



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.2984 to 2986 of 2009

R.Logeswari ..Appellant/petitioner in CMA.No.2984/2009
R.Kousalya (Minor)
[Rep.by her father & N.F. P.Ravichandran]
..Appellant/petitioner in CMA.No.2985/2009
P.Ravichandran ..Appellant/petitioner in CMA.No.2986/2009

Versus

1.U.Meganathan
[Re-remained ex-parte before the Trial Court]
2. National Insurance Co.Ltd.,
No.29, Pulla Avenue,
Shenoy Nagar,
Chennai - 600 030.
.. Respondents/ Respondents in all the Appeals

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree passed in M.A.C.T.O.P. Nos.5014, 5015 and 5016 of 2005 dated 21.04.2009 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai, respectively.

For Appellant
in all the appeals : Mr.K.Ayyadurai
for Mr.N.M.Muthurajan
For 2nd Respondent
in all the appeals : Mr.M.Krishnamoorthy [for R2]
R1-set exparte before Tribunal

J U D G M E N T

The instant appeals have been filed by the respective claimant seeking enhancement of compensation passed under the impugned common Award dated 21.04.2009 passed by the Motor Accident Claims Tribunal (II Small Causes Court), Chennai in M.A.C.T.O.P.Nos.5014, 5015 and 5016 of 2005.



WEB C

2. The Appellants in CMA.Nos.2984, 2985 and 2986 of 2009 sustained injuries as a result of an accident caused by a van bearing Registration No.TN-01-J-6787 owned by the first respondent in all these appeals and insured with the second respondent.

3. The Appellant in CMA.No.2984 of 2009 preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.5014 of 2005 seeking a compensation of Rs.10,00,000/-. The Tribunal by its common Award dated 21.04.2009 directed the second respondent to pay the Appellant a sum of Rs.2,64,340/- together with interest at 9.5% per annum from the date of claim till the date of realization.

4. The Appellant in CMA.No.2985 of 2009 preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.5015 of 2005 seeking a claim of Rs.6,00,000/-. The Motor Accident Claims Tribunal by its common award dated 21.04.2009 directed the second respondent to pay the Appellant a sum of Rs.86,105/- together with interest at 9.5% per annum from the date of claim till the date of realization.

5. The Appellant in CMA.No.2986 of 2009 preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.5016 of 2005 for a sum of Rs.5,00,000/-. The Motor Accident Claims Tribunal by its common award dated 21.04.2009 directed the second respondent to pay the Appellant a sum of Rs.1,51,325/- together with interest 9.5% per annum from the date of claim till the date of realization.

6. Aggrieved by the common award dated 21.04.2009 passed in M.C.O.P.Nos.5014, 5015 and 5016 of 2005, the Appellants have preferred these appeals seeking enhancement of compensation.

7. Heard, Mr.K.Ayyadurai for Mr.N.M.Muthurajan, learned counsel for the Appellants and Mr.M.Krishnamoorthy, learned counsel for the second respondent/Insurance Company.

8. According to the learned counsel for the Appellants in all these appeals, the Appellants have challenged the quantum of compensation awarded by the Tribunal under various heads. According to the learned counsel for the Appellants, the Appellant in CMA.No.2984 of 2009 is a Proprietor of Selvam press and was earning a monthly income of Rs.15,000/- at the time of accident, but the Tribunal has assessed his monthly income only at Rs.7,500/-. The learned counsel would further contend that the disability of the Appellant was assessed at 60% by the Doctor - P.W.3 and the disability certificate - Ex.P.34 was also marked. According to the learned counsel for the Appellant, even though the disability of the Appellant was assessed at 60%, the Tribunal has erroneously, without any basis, has assessed disability of the Appellant at 50%.



Further, the learned counsel for the Appellant contended that the accident having taken place in the year 2005, the Tribunal ought to have awarded at least Rs.2,000/- per percentage of disability and should have assessed the disability at 60% based on the disability certificate produced by the Appellant. According to the learned counsel, the Tribunal assessed the disability at 50% and has awarded compensation towards disability only for a sum of Rs.50,000/-. Further, the learned counsel would contend that the compensation awarded by the Tribunal towards loss of earning, transport to hospital, extra nourishment, damage of clothes and articles, medical expenses, pain and suffering, compensation for continuing and permanent disability was not commensurate with the actual loss sustained by the Appellant as a result of the accident.

