



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2019

CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

CMA Nos.2625 and 2626 of 2010

Rasu ...Appellant / Claimant
in CMA No.2625 of 2010

Subramaniam ...Appellant / Claimant
in CMA No.2626 of 2010

Vs

1.A.Nagaraj
2.S.Rajathi
3.The Branch Manager,
The New India Assurance Company Ltd.,
No.674, Periyakulam Road,
Theni, Theni District. ...Respondents / Respondents
in both appeals.

Common Prayer : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act against the Decree and Judgment, dated 05.07.2004 made in MCOP Nos.597 and 598 of 2003 on the file of the Motor Accident Claims Tribunal/1st Additional Subordinate Court, Erode.

For Appellant : Mr.N.Manokaran
(In both cases)

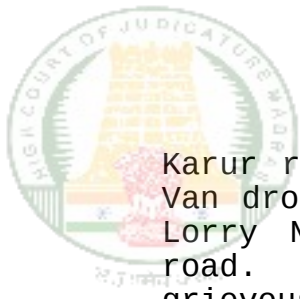
For R1 and R2 : No appearance
(In both cases)

For 3rd Respondent : Mr.R.Neethi Perumal
(In both cases)

COMMON JUDGMENT

Challenge made in these Civil Miscellaneous Appeals is to the common award passed by the Motor Accident Claims Tribunal/1st Additional Subordinate Court, Erode, in MCOP Nos.597 and 598 of 2003, dated 05.07.2004.

2.The brief facts of the case is that on 11.11.2002 at about 11.00 pm, when the appellants/claimants were travelling in the Mahendra Van No.TN-37-K-9626 as passengers, while driving the said Van by the 1st respondent (A.Nagarajan) on Erode to



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Karur road, near Savadipalayampudur Bus stop, the driver of the Van drove it in a rash and negligent manner and hit against the Lorry No.TN-39-6370, which was stationed on the side of the road. In that process, the appellants/claimants sustained grievous injuries all over the body. Thus, the appellants/claimants sought compensation of Rs.5,00,000/- and Rs.5,00,000/- respectively on the ground that the driver of the Van was responsible for the accident.

3.The claim was opposed by the 3rd respondent Insurance company disputing the manner of accident and their liability to pay compensation.

4.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the Van was responsible for the accident and awarded compensation of Rs.1,32,500/- and Rs.66,000/- respectively together with interest @ 9 % p.a from the date of petition till the date of deposit. Being not-satisfied with the common award of the tribunal, the claimants as appellants are before this court with these Civil Miscellaneous Appeals.

5.Heard the learned counsel appearing on either side and perused the materials available on record.

6.The manner of the accident and the findings on negligence are not in dispute and the appeals are confined only to quantum of compensation awarded by the Tribunal.

7.It is contended by the learned counsel for the appellants that the tribunal has not awarded just compensation when compared to the injuries sustained in the accident by the appellants/claimants and prays to enhance the compensation amount.

8.On the other hand, the learned counsel for the 3rd respondent Insurance Company submitted that the award is reasonable, which does not warrant any interference of this court.

9.Before the tribunal, both the appellants/claimants were examined as PW1 and PW2 and they deposed that the accident had taken place due to the inattentive attitude of the driver of the Van. PW3 (Dr.P.V.Sundaravadivel) assessed the disability on both the injured persons namely the appellants herein and issued the disability certificates, which were marked as Exs.P21 and P22. PW3/Doctor has assessed the disability on the appellant/claimant in CMA No.2625 of 2010 at 60% and 25% for the appellant/claimant in CMA No.2626 of 2010 based on the injuries sustained by them. But the tribunal, on proper consideration of the evidence adduced by the Doctor/PW3, who examined the claimants, fixed the disability as 55% and 20%. This court is of the considered view that the findings rendered by the tribunal



with regard to assessment of disability is based upon the evidence both oral and documentary and as such the, same are confirmed.

10.It is the contention of the appellant/claimant in CMA No.2625 of 2010 that he is doing textile business in the name and style of Ayyanar Fabrics and thereby earning Rs.15,000/- per month and at the time of accident, his age was 45 years. Since no reliable document has been produced on the side of the appellant/claimant, the tribunal by fixing the age of the claimant as 43 years and calculated the monthly income of the appellant/claimant as Rs.2,500/- per month.

