the materials available on record.

9.The appellants examined P.W.3/Doctor to prove the nature of the injuries sustained by them and percentage of disability. The Tribunal considering the evidence of Doctor, reduced the percentage of disability from 40% to 25% in C.M.A.No.2607 of 2015 on the

ground that the Doctor admitted that the appellant has not undergone any surgery. Further, the Doctor has not filed x-ray report and he has not seen the follow up records. The Tribunal reduced the percentage of disability from 60% to 50% in C.M.A.No.2608 of 2015 on the ground that the Doctor admitted that there is no fracture in the head of the appellant and the ankle bones are united. The Tribunal has given valid reasons for reducing the percentage of disabilities assessed by the Doctor for both the appellants and the same are hereby confirmed. The Tribunal has awarded a sum of Rs.2,000/- per percentage of disability and the same is not proper. This Court awards a sum of Rs.3,000/- per percentage of disability and thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.75,000/- (25% X 3000) and Rs.1,50,000/- (50% X 3000) respectively in both the appeals.

10. In C.M.A.No.2608 of 2015, the appellant was treated as in-patient in the hospital from 10.02.2013 to 16.02.2013 and then from 26.04.2014 to 27.04.2014. The Tribunal has not granted any amount to the appellant towards attendant charges and a sum of Rs.10,000/- is hereby awarded towards the same. The appellant in C.M.A.No.2607 of 2015 was treated only as an out-patient and

the Tribunal has not granted any amount to the appellant towards attendant charges and the same is proper.

11. In C.M.A.No.2607 of 2015, the Tribunal has fixed 10% contributory negligence on the part of the appellant on the ground that he has consumed alcohol at the time of accident. There is nothing on record to show that the appellant was in a drunken mood or unstable. In such circumstances, 10% contributory negligence fixed on the part of the appellant is set aside. The amounts awarded by the Tribunal under all the other heads are just and reasonable and hence, they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

M.C.O.P.No.1656 of 2013 (C.M.A.No.2607 of 2015):

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning	10,000	10,000	Confirmed
2.	Transportation	7,000	7,000	Confirmed
3.	Extra nourishment	7,000	7,000	Confirmed
4.	Damage to clothes	500	500	Confirmed
5.	Pain and suffering	20,000	20,000	Confirmed
6.	Disability	50,000	75,000	Enhanced
7.	Medical bills	2,175	2,175	Confirmed
	Total	96,675	1,21,675	Enhanced by Rs.25,000/-

M.C.O.P.No.2108 of 2013 (C.M.A.No.2608 of 2015):

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	20,000	20,000	Confirmed
2.	Transportation	7,000	7,000	Confirmed
3.	Extra nourishment	7,000	7,000	Confirmed
4.	Damage to clothes	500	500	Confirmed
5.	Pain and suffering	30,000	30,000	Confirmed
6.	Disability	1,00,000	1,50,000	Enhanced
7.	Medical expenses	11,604	11,604	Confirmed
8.	Attendant charges	-	10,000	Granted
	Total	1,76,104	2,36,104	Enhanced by Rs.60,000/-

12. In the result, both the Civil Miscellaneous Appeals are partly allowed. The compensation awarded by the Tribunal at Rs.96,675/- is hereby enhanced to Rs.1,21,675/- in C.M.A.No.2607 of 2015 and Rs.1,76,104/- is hereby enhanced to Rs.2,36,104/- in C.M.A.No.2608 of 2015, with interest at the rate of 7.5% per annum from the date of petitions till the date of realisation. The appellants/claimants shall pay necessary Court fee, if any, on the enhanced compensation. The second respondent/Insurance

Company is directed to deposit the enhanced award amount along with interest and costs now determined by this Court, 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 along with interest and costs, after adjusting the amount, if any, already withdrawn. No costs.

03.12.2018

Index : Yes / No
Internet : Yes/ No

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To

The Motor Accidents Claims Tribunal
III Judge, Court of Small Causes, Chennai.

