

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.632 & 633 of 2011

K.A.Gopi

... Appellant/Petitioner
(in CMA.No.632/2011)

Thirupathamma

... Appellant/Petitioner
(in CMA.No.633/2011)

Versus

1.G.Mohammed Rafeek

2.IFFCO-TOKIO General Insurance Company, Ltd.,
Sahas Embassy No.145/131,
Ground Floor,
Nelson Manickam Road,
Metha Nagar,
Chennai - 600 029.

... Respondents /Respondents

(R1 remained exparte)

Common Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 18.10.2010 made in MACT.O.P.Nos. 50 and 278 of 2007 on the file of the II Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.R.Kalai Arasan
in both the appeals

For Respondents : Exparte (for R1)
: Mrs.C.Harini
for Mr.N.Vijayaraghavan (for R2)

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

Both the above appeals have been filed by the claimants/injured seeking for enhancement of compensation amounts awarded by the II Small Causes Court (Motor Accidents Claims Tribunal), Chennai, dated 18.10.2010 made in MACT.O.P.Nos. 50 and 278 of 2007.

2.Both appellants are questioning the quantum of compensation, hence, both are taken up for hearing together.

3.Facts averred by the claimants/petitioners in MACT.O.P.Nos.50 & 278 of 2007:-

On 09.12.2006 at about 09.30 hours, they were traveling in TVS Scooty, bearing Regn.No.TN-22-Q-6782, which was driven by one K.A.Gopi, claimant in MATCOP No. 50 of 2007 in which the claimant in MACTOP No. 278 of 2007 was travelling as a pillion rider. While the claimants stopped the vehicle for a moment and the vehicle was stationary, near the Central Median opposite to Sivaji Thottam, Manapakkam to proceed to Poonamallee High Road, from St.Thomas Mount, a Mini door autorickshaw, bearing Regn.No.TN-01-V-7401, which was driven by the driver of the first respondent, which was insured with the second respondent/Insurance company, in a rash and negligent manner and hit the claimants from behind. In the impact, the claimants have sustained serious injuries. In this context, a case was registered in Crime No.1349 of 2006 in S-4, Nandambakkam Police Station under Sections 279 ad 337 IPC. According to the claimants, the accident occured only due to rash and negligent driving of the dirver of the first respondent, whose vehicle was insured with the second respondent, and hence, they are jointly and severally liable to pay compensation. Therefore, the claimants have filed claim petitions in MACT.O.P.Nos.50 & 278 of 2007, claiming a sum of Rs.4,00,000/- and Rs.5,00,000/- respectively as compensation.

4.Before the Tribunal, the claimant in MCOP.No.278 of 2007 was examined as PW.1, the claimant in MCOP.No.50 of 2007 was examined as PW.2 and one Dr.K.J.Mathiazhagan examined as PW.3. On the claimants' side, twelve documents, namely Exs.P1 to P12 were marked. On the respondents' side, no oral or documentary evidence was adduced. After going through the oral and documentary evidence, the Tribunal has come to the conclusion that the accident took place on 09.12.2006 due to rash and negligent driving of the driver of the said autorickshaw. As far as compensation is concerned, the Tribunal awrded a sum of Rs.71,000/- and Rs.81,000/- respectively to the claimants/appellants herein.

5. The Learned counsel appearing for the appellants would contend that the claimant/K.A.Gopi in MCOP.No.50 of 2007 in CMA.No.632 of 2011, was aged about 56 years at the time of accident and he was working as Sweeper in Indian Airlines, earning Rs.15,000/- per month. According to the deposition of PW.3/Doctor, who examined the claimant, he sustained fracture and lacerated injuries on the left shoulder, dislocation of left index finger and multiple injuries all over the body and he assessed his disability at 30%. He was given treatment for one day and thereafter asked to take bed rest. PW3/Doctor, who examined PW2/claimant in MCOP No.50 of 2007, has stated that there is mal-union of clavical bone, stiffness in left shoulder and movement of left shoulder is restricted to 100 degrees, as a result of which, he will find it difficult to lift and hold heavy objects. The Doctor assessed the disability of the claimant at 30%. However, the Tribunal, without any reason, has taken into account the disability only at 25% and awarded Rs.50,000/- towards permanent disability. Even though the claimant has stated that he could not attend to his employment for a period of six months, the Tribunal awarded only a sum of Rs.6,000/- towards loss of earning during the period of treatment. The amount awarded under the heads of Transportation at Rs.1,000/-, Extra Nourishment at Rs.2,000/- and pain and suffering at Rs.10,000/- are very low and they are liable to be enhanced.

