

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.1817 and 1818 of 2015

Loganayagi ..Appellant/Claimant in C.M.A.No.
1817 of 2015

Balakrishnan ...Appellant/Claimant in C.M.A.No.
1818 of 2015

Vs

1.R.Manikandan

2.R.Thangamani

3.M/s.New India Assurance Co.Ltd.,
No.7, Ramalinga Mudaliar Street
Guhai, Salem-636 006.

... Respondents/Respondents in both appeals

C.M.A.No.1817 of 2015 filed under Section 173 of the Motor Vehicles Act against the fair and decreetal order dated 24.02.2015 made in MCOP No.271 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Erode.

C.M.A.No.1818 of 2015 filed under Section 173 of the Motor Vehicles Act against the fair and decreetal order dated 24.02.2015 made in MCOP No.272 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Erode.

For Appellant सत्यमेव जयते : Mr.K.Govi Ganesan
in both appeals

For Respondents : Mr.G.Udayasankar for R3
in both appeals

COMMON JUDGMENT

The case in brief, is as follows:

The appellant in C.M.A.No.1818 of 2015 and the appellant in C.M.A.No.1817 of 2015 are the husband and wife. On the fateful day, ie. on 06.05.2012 at about 03.15 p.m., the husband / appellant in C.M.A.No.1818 of 2015 was riding the motorcycle bearing Reg.No.TN-33-AP-9583 from Avalpoondurai to Erode, in the

Kangayam Road from South to North direction. The wife / appellant in C.M.A.No.1817 of 2015 travelled as pillion rider. When the motorcycle reached near Durai Latha Bridge, Avalpoondurai, the lorry bearing Reg.No.TN-52-X-0806 belonging to the second respondent herein and insured with the third respondent Insurance Company, came from South direction in a rash and negligent manner and dashed against the two-wheeler which the husband was riding. Due to the said impact, both the rider and the pillion rider sustained multiple grievous injuries. The husband filed a claim petition before the Tribunal in MCOP No.272 of 2013, claiming a sum of Rs.5,00,000/- as compensation. The wife filed a claim petition before the Tribunal in MCOP No.271 of 2013, claiming a sum of Rs.10,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.73,285/- with interest at the rate of 7.5% per annum from the date of petition in respect of MCOP No.272 of 2013 and Rs.1,75,670/- with interest at the rate of 7.5% per annum from the date of petition in respect of MCOP No.271 of 2013.

2.Challenging the award passed in MCOP No.272 of 2013, the appeal in C.M.A.No.1818 of 2015 has been filed for enhancement of compensation. Challenging the award passed in MCOP No.271 of 2013, the appeal in C.M.A.No.1817 of 2015 has been filed for enhancement of compensation.

3.The learned counsel for the appellants /claimants has submitted that the compensation amounts awarded by the Tribunal under various heads in both the MCOPs are very meagre compared to the claims made by the respective claimants and accordingly prayed for enhancement of compensation.

4.The learned counsel for the third respondent Insurance Company has submitted that the Tribunal has rightly considered the materials and evidence available on record and has awarded the just, fair and reasonable compensation in both these cases and hence the same does not require any interference in the hands of this Court.

5.Heard the learned counsel for the appellants and the learned counsel for the third respondent Insurance Company and perused the materials available on record carefully and meticulously.

6.The details of compensation awarded by the Tribunal in MCOP No.271 of 2013 (CMA No.1817 of 2015) are as follows:

HEADS	AMOUNT (Rs.)
Loss of income	3,000/-
Disability and compensation for loss of earning power	50,000/-
Pain and suffering	20,000/-
Extra nourishment	5,000/-
Damages to clothes	1,000/-
Transport expenses	20,000/-
Medical expenses	76,670/-

TOTAL...	1,75,670/-
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7.The details of compensation awarded by the Tribunal in MCOP No.272 of 2013 (CMA No.1818 of 2015) are as follows:

HEADS	AMOUNT (Rs.)
Disability	30,000/-
Pain and suffering	15,000/-
Extra nourishment	3,000/-
Damages to clothes	1,000/-
Transport expenses	2,000/-
Medical expenses	22,285/-