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V.M.VELUMANI, J.,

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C.M.A.Nos.2607 and 2608 of 2015**V.M.VELUMANI,J.**

At the instance of the learned counsel for the appellant, today the above Civil Miscellaneous Appeals are listed under the caption 'for being mentioned'.

2.The learned counsel for the appellant submitted that in M.C.O.P.No.1656 of 2013 [C.M.A.No.2607 of 2015], the Tribunal has fixed 10% contributory negligence on the part of the claimant/appellant and granted only 90% of the compensation amount arrived. In the judgment of this Court dated 03.12.2018 made by this Court in C.M.A.Nos.2607 and 2608 of 2015, the said 90% of award amount is not mentioned in the tabular column showing the modified compensation granted in M.C.O.P.No.1656 of 2013 and in the 2nd line of paragraph No.12, the compensation amount has been wrongly mentioned as Rs.96,675/-, instead of Rs.85,050/- and prayed for incorporate the said corrections.

3.Heard the learned counsel for the appellant and perused the materials available on record.

4. In view of the above submissions, the tabular column in page no.6 and paragraph No.12 of the judgment dated 03.12.2018 made in C.M.A.No.2607 of 2015 shall read as follows:

M.C.O.P.No.1656 of 2013 (C.M.A.No.2607 of 2015):

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning	10,000	10,000	Confirmed
2.	Transportation	7,000	7,000	Confirmed
3.	Extra nourishment	7,000	7,000	Confirmed
4.	Damage to clothes	500	500	Confirmed
5.	Pain and suffering	20,000	20,000	Confirmed
6.	Disability	50,000	75,000	Enhanced
7.	Medical bills	2,175	2,175	Confirmed
	Total	96,675	1,21,675	Enhanced by Rs.36,625/-
	90% of the award amount [90% negligence fixed by the Tribunal]	85,050		

"12. In the result, both the Civil Miscellaneous Appeals are partly allowed. The compensation awarded by the Tribunal at Rs. **85,050/-** is hereby enhanced to Rs.1,21,675/- in C.M.A.No.2607 of 2015 and Rs.1,76,104/- is hereby enhanced to Rs.2,36,104/- in C.M.A.No.2608 of 2015, with interest at the rate of 7.5% per annum from the date of petitions till the date of realisation. The

appellants/claimants shall pay necessary Court fee, if any, on the enhanced compensation. The second respondent/Insurance Company is directed to deposit the enhanced award amount along with interest and costs now determined by this Court, 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 along with interest and costs, after adjusting the amount, if any, already withdrawn. No costs."

5.The Registry is directed to make necessary corrections in the order of this Court dated 03.12.2018 made in C.M.A.Nos.2607 and 2608 of 2015 and issue fresh order copy.

6.In all other aspects, the order of this Court dated 03.12.2018 shall remain unaltered.

