

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1360 to 1364 of 2016

K.Kamala .. Appellant/Petitioner in C.M.A.No.1360 of 2016

B.Yasodha .. Appellant/Petitioner in C.M.A.No.1361 of 2016

Balakrishnan (since died)

1.R.Yasodha

2.B.Purushothaman

3.B.Sangeetha (Minor)

(rep by her mother 2nd petitioner)

4.B.Selvanayagi

.. Appellant/Petitioner in C.M.A.No.1362 of 2016

K.Bharath (Minor)

(Rep. by his mother K.Rahini)

.. Appellant in C.M.A.No.1363 of 2016

K.Ragini

.. Appellant in C.M.A.No.1364 of 2016

Vs.

1.B.Murali

2.United India Insurance Co. Ltd.,

No.470, G.N.T. Road,

Redhills, Chennai-600 052.

Presently at

Silingi Building, No.134, Greams Road,

Chennai-600 006.

.. Respondents in all C.M.As

Common Prayer: Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.04.2015 made in M.C.O.P.Nos.4359, 4360, 4362, 4366 and 4365 of 2007 on the file of Motor Accidents Claims Tribunal, III Court of small Causes, Chennai.

In all CMAs.

For Appellants : Mr.A.A.Venkatesan

For R2

: Mr.R.Ravichandran

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

These Civil Miscellaneous Appeals are filed for enhancement of compensation granted by the Tribunal in the award dated 22.04.2015 made in M.C.O.P.Nos.4359, 4360, 4362, 4366 and 4365 of 2007 on the file of Motor Accidents Claims Tribunal, III Court of small Causes, Chennai.

2.All the appeals arise out of the same accident and common award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to as per their ranks in the claim petitions for the sake of convenience.

3.The appellants are claimants in M.C.O.P.Nos.4359, 4360, 4362, 4366 and 4365 of 2007 on the file of Motor Accidents Claims Tribunal, III Court of small Causes, Chennai. They filed the said claim petitions claiming a sum of Rs.50,000/-, Rs.1,50,000/-, Rs.50,000/-, Rs.50,000/- and Rs.50,000/- as compensation for the injuries sustained by them in the accident that took place on 29.07.2007.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the first respondent and directed the second respondent being the insurer of the first respondent's vehicle to pay a sum of Rs.10,000/-, Rs.64,200/-, Rs.2,000/-, Rs.10,000/- and Rs.10,000/- as compensation to the appellants/claimants respectively.

5.Not being satisfied with the amounts awarded by the Tribunal, the claimants have come out with the present appeals seeking enhancement of compensation.

6.The learned counsel appearing for the appellants/claimants contended that the Tribunal having held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the first respondent, ought to have awarded compensation as prayed for. The claimants have taken treatment as in-patients as well as out-patients. The claimant in M.C.O.P.No.4360 of 2007 (C.M.A.No.1361 of 2016) was admitted in hospital for more than

20 days and no amount was awarded by the Tribunal towards attendant charges. The Tribunal has failed to consider the nature of injuries sustained by the claimants in M.C.O.P.Nos.4359, 4362, 4366, 4365 of 2007 (C.M.A.Nos.1360 and 1362 to 1364 of 2016) and erred in awarding meagre sums towards compensation under different heads and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that the claimants in C.M.A.Nos.1360, 1362 to 1364 of 2016 have sustained only simple injuries and they were treated conservatively. They did not examine any Doctors to prove the nature of injuries and disability. In such circumstances, the Tribunal has rightly awarded consolidated compensation. The claimants have not made out any case for enhancement of compensation. The learned counsel appearing for the second respondent/Insurance Company further contended that in M.C.O.P.No.4360 of 2007 (C.M.A.No.1361 of 2016), the percentage of disability certified by the Doctor is on the higher side and the amounts awarded by the Tribunal under different heads are excessive and prayed for dismissal of all the appeals.

8.Heard the learned counsel appearing for the claimants/appellants as well as the learned counsel appearing for the second respondent/Insurance Company and perused all the materials available on record.