TOTAL...	73,285/-
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8.In respect of MCOP No.271 of 2013 (CMA No.1817 of 2015), it is seen from Ex.P6-Wound Certificate that the appellant sustained a comminuted fracture on her left acetabulum with central hip location, for which P.W.3-Doctor has deposed before the Tribunal that she sustained 24% partial permanent disability. But the Tribunal has reduced the percentage of disability to 20% and awarded a sum of Rs.40,000/- at the rate of Rs.2,000/- per percentage of disability and has awarded a further sum of Rs.10,000/- towards loss of earning capacity and accordingly awarded a total sum of Rs.50,000/- under the head "Disability and Compensation for Loss of Earning Power". Considering the nature of injuries sustained, this Court is of the view that awarding a sum of Rs.3,000/- per percentage of disability would meet the ends of justice and further, it would be appropriate to enhance the compensation awarded by the Tribunal towards loss of income to Rs.8,000/-. Accordingly, the amount awarded by the Tribunal towards Disability and Compensation for Loss of Earning Power, stands modified to

Rs.70,000/- (Rs.60,000/- towards disability now enhanced and Rs.10,000/- towards loss of earning capacity already awarded by the Tribunal) and the amount awarded towards loss of income, stands modified to Rs.8,000/-. The amounts awarded towards other heads are confirmed.

9. In respect of MCOP No.272 of 2013 (CMA No.1818 of 2015), it is seen from Ex.P20-Wound Certificate that the appellant sustained a fracture with intraarticular extension, for which P.W.3-Doctor has deposed before the Tribunal that he sustained 20% partial permanent disability. But the Tribunal has reduced the percentage of disability to 15% and awarded a sum of Rs.30,000/- towards disability at the rate of Rs.2,000/- per percentage of disability. The Tribunal has not awarded any sum towards loss of earning capacity. Considering the nature of injuries sustained, this Court is of the view that awarding a sum of Rs.3,000/- per percentage of disability would meet the ends of justice and further, it would be appropriate to enhance the compensation awarded by the Tribunal towards pain and suffering to Rs.25,000/- and towards extra nourishment to Rs.5,000/-. Accordingly, the amounts awarded by the Tribunal towards Disability, pain and suffering and extra nourishment, stands modified to Rs.45,000/-, Rs.25,000/- and Rs.5,000/- respectively. The amounts awarded towards other heads are confirmed.

10. The details of the modified compensation in respect of MCOP No.271 of 2013 (CMA No.1817 of 2015) are as follows:

HEADS	AMOUNT (Rs.)
Loss of income	8,000/-
Disability and compensation for loss of earning power	70,000/-
Pain and suffering	20,000/-
Extra nourishment	5,000/-
Damages to clothes	1,000/-
Transport expenses	20,000/-
Medical expenses	76,670/-
TOTAL...	2,00,670/-

Thus the appellant / claimant in C.M.A.No.1817 of 2015 is entitled to the modified compensation of Rs.2,00,670/-. It is made clear that only for the compensation of Rs.1,75,670/- awarded by the Tribunal, the interest rate of 7.5% per annum shall be calculated from the date of claim petition. For the enhanced amount of Rs.25,000/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal.

11.The details of the modified compensation in MCOP No.272 of 2013 (CMA No.1818 of 2015) are as follows:

HEADS	AMOUNT (Rs.)
Disability	45,000/-
Pain and suffering	25,000/-
Extra nourishment	5,000/-
Damages to clothes	1,000/-
Transport expenses	2,000/-
Medical expenses	22,285/-
TOTAL...	1,00,285/-

Thus, the appellant / claimant in C.M.A.No.1818 of 2015 is entitled to the modified compensation of Rs.1,00,285/-. It is made clear that only for the compensation of Rs.73,285/- awarded by the Tribunal, the interest rate of 7.5% per annum shall be calculated from the date of claim petition. For the enhanced amount of Rs.27,000/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal.

12.The Civil Miscellaneous Appeals are allowed to the extent indicated above. No costs.

13.The third respondent Insurance Company is directed to deposit the modified compensation amounts as ordered above, less the amounts if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants / claimants shall withdraw the same, on making proper application before the Tribunal.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

KM

To

1.New India Assurance Co.Ltd.,
No.7, Ramalinga Mudaliar Street
Guhai, Salem-636 006.

2.The Special Subordinate Judge,
Motor Accidents Claims Tribunal, Erode.

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

+2cc to Mr.K.Govi Ganesan, Advocate SR.No.86650, 86649

+2cc to Mr.G.Udayasankar, Advocate SR.No.86753, 86752

C.M.A.Nos.1817 and 1818
of 2015

VBA (CO)
GMY (13/02/2020)



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