

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.11.2018
Pronounced on : 21.12.2018

Coram

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.Nos.2540 to 2542 of 2018

K.Valarmathi Appellant in CMA.No.2540/2018

T.K.AnithaAppellant in CMA.No.2541/2018

R.Justin PrabagharanAppellant in CMA.No.2542/2018

vs.

1.R.Shanmuga Sundaram

2.The Reliance General Insurance Company Limited,
No.15-A, Palkanagu Towers,
Thillai Nagar, II-Cross, Trichy -48.

.... Respondents in all the CMAs

Common Prayer : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree made in MCOP.Nos.4418, 4419 and 4420 of 2008 dated 27.11.2017 on the file of the IIInd Small Causes Court/Motor Accident Claims Tribunal, Chennai.

(In all the CMAs)

For Appellants : Mr.G.Elanchezhiyan

For Respondents : Mr.M.B.Raghavan (for R2)

COMMON ORDER

Challenging the common judgment and decree dated 27.11.2017 passed by the Motor Accidents Claims Tribunal, (II Court of Small Causes) Chennai in M.C.O.P.Nos.4418 to 4420 of 2008, the claimants have come up with this appeal seeking enhancement of compensation.

2.The claim petition in M.C.O.P.NO.4418 of 2008 has been filed under section 166 of the Motor Vehicle Act and Rule of the Motor Vehicle Rules claiming compensation of Rs.2,00,000/- for the injuries sustained by Tmt.Valarmathi in the road accident on

03.03.2008.

3.The claim petition in M.C.O.P.NO.4419 of 2008 has been filed under section 166 of the Motor Vehicle Act and Rule of the Motor Vehicle Rules claiming compensation of Rs.3,00,000/- for the injuries sustained by Tmt.Anitha in the road accident on 03.03.2008.

4.The claim petition in M.C.O.P.NO.4420 of 2008 has been filed under section 166 of the Motor Vehicle Act and Rule of the Motor Vehicle Rules claiming compensation of Rs.20,00,000/- for the injuries sustained by Mr.Justin Prabagharan in the road accident on 3.3.2008.

5.The case of the appellant in brief, is that on 03.03.2008 at about 2.45 hours, then the petitioners K.Valarmathi, Anitha and Justin Prabagharan in M.C.O.P.Nos.4418 of 2008, 4419 of 2008, 4420 of 2008 were travelling in a Scorpio(LMV) Car bearing Reg.No.TN-31-P-9991 from Tittagudi to Chennai and when the vehicle was proceeding in the G.S.T.Road, near Vandalur Railway gate and Irani Amman Temple, Perungalathur, Kancheepuram District an unknown person suddenly crossed the road in which the driver of the vehicle was driven in a very rash and negligence manner specific speed endangering to the public safety and he lost control over the vehicle and the car rolled twice and then stopped. Consequently, the petitioners who were rolled in the vehicle along with the driver were sustained grievous injuries and simple injuries over the body. The above accident occurred only due to the rash and negligent driving of the driver of the car bearing Reg.No.TN-31-P-9991 and he is only responsible for the accident. Hence, the 1st respondent as the owner and the 2nd respondent as insurer of the car are jointly, severally and vicariously liable to compensation to the injured petitioners.

6.The case of the respondent is that the 2nd respondent denies all the allegations made in the claim petition herein. The respondent denied the alleged manner of the accident. The 2nd respondent denies that the age, occupation and income of the petitioners and the petitioner to call on to prove the same by documentary evidence. In any event, without prejudice, it is submitted that the allegations in the petition reveal that the petitioner was solely responsible for the accident or in any case contributed substantially to the occurrence and the claim made by the petitioners is unlawful. Hence this respondent is not liable to pay any compensation as alleged. The compensation claimed by the petitioners is highly exaggerated. Hence prayed to dismiss all the above claims.

7.Since these claim petitions are arising out of one and the same accident and in view of the joint trial memo filed by the counsel for the petitioners the joint trial was taken and a common order was passed on 27.11.2017.