9. As regards the Appellant in CMA.No.2985 of 2009 is concerned, the learned counsel for the Appellant would contend that the Tribunal has awarded only a sum of Rs.86,105/- as compensation eventhough, the claim made before the Tribunal was for a sum of Rs.6,00,000/-. The learned counsel for the Appellant would further contend that the disability was assessed at 30% for the Appellant in CMA.No.2985/2009 and disability certificate - Ex.P.35 was also marked. But the Tribunal has erroneously without any basis assessed the disability of Appellant in CMA.No.2985/2009 at 24% and has awarded disability compensation only at Rs.24,000/-. According to him, the accident having taken place in 2005, the Tribunal ought to have awarded a much higher compensation at least a minimum of Rs.2,000/- per percentage of disability which works out to Rs.60,000/- for 30% disability sustained by the Appellant in CMA.No.2985/2009. The learned counsel for the Appellant submits that the compensation awarded under various other heads is also not in accordance with the settled principles of law.

10. As regards CMA.No.2986/2009, the learned counsel for the Appellant would contend that the Tribunal has erroneously awarded only a compensation of Rs.1,51,325/-, even though, the Appellant in CMA.No.2986/2009 had made a claim of Rs.5,00,000/- before the Tribunal. According to the learned counsel for the Appellant, the Appellant was a Bench clerk in the Court of Chief Judicial Magistrate, Chengalpattu and was earning a monthly salary of Rs.7,200/-. Ex.P.29 - Pay certificate and Ex.P.30 - NGGO certificate were also marked before the Tribunal to establish his monthly income. According to the learned counsel for the Appellant, the compensation awarded by the Tribunal under various other heads is also not commensurate with the actual loss sustained by the Appellant as a result of the accident.

11. Per contra, the learned counsel for the second respondent/Insurance Company in all these appeals would submit that the Appellant in CMA.No.2984/2009 has not produced any documentary proof to establish that he was earning a monthly



income of Rs.15,000/- at the time of accident. No income tax returns were also filed by the Appellant in CMA.No.2984/2009 to prove the income of the Appellant. According to him, the Tribunal has rightly rejected higher compensation since the Appellant has not filed the income tax return to prove that he was earning monthly income of Rs.15,000/- at the time of accident. According to the learned counsel for the second respondent/Insurance Company, the Appellant has not let in oral or documentary evidence to establish that due to the injuries sustained by him, he had to suffer loss of earnings. According to him, compensation awarded to the Appellant under various heads is a just compensation.

12. Insofar as the Appellant in CMA.No.2985/2009 is concerned, the learned counsel for the second respondent would contend that the Tribunal has rightly assessed the monthly income of the Appellant at Rs.4,800/- which is his net monthly income as per Ex.P.29 - Pay certificate filed by the Appellant. According to the learned counsel for the second respondent/Insurance Company, the percentage of disability assessed by the Tribunal for all the three appeals has been assessed by the Tribunal, based on the actual injuries sustained by them as a result of the accident. According to the learned counsel for the second respondent, the compensation awarded to the Appellant under various heads under the impugned award is also a reasonable and a just compensation.

13. This Court, after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels, observes the following:-

(a) The nature of injuries sustained by the Appellant in all the three appeals are not disputed by the second respondent. Admittedly the Appellant in CMA.No.2984/2009 has not filed any documentary evidence to prove that he was earning a monthly income of Rs.15,000/- at the time of accident. Even though no documentary evidence was produced, the Tribunal has assessed the monthly income of the Appellant in CMA.No.2984/2009 at Rs.7,500/-.