11.It is seen that the Tribunal has awarded Rs.55,000/- towards permanent disability, by applying Rs.1,000/- per percentage for 55%. As per the decision of this court reported in 2013(2) TAN MAC 583 (National Insurance Company Limited Vs. G.Ramesh), this court awards Rs.1,65,000/- towards permanent disability, by applying Rs.3,000/- per Percentage. Further, it is seen from the records that the tribunal has awarded Rs.35,000/- under the head of medical expenses. But on perusal of Exs.P8 and P11 medical bills, the claimant spent Rs.58,132/- towards medical expenses. Hence, this court awards Rs.58,132/- towards medical expenses. Further, the tribunal has not awarded any amount under the head of attendant charges. Considering the nature of the injuries and the treatment taken by the injured, this court awards Rs.9,000/- under the head of attendant charges. The award under other head of conventional damages, in the considered opinion of this court, requires modification as detailed hereunder:-

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	For permanent disability(55%) (55% x 3,000)	55,000/-	1,65,000/-
2.	For pain and sufferings	5,000/-	30,000/-
3.	For extra nourishment	3,500/-	4,000/-
4.	For attendant charges	Nil	9,000/-
5.	For loss of income during treatment period	2,500/-	9,000/-
6.	For Medical expenses	35,000/-	58,130/-
7.	For Transportation	1,500/-	2,000/-
8	Loss of earning capacity	30,000/-	20,000/-
	Total	1,32,500/-	2,97,130/-



WEB COURT

12.It is the contention of the appellant/claimant in CMA No.2626 of 2010 that he is doing textile business in the name and style of Ayyanar Fabrics and thereby earning Rs.15,000/- per month. Since no reliable document has been produced on the side of the appellant/claimant, based on the documentary evidence available on record, the tribunal fixed the age of the appellant/claimant as 52 and calculated the monthly income of the appellant/claimant at Rs.2,500/- per month.

13.It is seen that the Tribunal has awarded Rs.20,000/- towards permanent disability, by applying Rs.1,000/- per percentage for 20. As per the decision of this court reported in 2013(2) TAN MAC 583 (National Insurance Company Limited Vs. G.Ramesh), this court awards Rs.60,000/- towards permanent disability, by applying Rs.3,000/- per Percentage. Further, it is seen from the records that the tribunal has awarded Rs.20,000/- under the head of medical expenses. But on perusal of Exs.P13, P16 and P17 medical bills, the claimant spent Rs.1,11,277/- towards medical expenses. Hence, this court awards Rs.1,11,277/- towards medical expenses. Further, the tribunal has not awarded any amount under the head of attendant charges. Considering the nature of the injuries and the treatment taken by the injured, this court awards Rs.1,500/- under the head of attendant charges. The award under other head of conventional damages, in the considered opinion of this court, requires modification as detailed below:-

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	For permanent disability(20%) (20% x 3,000)	20,000/-	60,000/-
2.	For pain and sufferings	5,000/-	15,000/-
3.	For extra nourishment	2,500/-	4,000/-
4.	For attendant charges	Nil	1,500/-
5.	For loss of income during treatment period	2,500/-	2,500/-
6.	For Medical expenses	20,000/-	1,11,277/-
7.	For Transportation	1,000/-	2,000/-
8	Loss of earning capacity	15,000/-	10,000/-
	Total	66,000/-	2,06,277/-

14.In fine, these Civil Miscellaneous Appeals are partly allowed. The interest awarded by the tribunal 9% is reduced to 7.5% p.a. The appellant/claimant in CMA No.2625 of 2010 is



entitled to get Rs.2,97,130/- and the appellant/claimant in CMA No.2626 of 2010 is entitled to get Rs.2,06,277/-. The 3rd respondent Insurance Company is directed to deposit the modified award amount together with interest @ 7.5% from the date of petition till the date of deposit together with accrued interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such compliance, the appellants/claimants in both appeals are permitted to withdraw the entire amount. No Costs.

Sd/-
Deputy Registrar (CS)

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Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal
1st Additional Subordinate Court,
Erode.

2.The Section Officer,
V.R. Section,
Madras High Court.

+2ccs to Mr.R.Neethi Perumal, Advocate SR.No.87515, 87516

+2ccs to Mr.N.Manokaran, Advocate SR.No.87511, 87513

C.M.A.Nos.2625 and 2626 of 2010

SR-I(CO)
RVM(06/09/2021)