8.Before the claims Tribunal, the appellant K.Valarmathu, Anitha and Justin Prabagharan in M.C.O.P.Nos.4418 of 2008, 4419 of 2008 and 4420 of 2008 were examined as PW1, PW2 and PW3 and through them Exs.P1 to Ex.P35 were marked. Dr.M.Saravanabavantham, was examined as PW4 and through him Ex.P36 to Ex.P41 were marked on behalf of the three petitioners.

9.On the side of the respondent, no oral or documentary evidence was adduced. Written argument filed by the learned counsel for petitioner also taken into consideration. The marking of the appellant of the documents are as given below:

Petitioners side witnesses:	
PW.1	Tmt.Valarmathi
PW.2	Tmt.Anitha
PW.3	Mr.Justin Prabagharan
PW.4	Dr.Saravana Bhavanantham
Petitioners side Exhibits:	
1.	Discharge summary of (O.P.No.4418/2008)
2.	Doctors prescriptions (O.P.No.4418/2008)
3.	Scan
4.	Medical bills (O.P.No.4418/2008)
5.	Discharge summary of PW2 (O.P.No.4419/2008)
6.	Doctors prescriptions of PW2 (O.P.No.4419/2008)
7.	Medical bills (O.P.No.4419/2008)
8.	Scan
9.	FIR (O.P.No.4420/2008)
10.	AIR report (O.P.No.4420/2008)
11.	Discharge summary (O.P.No.4420/2008)
12.	Discharge summary (O.P.No.4420/2008)
13.	Doctor note sheet (O.P.No.4420/2008)

Petitioners side witnesses:		
14.	Doctors (O.P.No.4420/2008)	prescriptions
15.	Discharge summary (O.P.No.4420/2008)	
16.	Doctors (O.P.No.4420/2008)	prescriptions
17.	Doctors (O.P.No.4420/2008)	prescriptions
18.	Doctors (O.P.No.4420/2008)	prescriptions
19.	Doctors (O.P.No.4420/2008)	prescriptions
20.	Discharge summary (O.P.No.4420/2008)	
21.	Doctors (O.P.No.4420/2008)	prescriptions
22.	Doctors (O.P.No.4420/2008)	prescriptions
23.	Doctors (O.P.No.4420/2008)	prescriptions
24.	Laboratory report (O.P.No.4420/2008)	
25.	Medical bills (O.P.No.4420/2008)	
26.	Scan	
27.	Vehicle purchase bill (O.P.No.4420/2008)	
28.	Salary bill (O.P.No.4420/2008)	
29.	Salary bill (O.P.No.4420/2008)	
30.	Transport receipt (O.P.No.4420/2008)	
31.	Diet cash bill (O.P.No.4420/2008)	
32.	Copy of the deputation order (O.P.No.4420/2008)	
33.	Charge Sheet (O.P.No.4420/2008)	
34.	Sketch (O.P.No.4420/2008)	
35.	A.R.Copy (O.P.No.4420/2008)	
36.	Disability (O.P.No.4418/2008)	certificate
37.	X-ray	
38.	Disability (O.P.No.4419/2008)	certificate
39.	X-ray	

Petitioners side witnesses:		
40.	Disability (O.P.No.4420/2008)	certificate
41.	X-ray	
Respondent side Witnesses and Exhibits : Nil		

10. On consideration of the available oral and documentary evidence, the Tribunal, held that the accident had occurred due to the rash and negligent driving of the driver of the vehicle, and fixed the liability to compensate the claimants on the 2nd respondent/Insurance Company. The 1st respondent herein, who is the owner of the vehicle was set exparte before the Tribunal. Against the claim of Rs.2,00,000/- of Tmt.Valarmathi in M.C.O.P.No.4418 of 2008, the Tribunal awarded a sum of Rs.67,000/- and against the claim of Rs.3,00,000/- of Tmt.Anitha the Tribunal awarded Rs.1,10,300/- and against the claim of Rs.20,00,000/- of Mr.Justin Prabagharan the Tribunal awarded Rs.2,60,300/- as compensation under the following heads:

For Tmt.Valarmathi:

Sl.No.	Heads	Total Rs.
1	Medical bills	700
2	Disability	45,000
3	Attendance charges	2,000
4	Pain and suffering	10,000
5	Transport to Hospital	5,000
6	Extra Nourishment	5,000
	Total	67,700

