

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CMA.NO.2008 OF 2009

AND

CMA.NO.2009 OF 2009

D.Peter Naresh Appellant in CMA 2008/2009

R.Thiagarajan Appellant in CMA 2009/2009

Vs.

1. M/s C.E.S.Onyx Private Limited,
No.12, Hoddows road, Chennai 600 006.
(R1 set exparte before the lower court)

2. National Insurance Co. Ltd.,
Motor Third Party Claims Department,
No.751, Anna Salai, III Floor,
Chennai 600 002.

.... Respondents in both CMAs

Prayer in CMA 2008 of 2009:-

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the quantum of compensation awarded in M.C.O.P.No.711 of 2004 on 07.03.2008 by the II Judge, Court of Small Causes, Chennai.

Prayer in CMA 2009 of 2009:-

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the quantum of compensation awarded in M.C.O.P.No.712 of 2004 dated 07.03.2008 by the II Judge, Court of Small Causes, Chennai.

For Appellant : Mr.V.Venkatesan (in both CMAs)

For Respondents : Mr.S.Vadivel
(for R2 in both CMAs)
Exparte in the Lower Court
for R1 (in both CMAs)

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

The appellant in CMA No.2008/2009 is the claimant in MCOP No.711/2004, while the appellant in CMA No.2009/2009 is the claimant in MCOP No.712/2004, on the file of the II Judge, Court of Small Causes, Chennai and they filed the claim petitions under Section 166 and 142 of the Motor Vehicles Act and Rule 3 of the Motor Accident Claims Tribunal Rules, praying to award compensation of Rs.3,00,000/- each for the injuries sustained by them in a road accident that took place on 13.12.2002.

2. The case of the claimant in MCOP No.711/2004 is that he was riding a two wheeler bearing registration No.TN 01 T 7031 along Santhome High Road and the claimant in MCOP No.712/2004 was the pillion rider. When they were nearing Dr. Radhakrishnan Salai, a lorry bearing registration No. TN 01 R 7075 belonging to the first respondent and insured with the 2nd respondent came with a high speed and hit the motor cycle, as a result of which both the claimants sustained grievous injuries and were immediately rushed to a hospital. According to the claimants, the rash and negligent driving of the driver of the first respondent was the cause of the accident and that since the lorry was insured with the 2nd respondent, both of them are jointly and severally liable to pay compensation.

3. The first respondent in both the claim petitions remained absent before the Tribunal and therefore, he was set exparte. The 2nd respondent, the National Insurance Company Limited contested the claim petition on the ground that the rider of the motor cycle also contributed equally to the accident that took place on 13.12.2002.

4. The learned II Judge, Court of Small Causes, Chennai after analysing the evidence on record, awarded a compensation of Rs.43,500/- to the claimant in MCOP No.711/2004 and Rs.71,400/- to the claimant in MCOP No.712/2004 with interest at the rate of 7.5% per annum. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeals.

5. Mr.V.Venkatesan, learned counsel appearing for the appellants/claimants contended that the claimant in MCOP No.711/2004 had undergone "Tangential excision of abrasions and SSG left wrist " as per the discharge summary (Ex.P3) issued by the Appollo Hospital and that he was just 23 years old on the date of accident. His next contention is that though Dr.Saichandran (PW3) had assessed the partial permanent disability of the claimant as 30%, the Tribunal reduced the same to 22% on the ground that Dr.Saichandran had examined the claimant only after 5 years from the date of the accident. His

specific contention is that such an observation made by the Tribunal cannot be sustained.

6. As far as the claimant in MCOP No.712/2004 is concerned, his contention is that the claimant sustained type III compound fracture on his left tibia middle and that he had undergone three surgeries on 13.12.2002, 17.12.2002 and 04.08.2003. His specific contention is that since the claimant could not attend to his work on account of the accident for 6 months, he was terminated from service. His another contention is that though Dr.Saichandran assessed the partial permanent disability of the claimant as 45%, the Tribunal without assigning any reason had reduced it by 35%. He therefore, prayed for enhancement of compensation in both the appeals.

7. Per contra, Mr.S.Vadivel, learned counsel appearing for the 2nd respondent, the National Insurance Company Limited contended that the Tribunal had passed an award based on the well laid principles of law which prevailed at the time of passing of the award and therefore, the same need not be upset at this stage.

8. It is seen from the records that both the claimants were working for Southerland Technologies Private Limited and the claimant in MCOP No.711/2004 was working as Customer Service Executive earning a sum of Rs.7,429/- per month and the claimant in MCOP No.712/2004 was working as Senior Customer Service Executive earning a sum of Rs.11,204/- per month. Dr.Saichandran (PW3) had assessed the partial permanent disability as 30% for the claimant in MCOP No.711/2004 and 45% for the claimant in MCOP No.712/2004. However, the Tribunal had reduced the percentage as 22% in MCOP No.711/2004 and 35% in MCOP No.712/2004, on the ground that Dr.Saichandran issued the partial permanent disability certificates Ex.P19 and Ex.P21 after 5 years from the date of the accident. Such an observation made by the Tribunal cannot be sustained, in the light of the overwhelming medical records produced by both the claimants. Therefore, the award amount passed by the Tribunal in both MCOP No.711/2004 and 712/2004 are enhanced, as detailed hereunder.

