

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.2711 & 2712 of 2009

M.Aruldoss .. Appellant/Petitioner
in CMA.No.2711 of 2009

A.Theresa .. Appellant/Petitioner
in CMA.No.2712 of 2009

Vs.

1. L. Lakshmi

2. The National Insurance Co., Ltd.,
No.25, Whites Road, Royapettah,
Chennai 600 014.

.. Respondents/Respondents
in both CMAs

Prayer in both CMAs: These Civil Miscellaneous Appeals is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.10.2007 made in M.A.C.T.O.P.No.4022 & 4005 of 2004, on the file of the Motor Accidents Claims Tribunal, II Judge, (Court of Small Causes), Chennai.

For Appellants : Mr.M.Swamikkannu in both CMAs

For R2 : Mr.D.Baskaran in both CMAs

R1 : Not Ready in notice in both CMAs

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

These Civil Miscellaneous Appeals arise out of the common Judgment dated 05.10.2007 in M.A.C.T.O.P.Nos.4022 & 4005 of 2004, on the file of the Motor Accidents Claims Tribunal, II Judge, Court of Small Causes, Chennai, (for brevity, "the Tribunal").

2.The appellant(s)/claimant(s) met with an accident on 19.09.2004, while they were proceeding in a motorcycle bearing registration No.TN07 AB 6571, on account of the rash and

negligent driving of the driver of the Water Tanker Lorry bearing registration No.TN 10 B 2947, belonging to the first respondent and insured with the second respondent. As a result of the same, they sustained grievous injuries. Hence, they filed claim petitions, claiming compensation of Rs.6,00,000/- and Rs.3,00,000/- respectively.

3.The Tribunal, after considering the oral and documentary evidence, awarded the total compensation of Rs.57,440/- and Rs.12,500/- with interest at 7.5% per annum from the date of petition. Being dissatisfied with the quantum so awarded, the appellant(s) have filed the present appeals seeking enhancement of the same.

4.The learned counsel for the appellant(s)/claimant(s) submitted that considering the nature of the injuries sustained by the appellant(s)/claimant(s), the compensation awarded by the Tribunal is very meagre and the same have to be enhanced substantially.

5.Per contra, the learned counsel for the second respondent insurance company submitted that after properly analysing the materials and evidence, the Tribunal has awarded the compensation, which is just and reasonable and hence, the same does not require any interference in the hands of this Court.

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

7.The present appeals are the claimant(s)' appeals seeking enhancement of the compensation awarded by the Tribunal. Hence, this Court is not inclined to go into the findings of the Tribunal as regards the negligence fixed on the driver of the Tanker Lorry and the liability of the second respondent insurance company to pay compensation to the appellant(s)/claimant(s).

8.CMA.No.2711 of 2009 (MCOP.No.4022/2004) :-

8.1 P.W.1/appellant/claimant in his evidence deposed that he was aged about 65 years and was earning a sum of Rs.5,000/- per month as Electrician; and in the accident, he sustained head injuries. The doctor, who certified that the appellant/claimant sustained 25% permanent disability and Ex.P18 is the Disability certificate, which was issued after three years from the date of accident. Ex.P2 is the discharge summary and Ex.P19 is the X-ray. Considering those oral and documentary evidence, the Tribunal has taken only 20% as permanent disability of the appellant/claimant and awarded Rs.20,000/- by fixing Rs.1,000/-

per percentage of disability, under the head "partial and permanent disability" which, in the opinion of this Court, is on the lower side and the same is hereby enhanced to Rs.30,000/- by awarding Rs.1,200/- per percentage of disability for 25%.

8.2 Further, the Tribunal has awarded Rs.5,000/- towards pain and suffering, which appears to be very meagre. Taking note of the nature of injuries and the percentage of permanent disability sustained by the appellant/claimant, this Court deems it just and proper to enhance the same to Rs.15,000/- and the same is hereby awarded.

8.3 That apart, the Tribunal has awarded only a sum of Rs.3,000/- towards loss of earning, which seems to be very low and the same is hereby enhanced to Rs.15,000/-. Having regard to the facts and circumstances of the case, the compensation awarded under other heads viz., Transportation and Extra nourishment to the tune of Rs.1,000/- each is hereby enhanced to Rs.2,000/- each. However, there is no modification with regard to the award under the head "medical expenses" and "damage to clothes". Thus, the compensation awarded by the Tribunal is hereby enhanced to Rs.91,500/- from Rs.57,440/-, with interest at 7.5%pa from the date of petition, the details of which read as follows:

Head	Compensation awarded by the Tribunal (Rs.)	Compensation enhanced by this Court (Rs.)
Medical Expenses	26,440/-	26,440/-
Transportation	1000/-	2000/-
Extra Nourishment	1000/-	2000/-
Damages of Cloths	1000/-	1000/-
Loss of earning	3000/-	15,000/-
Permanent disability (Rs.1,200/- x 25%)	20,000/-	30,000/-
Pain and suffering	5,000/-	15,000/-
Total	57,440/-	91,440/- @ 91,500/-

9.CMA.No.2712 of 2009 (MCOP.4005/2004):

P.W.2/appellant/claimant in her evidence deposed that she was aged about 48 years and was earning a sum of Rs.6,000/- to 7,000/- per month by looking after her son's business. Except Ex.P5-OP chit and Ex.P6 medical bills, no other material was

adduced. Taking note of the same, the Tribunal was of the view that the nature of injuries sustained by the appellant/claimant was simple in nature and ultimately, awarded a sum of Rs.12,500/- as total compensation, which, in the opinion of this Court, is very meagre and the same is hereby enhanced to Rs.17,500/-, with interest at 7.5%p.a. from the date of petition.

10. Accordingly, both the appeals are partly allowed. No costs. The second respondent Insurance Company is directed to deposit the entire compensation amount, with interest and costs, after deducting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the same to the respective savings bank accounts of the appellant(s)/claimant(s), through RTGS within a period of one week thereafter.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

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

copy to

The Section Officer,
VR Section,
High Court, Madras.

+2 ccs to Mr.M.Swamikkannu Advocate sr71766 & 71767

+1 cc to Mr.D.Bhaskaran Advocate sr71080

C.M.A.Nos.2711 & 2712 of 2009

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