For Tmt.T.K.Anitha:

Sl.No.	Heads	Total Rs.
1	Medical bills	1,300
2	Disability	75,000
3	Attendance charges	2,000
4	Loss of income	12,000
5	Pain and suffering	10,000
6	Transport to Hospital	5,000
7	Extra Nourishment	5,000
	Total	1,10,300

For Mr.R.Justin Prabagharan:

Sl.No.	Heads	Total Rs.
1	Medical bills	1,66,300
2	Disability	60,000
3	Attendance charges	2,000
4	Loss of income	12,000
5	Pain and suffering	10,000
6	Transport to Hospital	5,000
7	Extra Nourishment	5,000
	Total	2,60,300

11.Learned counsel for the appellants/claimants contended that when the injured persons, who were a Software Engineer by profession, the Tribunal erred in fixing his monthly income only at Rs.3,000/-, which is very low on account of the rising prices. They further contended that the Tribunal ought to have awarded a sum of Rs.8,68,145/- for the incurred medical expenses along with future treatment Rs.4,32,000/- and the Tribunal also has not awarded reasonable amount for pain and suffering.

12.On the other hand, learned counsel appearing for the 2nd respondent/Insurance Company submitted that the compensation awarded by the Tribunal is just and reasonable and sought dismissal of the appeal except the incurred medical expenses of the claimant along with future treatment.

13.I heard Mr.G.Elanchezhiyan, learned counsel for the appellants and Mr.M.B.Raghavan, learned counsel for the 2nd respondent in all the Appeals and perused the material documents available on record.

14.In the claim petition the claimants have stated that after the accident the 1st claimant Tmt.Valarmathi was admitted in Sri Ramachandra Medical Hospital on 03.03.2008 for the injuries that CERVICAL STRAIN and DIFFUSE MULTIPLE DISC BULGES C3-C4, C4-C5, C5-C6, C6-C7 Levels. She was treated with interferential therapy cervical traction analgesics, and muscle relaxants. She has also marked disabilities certificate mentioning 35% of partial permanent disability along with medical bills and discharged from the said hospital on 10.03.2008. Totally 7 days treatment was given as in patient for the injuries.

15.In the claim petition the claimants have stated that after the accident the 2nd claimant Tmt.T.K.Anitha was admitted

in Sri Ramachandra Medical Hospital on 03.03.2008 for the injuries that Patient was not able to walk and stand following the accident. The MRI Scan taken at the time showed deffuse Disc Bulge with Posterocentral protrusion with Bilateral Neural Foremen Narrowing L4-L5. She was treated conservatively with IFT and medications. She was working as Software Engineer at Virtusa Pvt. Ltd., Ekkattuthangal, Chennai and her salary was Rs.25,000/-. She has also marked salary certificate to that effect and discharged from the said hospital on 10.03.2008. Totally 7 days treatment was given as in patient for injuries. She has produced discharge certificate mentioning her 30% of Partial permanent disability.

16.In the claim petition the claimants have stated that after the accident the 3rd claimant Mr.R.Justin Prabagharan was admitted in Sri Ramachandra Medical Hospital on 03.03.2008 for the injuries is that He has hemorrhagic Lung contusions, Subdural Haemorrhage over left Parietal Region with Multiple Facial Bone Fractures with multiple frontal Bone fractures. He had loss of consciousness history of seizure one episode history of ENT bleed, history of vomiting one episode. The claimant was working as Software Engineer at HCL Company, Chennai. He was earning Rs.21,000/- per month and he also marked salary certificate and discharged from the said hospital on 10.03.2008. Totally 79 days treatment was given as in patient for injuries. He has also produced discharge certificate mentioning his 60% of Partial permanent disability.

17.The petitioner counsel produced a Judgment rendered by the Hon'ble Supreme Court reported in (2011) 10 SCC 683 [Govindh yadhav-Vs- New India Insurance Co.,Ltd.,] in which it was held:-

"The personal sufferings of the survivors and disabled persons are manifold. Some time they can be measured in terms of money but most of the times it is not possible to do so. If an individual is permanently disabled in an accident, the cost of his medical treatment and care is likely to be very high. In cases involving total or partial disablement, the term 'compensation' used in section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') would include not only the expenses incurred for immediate treatment, but also the amount likely to be incurred for future medical treatment/care necessary for a particular injury or disability caused by an accident".