9.As far as C.M.A.Nos.1360 and 1362 to 1364 of 2016 are concerned, from the materials available on record, it is seen that the claimants have sustained only simple injuries, they were treated conservatively, they have not suffered any fracture and they have not examined any Doctors to prove their contentions. The Tribunal considering the entire materials available on record, held that the claimants have suffered only simple injuries, they took treatment for 2 to 4 days conservatively and they have not produced any document to show the follow-up treatment. In view of the same, the Tribunal considering the nature of injuries and treatment taken by the claimants, awarded a sum of Rs.10,000/- each as compensation in C.M.A.Nos.1360, 1363 and 1364 of 2016 and a sum of Rs.2,000/- as compensation in C.M.A.No.1362 of 2016. In my considered opinion, the compensations awarded by the Tribunal are just and reasonable and they do not warrant any interference by this Court.

10.As far as C.M.A.No.1361 of 2016 (M.C.O.P.No.4360 of 2007) is concerned, the claimant examined P.W.4/Dr.Mathiazagan, who certified that the claimant has suffered 35% disability. The Tribunal reduced the percentage of disability to 30% on the ground that P.W.4 is not the Doctor, who treated the claimant.

The reason given by the Tribunal for reducing the percentage of disability is not correct. The claimant is entitled to compensation for 35% disability. The Tribunal has granted a sum of Rs.1,500/- per percentage of disability. The accident had occurred in the year 2007. The claimant is entitled to Rs.2,000/- per percentage of disability and the compensation awarded by the Tribunal towards disability is modified as Rs.70,000/- (Rs.2,000/- X 35%). From the materials available on record, it is seen that the appellant was admitted in hospital as in-patient from 29.07.2007 to 18.08.2007. The Tribunal has not awarded any amount towards attendant charges and this Court awards a sum of Rs.5,000/- under this head. Similarly, a sum of Rs.7,000/- and Rs.2,000/- awarded by the Tribunal towards pain and suffering and extra nourishment are meagre and they are hereby enhanced to Rs.20,000/- and Rs.10,000/- respectively. The amounts awarded by the Tribunal under other heads are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning	6,000	6,000	Confirmed
2.	Transportation	1,000	1,000	Confirmed
3.	Extra nourishment	2,000	10,000	Enhanced
4.	Damage to clothing	200	200	Confirmed
5.	Medical expenses	3,000	3,000	Confirmed
6.	Pain and suffering	7,000	20,000	Enhanced
7.	Disability	45,000	70,000	Enhanced
8.	Attendant charges	-	5,000	Granted
	Total	64,200	1,15,200	Enhanced by Rs.51,000/-

11. In the result,

(i) C.M.A.No.1361 of 2016 (M.C.O.P.No.4360 of 2007) is

partly allowed and the compensation awarded by the Tribunal at Rs.64,200/- is hereby enhanced to Rs.1,15,200/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The claimant/appellant in C.M.A.No.1361 of 2016 shall pay necessary Court fee, if any, on the enhanced compensation. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn.

(ii) C.M.A.Nos.1360 and 1362 to 1364 of 2016 are dismissed and award of the Tribunal made in M.C.O.P.Nos.4359, 4362, 4366 and 4365 of 2007 is confirmed. The second respondent-Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants/appellants in C.M.A.Nos.1360, 1362 and 1364 of 2016 are permitted to withdraw their respective share amount awarded by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor claimant in C.M.A.No.1363 of 2016 is ordered to be deposited in any one of the nationalised banks till he attains majority. The mother of the minor claimant is permitted to withdraw the interest once in three months. No costs.

Sd/-

Assistant Registrar(Insp Cell)

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
III Court of small Causes, Chennai

+1cc to Mr.R.Ravichandran, Advocate, S.R.No.3651

+1cc to Mr.A.V.Venkatesan, Advocate, S.R.No.3149

C.M.A.No.1360 to 1364 of 2016

CNR(CO)

RMP(10/06/2019)