

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 05.10.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

WEB COPY

C.M.A. (MD) No.898 to 900 & 994 of 2018C.M.A (MD) No.898 of 2018

Ganapathiammal

... Appellant/Petitioner

Vs.

1.Ganesha Murugan
2.The Oriental Insurance Company Limited,
Through its Divisional Manager,
Sree Vijay Complex,
No.1024-B Cumbum Road,
Opposite to Bus Stand,
Theni.

... Respondents/Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, award made in M.C.O.P.No.952 of 2013 on the file of the Motor Accident Claims Tribunal, (Special Sub Court), Tirunelveli, dated 12.02.2015.

For Appellant : Mr.T.Selvakumaran
For R2 : Mr.K.Bhaskaran

C.M.A (MD) No.899 of 2018

Kaleeshwari

... Appellant/Petitioner

Vs.

1.Ganesha Murugan
2.The Oriental Insurance Company Limited,
Through its Divisional Manager,
Sree Vijay Complex,
No.1024-B Cumbum Road,
Opposite to Bus Stand,
Theni.

... Respondents/Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, award made in M.C.O.P.No.1011 of 2013 on the file of the Motor Accident Claims Tribunal, (Special Sub Court), Tirunelveli, dated 12.02.2015.

For Appellant : Mr.T.Selvakumaran
For R2 : Mr.K.Bhaskaran

C.M.A (MD) No.900 of 2018<https://hcservices.ecourts.gov.in/hcservices/>

Vallimayil

... Appellant/Petitioner



Vs.

1.Ganesha Murugan
2.The Oriental Insurance Company Limited,
Through its Divisional Manager,
Sree Vijay Complex,
No.1024-B Cumbum Road,
Opposite to Bus Stand,
Theni.

...Respondents/Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, award made in M.C.O.P.No.1013 of 2013 on the file of the Motor Accident Claims Tribunal, (Special Sub Court), Tirunelveli, dated 12.02.2015.

For Appellant : Mr.T.Selvakumaran
For R2 : Mr.K.Bhaskaran

C.M.A(MD)No.994 of 2018

Maheswari

... Appellant/Petitioner

Vs.

1.Ganesha Murugan
2.The Oriental Insurance Company Limited,
Through its Divisional Manager,
Sree Vijay Complex,
No.1024-B Cumbum Road,
Opposite to Bus Stand,
Theni.

...Respondents/Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, award made in M.C.O.P.No.953 of 2013, on the file of the Motor Accident Claims Tribunal, (Special Sub Court), Tirunelveli, dated 12.02.2015.

For Appellant : Mr.T.Selvakumaran
For R2 : Mr.K.Bhaskaran

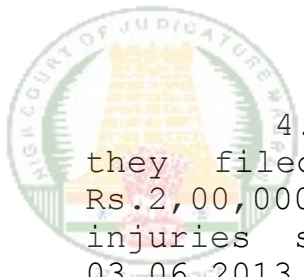
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COMMON JUDGMENT

By consent of both parties, the Civil Miscellaneous Appeals are taken up for final disposal.

2.All the four appeals are arising out of common award passed by the Motor Accident Claims Tribunal, (Special Sub Court), Tirunelveli, in M.C.O.P.Nos.952, 1011, 1013 and 953 of 2013, dated 12.02.2015. Hence, all the appeals are disposed of by this common judgment.

3.The parties are referred to as per their rank in the claim petition.



4.The appellants in all the four appeals are claimants and they filed claim petitions claiming a sum of Rs.8,00,000/-, Rs.2,00,000/-, Rs.3,00,000/- and Rs.5,00,000/- respectively for the injuries sustained by them in the accident that occurred on 03.06.2013.

5.The Tribunal, considering the pleadings, oral and documentary evidence held that the accident took place only due to rash and negligent driving by the first respondent and directed the second respondent to pay the compensation at the first instance and recover the same from the first respondent and considering the evidence of doctor and injuries sustained by the appellants, awarded compensation under various heads.

6.Not being satisfied with the amounts awarded, the appellants have come out with the present appeals.

7.The learned counsel appearing for the appellants contended that the Tribunal ought to have adopted multiplier method for awarding compensation and contended that in the Judgment reported in **2017 ACJ 979**, the Hon'ble Apex Court held that when there is a restriction in movement, multiplier has to be adopted. The Tribunal awarded meagre amounts for pain and suffering, transportation, extra nourishment and loss of amenities and prayed for enhancement of compensation.

8.Per contra, the learned counsel appearing for the second respondent Insurance Company in all the appeals contended that from the evidence let in by the appellants, it is seen that they have not alleged and proved that they could not do any work due to the injuries sustained by them. On the other hand, the Tribunal appreciating the materials on record, awarded amounts for loss of income during treatment period. Apart from that, the appellants are not entitled to any enhancement, as compensation awarded is proper compensation and prayed for dismissal of the claim petition.

9.I have heard the learned counsel appearing for the appellants and the second respondent Insurance Company and perused the materials available on record.

10.From the materials on record, it is seen that P.W.6 deposed that the appellants have suffered 45%, 25%, 29% and 29% respectively and marked the disability certificate based on the injuries sustained by them. The Tribunal has reduced the percentage of disability to 40%, 20%, 25% and 23% respectively on the ground that the Doctor has not fixed the disability for entire body and disability includes pain and suffering also. The said reasoning is not correct and therefore, the appellants are entitled to compensation for disability as certified by the doctor at 45%, 25%, 29% and 29% respectively.