18.He has also cited another citation in (2015) 7 SCC 252 [Jakir Hussain -Vs- Sabir and Others]

"From the facts, circumstances and evidence on record it is clear that a cost of Rs.2,00,000/- was incurred during medical treatment of the appellant. Keeping in mind his medical condition and future medical needs and requirements, we further award Rs.2,00,000/- towards future medical treatment &

incidental expenses in favour of the appellant by applying the legal principles laid down by this Court in the case of Nagappa v. Gurudayal Singh(supra)".

19.This Court has considered all the documents marked before the Trial Court including medical expenses and salary certificate. Without any adequate reason the trial Court has reduced the amount of medical bills and hospital bills of the appellant. The Hon'ble Apex Court held in the above said cases that the incurred medical expenses should be awarded to the injured person including future medical treatment expenses. But the Court below fails to follow the above said aspect and neglected the documents marked by the appellant before the trial Court in regard to medical expenses. It is totally erroneous. During the course of argument the 2nd respondent has also agreed to accept medical expenses claimed by the appellant. Hence this Court is inclined to consider medical expenses document marked before the trial Court and accordingly granted medical expenses of the claimant in full and also 50 % future medical treatment.

20.Further the loss of income awarded by the Court below is erroneous and without any basis. The appellants have produced their salary certificates and the same was not disputed by the respondent by way of any oral or documentary evidence. When there is no dispute about the salary certificate marked before the Trial Court, it cannot be neglected. In fine the compensation awarded by the Tribunal is enhanced along with interest at 9% P.A. Therefore this Court is inclined to enhance the loss of income of the appellant also. The revised compensation awarded to the appellant is as follows:

For Tmt.Valarmathi:

Sl.No .	Heads	Compensation awarded by Tribunal	Revised Compensation awarded by this Court
1	Medical bills	700	1,000
2	Disability	45,000	45,000
3	Attendance charges	2,000	5,000
4	Pain and suffering	10,000	25,000
5	Transport to hospital	5,000	5,000
6	Extra Nourishment	5,000	5,000
	Total	67,700	86,000

For Tmt.T.K.Anitha:

Sl.No .	Heads	Compensation awarded by Tribunal	Revised Compensation awarded by this Court
1	Medical bills	1,300	1,760
2	Disability	75,000	75,000
3	Attendance charges	2,000	5,000
4	Loss of Income	12,000	20,000
5	Pain and suffering	10,000	25,000
6	Transport to hospital	5,000	5,000
7	Extra Nourishment	5,000	5,000
	Total	1,10,300	1,36,760

For Mr.R.Justin Prabagharan:

Sl.No .	Heads	Compensation awarded by Tribunal	Revised Compensation awarded by this Court
1	Medical bills	1,66,300	8,68,145.27
2	Disability	60,000	60,000
3	Attendance charges	2,000	5,000
4	Loss of Income	12,000	60,000
5	Pain and suffering	10,000	25,000
6	Transport to hospital	5000	5,000
7	Extra Nourishment	5000	5,000
	Future treatment amount	-	4,32,000
	Total	2,60,300	14,60,145.27

21.The revised compensation awarded by this Court along with interest at the rate of 9% p.a. and proportionate costs shall be deposited by the 2nd respondent/Insurance Company to the credit of M.C.O.P.Nos.4418 to 4420 of 2008, less the amount already deposited within a period of six (6) weeks from the date of receipt of a copy of this order. On such deposit, the claimants

are permitted to withdraw the compensation on filing appropriate petition before the Tribunal. These appeals are allowed in the above said terms. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

The I Additional District and Sessions Judge,
Coimbatore.

+3 Ccs to Mr.G.Elanchezhian, Advocate sr 89782.

+3 Ccs to Mr.M.B.Gopalan Associates sr 89879, 89880, 89881.

C.M.A.Nos.2540 to 2542 of 2018

GP (CO)
SP (08/04/2019)



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