(b) The Appellant in CMA.No.2984/2009 has sustained shattered elbow right and fracture of right clavicle, contusion chest wall and right ankle and mandible due to the accident. The Doctor has assessed his disability at 60% and the disability certificate was also marked as Ex.P.34 before the Tribunal. No contra evidence was produced by the second respondent to disprove the age of the disability suffered by the Appellant in CMA.No.2984/2009. Without any basis, the Tribunal has erroneously reduced the percentage of disability of the Appellant from 60% to 50%. The Tribunal has awarded Rs.50,000/- as disability compensation to the Appellant. This Court is of the considered view that the Tribunal ought not to have reduced the percentage of disability without any basis. Therefore, this Court fixes the disability of the Appellant at



WEB

60% as per Ex.P.3 - Disability certificate. Considering the percentage of disability suffered by the Appellant, this Court awards Rs.60,000/- as disability compensation, calculated at the rate of Rs.1,000/- per percentage of disability. The accident happened in the year 2005. No oral or documentary evidence has been let in by the Appellant in CMA.No.2984/2009 to prove that due to the injuries sustained by him, as a result of the accident, he had to suffer loss of earnings. Even though no documentary evidence was produced, the Tribunal has awarded Rs.45,000/- towards loss of earnings to the Appellant. The Tribunal has also awarded Rs.2,000/- towards Transportation cost, Rs.5,000/- towards extra nourishment charges, Rs.1,500/- towards damage to clothing and articles, Rs.1,20,840/- towards medical expenses, even though only Rs.95,000/- was claimed in the claim petition. The Tribunal has also awarded Rs.5,000/- towards compensation for attender charges, Rs.10,000/- towards mental agony, Rs.25,000/- towards Pain and Suffering, Rs.50,000/- towards compensation for continuing or permanent disability in all put together a sum of Rs.2,64,340/- was awarded as compensation to the Appellant under the impugned common award.

14. Insofar as the claim made by the Appellant in CMA.No.2985/2009 is concerned, this Court observes the following:-

(a) The Appellant was a minor and she was 9 years at the time of accident. She sustained fracture of mandible, lat wall orbit zygoma and nasal bone and she took inpatient in Deepam Hospital for five days and she had to undergo one surgery in the very same hospital.

(b) The Appellant in CMA.No.2985/2009 filed the disability certificate marked as Ex.P.35 to disclose that she suffered 30% partial and permanent disability as a result of the accident. No contra evidence was produced by the second respondent to disprove the percentage of disability suffered by the Appellant as a result of the accident. Despite their being no contra evidence, the Tribunal, without any basis, has assessed the disability of the Appellant at 24% and awarded a sum of Rs.24,000/- as disability compensation to the Appellant.

15. This Court is of the considered view that the Tribunal ought not to have reduced the percentage of disability when the disability certificate Ex.P.35 discloses that the Appellant has suffered 30% disability and there being no contra evidence to disprove the same. Therefore, this Court is of the considered view that the Appellant has suffered 30% disability and the compensation payable to the Appellant is assessed at Rs.30,000/- calculated at the rate of Rs.1,000/- per percentage of disability. Therefore, the disability compensation is enhanced for the Appellant from Rs.24,000/- to Rs.30,000/- by this Court.



16. The Tribunal has awarded Rs.1,000/- towards transportation cost, Rs.5,000/- towards extra nourishment, Rs.500/- towards damage of clothing and articles, Rs.25,605/- towards medical expenses, Rs.5,000/- towards compensation for attendants, Rs.20,000/- towards Pain and suffering, Rs.5,000/- towards mental agony due to disfigurement, Rs.24,000/- towards compensation for continuing and permanent disability, if any. In all put together, the Tribunal has awarded a sum of Rs.86,105/- together with interest at 9.5% per annum from the date of claim till the date of realization.

17. Considering the age of the Appellant in CMA.No.2985/2009 and the injuries sustained by her, this Court is of the considered view that the compensation awarded to the Appellant under these heads is a reasonable and just compensation.

