

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.313 and 314 of 2016

Reliance General Insurance Company Limited,
No.2054, II Avenue, Rai Towers,
Annanagar, Chennai - 600 040. .. Appellant/2nd Respondent in
both C.M.As

Vs.

1.M.Ganapathy ... First respondent/ Petitioner
in C.M.A.No.313 of 2016
1.M.Karthick ... First respondent/ Petitioner
in C.M.A.No.314 of 2016
2.J.Vijaya Kumar ... Second respondent/1st Respondent
in both C.M.As

Common Prayer: These Civil Miscellaneous Appeals are filed
under Section 173 of Motor Vehicles Act, 1988, against the
Judgment and Decree dated 10.07.2014 made in M.C.O.P.Nos.3028
and 3057 of 2012 on the file of Motor Accidents Claims
Tribunal, V Small Causes Court, Chennai.

For Appellant : Mr.P.Suresh for
M/s.K.Moorthy

For 1st Respondent : Mr.U.Chithambaram for
M/s.B.S.Padmanabhan

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

These Civil Miscellaneous Appeals have been filed
against the common award dated 10.07.2014 made in
M.C.O.P.Nos.3028 and 3057 of 2012 on the file of Motor
Accidents Claims Tribunal, V Small Causes Court, Chennai.

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

3.The appellant is second respondent in M.C.O.P.Nos.3028
and 3057 of 2012. The first respondent in both the appeals
filed the above claim petitions claiming a sum of
Rs.6,00,000/- and Rs.3,00,000/- respectively as compensation
for the injuries sustained by them in the accident that took
place on 18.03.2012

4.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 vehicle belonging to the second respondent and directed the appellant being the insurer of the vehicle belonging to the second respondent, to pay the compensation to the first respondent in both the appeals at the first instance and recover the same from the second respondent without initiating any proceedings, on the ground that the driver was not having endorsement or badge in the license.

5.Against the common award passed by the Tribunal dated 10.07.2014 made in M.C.O.P.Nos.3028 and 3057 of 2012, the present appeals were filed.

6.The learned counsel appearing for the appellant contended that the accident did not occur due to rash and negligent driving by the driver of the auto insured with the appellant. The Tribunal erred in fastening the liability on the appellant. The amounts awarded by the Tribunal under different heads are excessive. The Tribunal has granted higher amounts without any basis. The Tribunal erroneously awarded a sum of Rs.3,51,000/- for loss of earning capacity in M.C.O.P.No.3028 of 2012, when there is no basis for the same. The Tribunal erred in directing the appellant to pay the compensation to the first respondent even though the second respondent has allowed his driver to drive the auto without any valid license and prayed for setting aside the award passed by the Tribunal.

7.Per contra, the learned counsel appearing for the first respondent contended that the first respondent have proved that the accident occurred only due to rash and negligent driving by the driver of the auto. The Tribunal considering the nature of injuries sustained by the first respondent has awarded compensation on different heads. As far as first respondent in C.M.A.No.313 of 2016 is concerned, due to injuries sustained by the first respondent his movement has been restricted and he is limping. Considering the evidence of P.W.3/Doctor, the Tribunal has awarded compensation for both permanent disability and loss of earning capacity and the Tribunal has given valid reason for the same. The amounts awarded by the Tribunal under different heads are not excessive and prayed for dismissal of both the appeals.

8.Heard the learned counsel appearing for the appellant as well as the first respondent and perused all the materials available on record.

C.M.A.No.313 of 2016:

9.The contention of the learned counsel appearing for the appellant is that the Tribunal has awarded compensation for 50% disability as well as loss of earning capacity. As far as compensation for permanent disability, the Tribunal has awarded a sum of Rs.1,00,000/- at the rate of Rs.2,000/- per percentage for 50% disability sustained by the first respondent as certified by P.W.3/Doctor and the same is valid. As far as loss of earning capacity is concerned, P.W.3/Doctor has certified that due to the injuries sustained, there was stiffness in the muscles and movement of the first respondent is reduced and he is limping. There is no evidence let in by the first respondent to show that he is totally immobilized and his loss of earning capacity has been reduced. In such circumstances, the 25% fixed by the Tribunal for loss of earning capacity is excessive and the same is reduced to 10% as due to the stiffness of muscles and that first respondent is limping due to the injuries. Thus the amounts awarded by the Tribunal towards loss of earning capacity is reduced as follows:

$$\text{Rs.6,500/-} \times 12 \times 8 \times 10/100 = \text{Rs.1,40,400/-}$$

The amounts awarded by the Tribunal under all other heads are just and reasonable and hence they are confirmed.