MCOP No.711/2004

Sl. No	Heads	Amount in Rs.
1.	Partial Permanent Disability (30x2000)	60,000
2	Pain and sufferings	25,000

Sl. No	Heads	Amount in Rs.
3	Transportation	10,000
4	Extra Nourishment	10,000
5	Damages to Clothing	2,000
6	Los of earnings (7141 x 3)	21,423
7	Attender charges	5,000
	Total	1,33,423

MCOP No.711/2004

Sl. No	Heads	Amount in Rs.
1.	Partial Permanent Disability (45x2000)	90,000
2	Pain and sufferings	40,000
3	Transportation	10,000
4	Extra Nourishment	10,000
5	Damages to Clothing	2,000
6	Los of earnings (11,204 x 6)	67,224
7	Attender charges	5,000
	Total	2,24,224
	Rounded off	2,25,000

These amounts would carry interest at the rate of 7.5% per annum from the date of claim petition.

9. In the result,

(i) The appeal in CMA 2008/2009 and 2009/2009 are partly allowed. No costs.

(ii) The compensation awarded in MCOP No.711/2004 is enhanced from Rs.43,500/- to Rs.1,33,423/- and the compensation awarded in MCOP No.712/2004 is enhanced from Rs.71,400/- to Rs.2,25,000/-.

(iii) The 2nd respondent is directed to deposit the enhanced compensation amount of Rs.1,33,423/- in MCOP No.711/2004 and Rs.2,25,000/- in MCOP No.712/2004 together with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit (less the amount already deposited by them), within 4 weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the 2nd respondent, the claimants/appellants are entitled to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mst

To

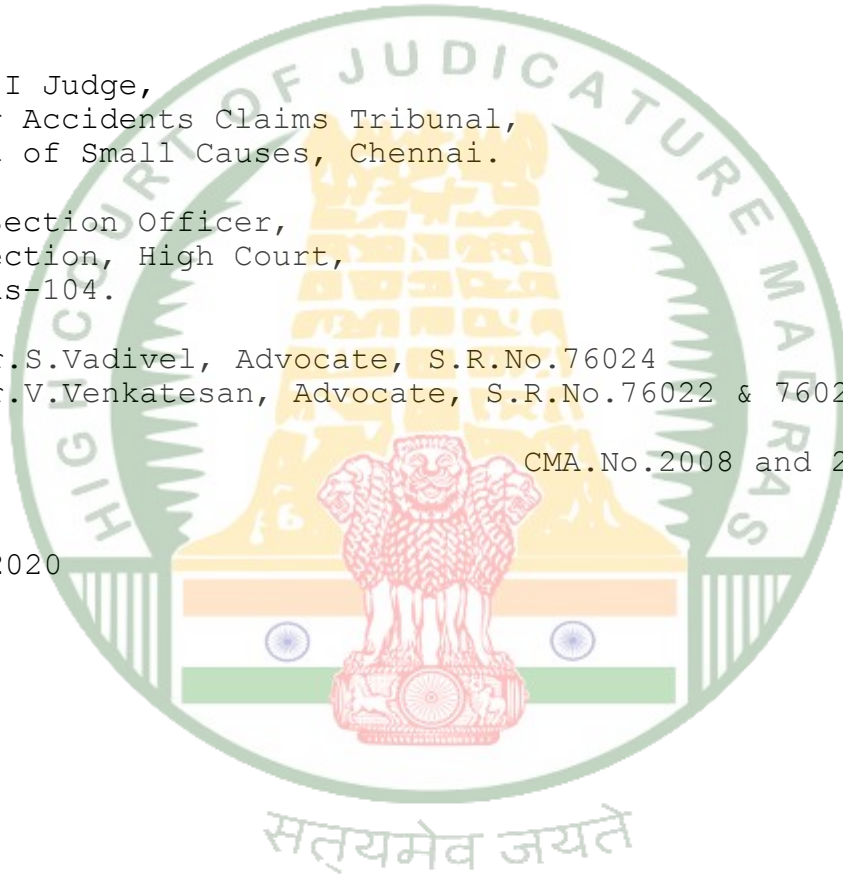
1. The II Judge,
Motor Accidents Claims Tribunal,
Court of Small Causes, Chennai.
2. The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.S.Vadivel, Advocate, S.R.No.76024

+2cc to Mr.V.Venkatesan, Advocate, S.R.No.76022 & 76023

CMA.No.2008 and 2009 of 2009

RK(CO)
CS/16/03/2020



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