18. As regards CMA.No.2986/2009, the Appellant sustained fracture of 3rd and 4th right meta carpal bones, fracture posterior lower end of tibia and talus of right leg, fracture of 3rd, 4th and 5th right ribs and fracture tibial condyle due to the accident. The Appellant was working as a bench clerk in the Chief Judicial Magistrate Court at Chengalpat and his net monthly income was Rs.4,800/-, even though his gross monthly income was Rs.7,070/-. He has also filed a pay certificate which was marked as Ex.P.29 to prove his monthly income. The Tribunal has accepted the pay certificate and has assessed the net monthly income of the Appellant as per the pay certificate at Rs.4,800/-. The percentage of disability suffered by the Appellant is 45% as disclosed in Ex.P.37. No contra evidence has been produced by the second respondent to disprove the percentage of disability suffered by the Appellant as a result of the accident. Even though, no contra evidence was available, the Tribunal assessed without any basis has reduced the percentage of disability from 45% to 38% and has assessed the disability compensation at Rs.38,000/-

19. This Court is of the considered view that the Tribunal ought to have assessed the percentage of disability of Appellant at 45% as seen from Ex.P.37 disability certificate and ought to have assessed the disability compensation at Rs.45,000/- instead of Rs.38,000/-.

20. The Tribunal has awarded Rs.24,000/- towards loss of earning to the Appellant between 07.08.2005 and 06.12.2005, Rs.6,100/- towards transportation cost, Rs.5,000/- towards extra nourishment charges, Rs.1,000/- towards damage to clothing and articles, Rs.54,225/- towards medical expenses, Rs.3,000/- towards compensation for attendants, Rs.20,000/- towards Pain and suffering, Rs.38,000/- towards compensation for continuing and permanent disability. Even though no documentary evidence was available before the Tribunal for the alleged loss of earnings sustained by the Appellant, the



Tribunal has awarded a sum of Rs.24,000/- as compensation towards loss of earning.

21. This Court is of the considered view that excepting for wrong assessment of compensation towards disability, the compensation awarded under various other heads to the Appellant is a just compensation and the Appellant has not made out any ground for interference by this Court.

22. In the result, the compensation awarded to the Appellant in CMA.No.2984/2009 by the Tribunal under impugned award is enhanced to Rs.2,74,340/- from Rs.2,64,340/- together with interest at 7.5% per annum from the date of claim till the date of deposit. The Insurance Company is directed to deposit the amount awarded by this Court after deducting the amount already deposited if any to the credit of M.C.O.P.No.5014 of 2005 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai, within a period of four weeks from the date of receipt of this order. On such deposit being made, the Appellant is permitted to withdraw the amount lying to the credit of M.C.O.P.No.5014 of 2005 together with accrued interest by filing an appropriate application.

23. In the result, the compensation awarded to the Appellant in CMA.No.2985/2009 by the Tribunal under impugned award is enhanced to Rs.92,105/- from Rs.86,105/- together with interest at 7.5% per annum from the date of claim till the date of deposit. The Insurance Company is directed to deposit the amount awarded by this Court after deducting the amount already deposited if any to the credit of M.C.O.P.No.5015 of 2005 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai, within a period of four weeks from the date of receipt of this order. Since the appellant is a minor, the award amount shall be deposited in any one of the Nationalized banks till they attain majority and her father is permitted to withdraw the interest accrued once in six months.

24. In the result, the compensation awarded to the Appellant in CMA.No.2986/2009 by the Tribunal under impugned award is enhanced to Rs.1,58,325/- from Rs.1,51,325/- together with interest at 7.5% per annum on the enhanced amount from the date of claim till the date of deposit. The Insurance Company is directed to deposit the amount awarded by this Court after deducting the amount already deposited if any to the credit of M.C.O.P.No.5016 of 2005 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai, within a period of four weeks from the date of receipt of this order. On such deposit being made, the Appellant is permitted to withdraw the said sum together with accrued interest by filing an appropriate application.



25. Accordingly, these Civil Miscellaneous Appeals are partly allowed as indicated above. No costs.

Sd/-

Assistant Registrar (CS iv)

//True Copy//

Sub Assistant Registrar

bri
To

1. The II Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.

2. The Section Officer,
Vernacular Section,
Madras High Court.

+2cc to Mr.M.Krishnamoorthy , Advocate SR.No. 62749,62751

+2cc to Mr.N.M.Muthurajan , Advocate SR.No. 62836

C.M.A.Nos.2984 to 2986 of 2009

ASK(19/11/2018)