10. C.M.A.No.313 of 2016 (M.C.O.P.No.3028 of 2012):

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income	39,000/-	39,000/-	confirmed
2.	Transportation, Damage to clothes	5,000/-	5,000/-	confirmed
3.	Extra Nourishment	25,000/-	25,000/-	confirmed
4.	Medical Expenses	5,000/-	5,000/-	confirmed
5.	Pain and suffering	40,000/-	40,000/-	confirmed
6.	Disability	1,00,000/-	1,00,000/-	confirmed
7.	Loss of amenities	25,000/-	25,000/-	confirmed
8.	Loss of future earning capacity	3,51,000/-	1,40,400/-	reduced
	Total	5,90,000/-	3,79,400/-	reduced by Rs.2,10,600/-

C.M.A.No.314 of 2016:

11.In so far as C.M.A.No.314 of 2016 is concerned, the Tribunal has awarded a sum of Rs.40,000/-, Rs.40,000/- and Rs.25,000/- towards transportation and extra nourishment, pain and suffering, loss of amenities respectively which are excessive and the same are hereby reduced to Rs.30,000/-, Rs.30,000/- and Rs.15,000/- respectively.

12. C.M.A.No.314 of 2016 (M.C.O.P.No.3057 of 2012):

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	39,000/-	39,000/-	confirmed
2.	Transportation & Extra nourishment	40,000/-	30,000/-	reduced
3.	Damage to clothes	1,000/-	1,000/-	confirmed
4.	Medical expenses	5,000/-	5,000/-	confirmed
5.	Pain and suffering	40,000/-	30,000/-	reduced
6.	Disability	70,000/-	70,000/-	confirmed
7.	Loss of amenities	25,000/-	15,000/-	reduced
	Total	2,20,000/-	1,90,000/-	reduced by Rs.30,000/-

13.In the result, both the Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal at Rs.5,90,000/- (in M.C.O.P.No.3028 of 2012) and Rs.2,20,000/- (in M.C.O.P.No.3057 of 2012) are hereby reduced to a sum of Rs.3,79,400/- and Rs.1,90,000/- respectively with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant-Insurance Company is directed to deposit the modified award amount 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 order. On such deposit, the first respondent in both the appeals/claimants are permitted to withdraw the modified award amount along with interest and cost, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

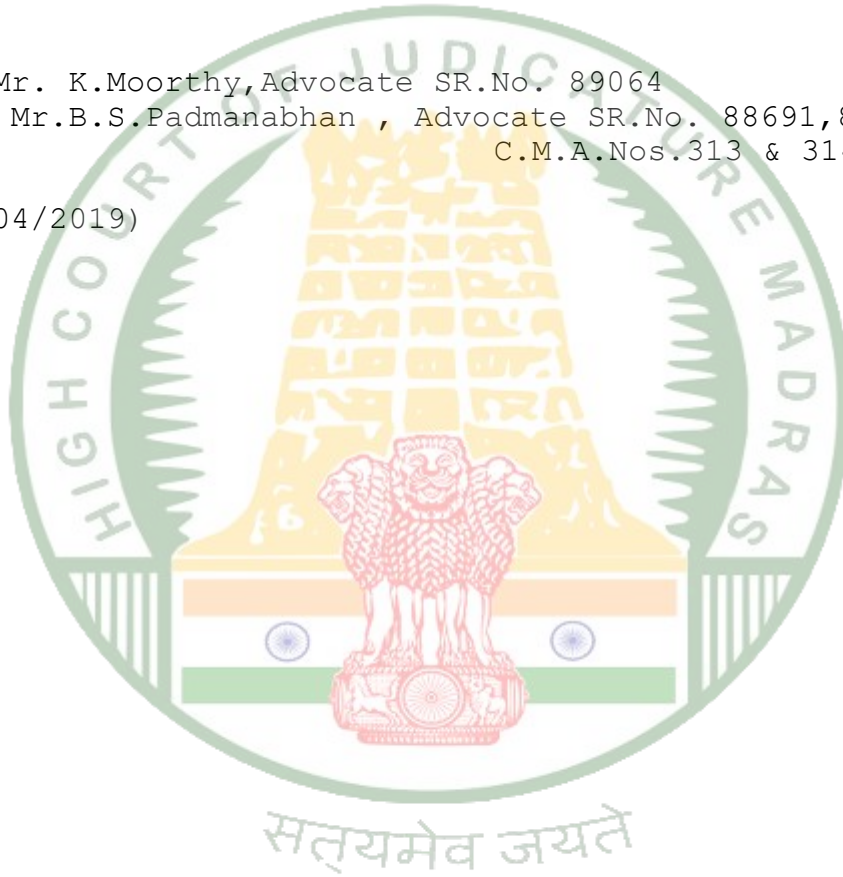
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To

The V Judge,
Motor Accidents Claims Tribunal,
Small Causes Court No.V,
Chennai.

2. The section officer,
VR Section,
High court
Madras

+1cc to Mr. K.Moorthy, Advocate SR.No. 89064
+2ccs to Mr.B.S.Padmanabhan , Advocate SR.No. 88691,88690
C.M.A.Nos.313 & 314 of 2016

A.SK(01/04/2019)



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