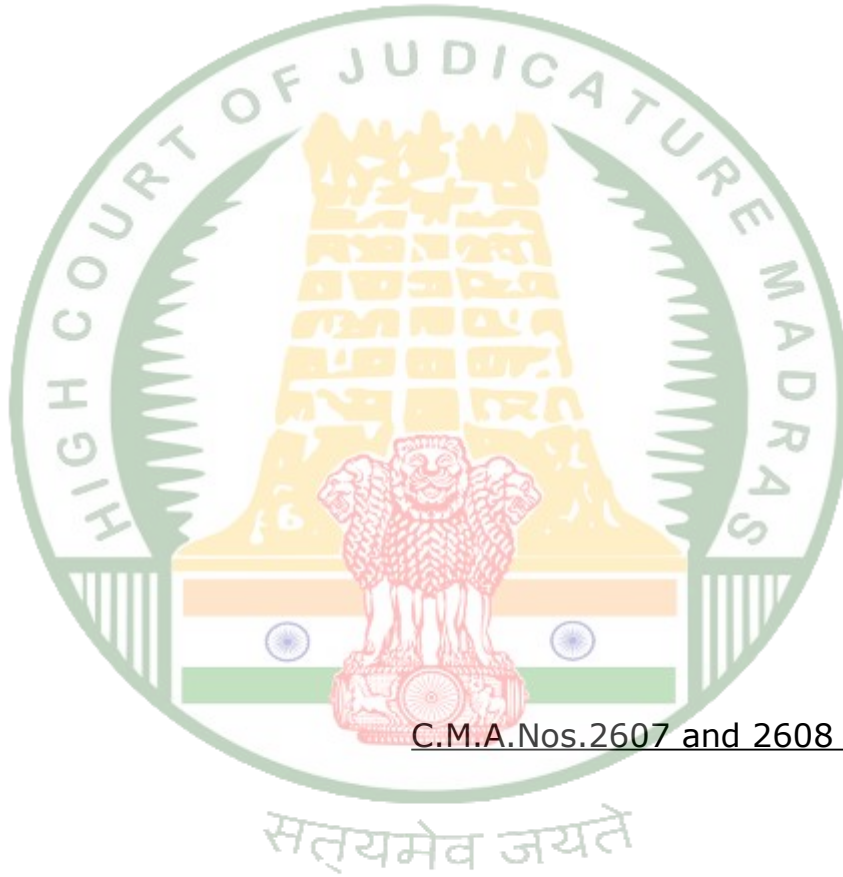
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V.M.VELUMANI,J.

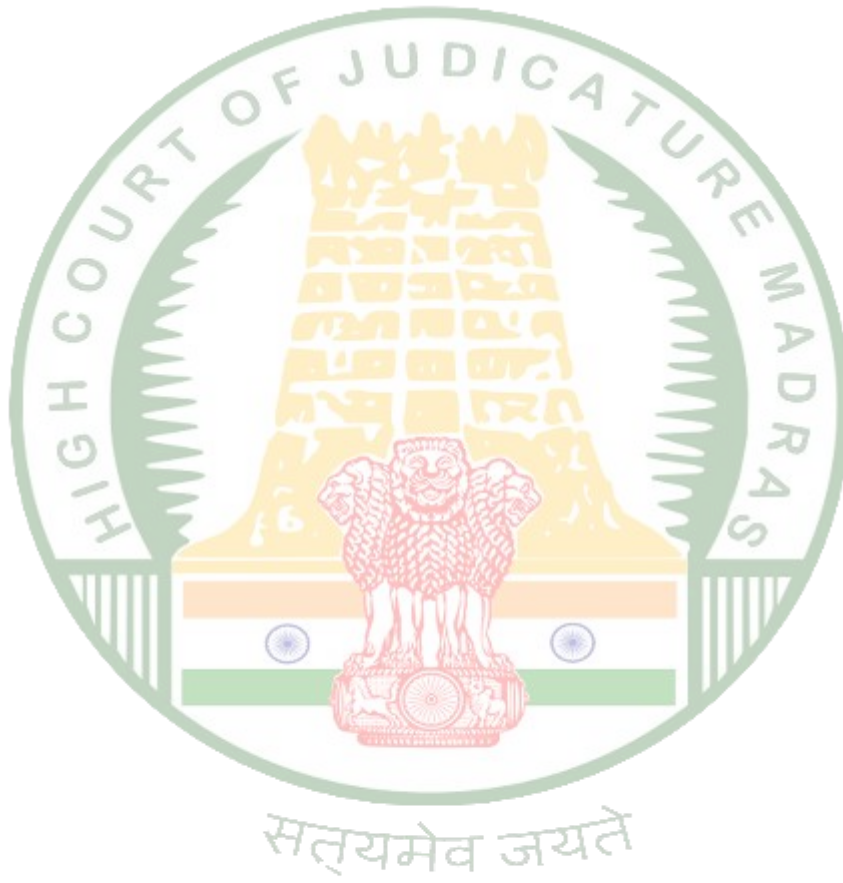
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