11. The contention of the learned counsel for the appellants that the Tribunal ought to have adopted the multiplier method to arrive at compensation for disability, is untenable in view of the facts of the present case. The appellants claimed to be agriculture coolies. They have not let in any evidence to show that

they are not unable to do agricultural work or any other work. On the failure on the part of the appellants to let in any evidence in this regard, the Tribunal has rightly not adopted the multiplier method. The judgment relied on by the learned counsel for the appellant is not applicable to the facts of the present case. The amounts awarded by the Tribunal under different heads are meagre and are enhanced as follows:-

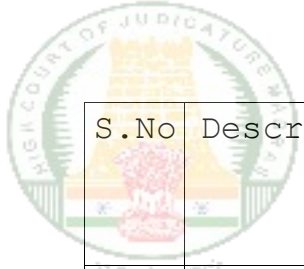
12. In view of the settled position of law, this Court modifies the award of the Tribunal by enhancing the compensation, as under:-

C.M.A(MD)No.898 of 2018

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For disability (45 x 3000)	1,20,000	1,35,000	enhanced
2.	Loss of income during treatment period	13,500	13,500	confirmed
3.	For Transportation, Extra nourishment and attendant charges	20,000	50,000	enhanced
4.	Pain and suffering	20,000	30,000	enhanced
5.	Loss of amenities	40,000	40,000	confirmed
	Total	Rs.2,13,500	Rs.2,68,500	By enhancing a sum of Rs.55,000/-

13. In the result, C.M.A(MD)No.898 of 2018 is partly allowed, enhancing the award of the Tribunal from Rs.2,13,500/- (Rupees Two Lakhs Thirteen Thousand and Five Hundred only) to a sum of **Rs.2,68,500/-** (Rupees Two Lakhs Sixty Eight Thousand and Five Hundred only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

C.M.A(MD)No.899 of 2018



S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For disability (25 x 3000)	60,000	75,000	enhanced
2.	Loss of income during treatment period	4,500	4,500	confirmed
3.	For Transportation, Extra nourishment and attendant charges	7,000	20,000	enhanced
4.	Pain and suffering	10,000	20,000	enhanced
5.	Loss of amenities	15,000	15,000	confirmed
	Total	Rs.96,500	1,34,500	By enhancing a sum of Rs.38,000/-

14. In the result, C.M.A(MD)No.899 of 2018 is partly allowed, enhancing the award of the Tribunal from Rs.96,500/- (Rupees Ninety Six Thousand and Five Hundred only) to a sum of **Rs.1,34,500/-** (Rupees One Lakh Thirty Four Thousand and Five Hundred only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs. C.M.A(MD)No.900 of 2018

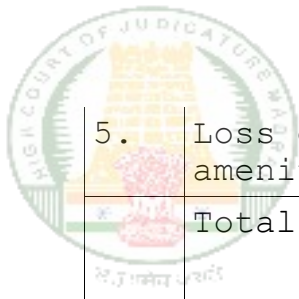
S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For disability (29 x 3000)	75,000	87,000	enhanced
2.	Loss of income during treatment period	13,500	13,500	confirmed

3.	For Transportation, Extra nourishment and attendant charges	7,000	20,000	enhanced
4.	Pain and suffering	15,000	15,000	confirmed
5.	Loss of amenities	15,000	15,000	confirmed
6.	For Medical expenses	5,070	5,070	confirmed
	Total	Rs.1,30,570	1,55,570	By enhancing a sum of Rs.25,000/-

15. In the result, C.M.A(MD)No.900 of 2018 is partly allowed, enhancing the award of the Tribunal from Rs.1,30,570/- (Rupees One Lakh Thirty Thousand Five Hundred and Seventy only) to a sum of **Rs.1,55,570/-** (Rupees One Lakh Fifty Five Thousand Five Hundred and Seventy only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

C.M.A (MD)No.994 of 2018

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For disability (29 x 3000)	69,000	87,000	enhanced
2.	Loss of income during treatment period	13,500	13,500	confirmed
3.	For Transportation, Extra nourishment and attendant charges	10,000	25,000	enhanced
4.	Pain and suffering	15,000	25,000	enhanced



5.	Loss of amenities	15,000	15,000	confirmed
	Total	Rs.1,22,500	1,65,500	By enhancing a sum of Rs.43,000/-

16. In the result, C.M.A(MD)No.994 of 2018 is partly allowed, enhancing the award of the Tribunal from Rs.1,22,500/- (Rupees One Lakh Twenty Two Thousand and Five Hundred only) to a sum of **Rs.1,65,500/-** (Rupees One Lakh Sixty Five Thousand and Five Hundred only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

17. The second respondent/Insurance Company is directed to deposit the award amount along with accrued interest and costs to the credit of respective claim petitions in M.C.O.P.No.952, 1011, 1013 and 953 of 2013, on the file of the Motor Accident Claims Tribunal (Special Sub Court), Tirunelveli, within a period of **eight weeks** from the date of receipt of a copy of this judgment;

(i) The appellants-claimants are directed to pay the additional Court Fees, if any, within a period of **two weeks** from the date of receipt of a copy of this judgment;

(ii) On such deposit being made, the appellants/claimants are entitled to withdraw the award amount with interest, by making necessary application before the Tribunal. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar

To
The Motor Accident Claims Tribunal,
(Special Sub Court), Tirunelveli.

COPY TO:

The Record Keeper,
V.R.Section,

Madurai Bench of Madras High Court, Madurai.2COPIES.
+3CCs to Mr.T.SELVAKUMARAN , Advocate SR.No.89342 TO 89344.
+3CCs to Mr.K.BHASKARAN , Advocate SR.No.89035,89036,89034.

C.M.A. (MD) Nos.898 to 900 & 994 of 2018

05.10.2018