6. As far as the claimant in MCOP No. 278 of 2007 is concerned, corresponding to CMA No. 633 of 2011, it is stated by the learned counsel for the appellant that she was admitted as an in-patient from 09.12.2006 to 15.12.2006 in MIOT Hospitals. She was aged about 50 years, working as Sweeper and earning Rs.4,000/- per month at the time of accident. The Doctor/PW.2, who examined the claimant, has stated that she sustained Compressed fracture on right maxilla and orbital floor, depression fracture on right frontal sinus, systemic hypertension, left high parietal subgaleal scalp haematoma and she underwent a surgery during which plates were implanted in the right orbital floor. The Doctor assessed her disability at 35%. But, the Tribunal had taken the disability at 30% and awarded Rs.60,000/- towards permanent disability. The Tribunal failed to consider the period of treatment and awarded meagre amount towards transport and extra-nourishment.

7. Now, it is submitted by the learned counsel for the claimants that on account of the disability suffered by them in the said accident, they found it very difficult to carry on their normal avocation, as they were doing before the accident. Under such circumstances, the Tribunal ought to have awarded some amount towards future medical expenses.

8. Per contra, the learned counsel appearing for the Insurance Company submitted that the injuries sustained by the victims/claimants in both the cases are simple in nature and further he stated that the injuries are non-schedule injuries falling under Section 4(1)(ii) of the Workmen's Compensation Act and no compensation is payable under this head. Hence, the compensation amounts awarded by the Tribunal are just and proper and the same need not to be enhanced.

9. Keeping in mind the submissions made on either side, I have carefully gone through the entire materials available on record.

CMA No. 632 of 2011:

10. The claimant was aged 56 at the time of accident and working as Sweeper, earning Rs.15,000/- per month. P.W.2 Doctor deposed that the claimant sustained fracture of left shoulder, dislocation of left index finger and lacerated injury over left shoulder. He assessed his disability at 30%. However, the Tribunal, without any justification, has taken the disability at 25% and awarded Rs.50,000/- as compensation towards permanent disability. Instead, the Tribunal ought to have taken the disability assessed by the Doctor as such and awarded Rs.60,000/- as compensation for the disability. Accordingly, Rs.60,000/- is awarded towards permanent disability. Even though the claimant was admitted in the hospital for one day, he, in his evidence has stated that he could not attend his duty atleast for 2 months, and therefore, for loss of income during the period of treatment, it is seen that the claimant had proved that he was earning Rs.15,000/- per month by marking Ex.P7 salary slip. Considering his monthly salary at Rs.19,227/-, for the period of hospitalization $(Rs.19,227 \times 2) = Rs.38,454/-$ could be awarded and it is round off to Rs.38,000/- and accordingly, the same is awarded towards the loss of income.

11. Similarly, the amount under the other heads, namely transportation to hospital and extra-nourishment is meagre. Therefore, the amount awarded under these heads are enhanced to Rs.10,000/- each.

12. The Tribunal awarded Rs.10,000/- towards pain and suffering to him. Admittedly, the claimant, who was aged 56 years at the time of accident, would have undergone enormous pain due to the injuries and therefore, awarding a sum of Rs.20,000/- towards pain and suffering would meet the ends of justice. Except these modifications, the compensation amount awarded by the Tribunal under other heads remain unaltered. Thus, the break up details of the award amount modified and

enhanced are as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Permanent Disability	Rs.50,000/-	Rs.60,000/-
Loss of earnings during treatment	Rs.6,000/-	Rs.38,000/-
Transport to Hospital	Rs.1,000/-	Rs.10,000/-
Extra Nourishment	Rs.2,000/-	Rs.10,000/-
Damaged to cloth & articles	Rs.1,000/-	Rs.1,000/-
Medical expenses	Rs.1,000/-	Rs.1,000/-
Pain and suffering	Rs.10,000/-	Rs.20,000/-
Total	Rs.71,000/-	Rs.1,40,000/-

CMA No. 633 of 2011:

13. On a perusal of the materials available on record, this Court is of the opinion that as per Ex.P8/disability certificate issued to the claimant/Thirupathamma, she suffered grievous injuries in the said accident and the Doctor assessed her disability at 35%. The Tribunal, taking into account the disability at 30%, awarded a sum of Rs.2,000/- per percentage. This Court feels that there is no justification on the part of the Tribunal in reducing the percentage of disability assessed by the Doctor, and hence, this Court awards a sum of Rs.70,000/- (Rs.2,000/- x 35) towards the disability by taking into account the disability assessed by the Doctor at 35%. In the absence of any document to substantiate the monthly income, the Tribunal has fixed her income at Rs.3,000/-. Considering her age and injuries sustained by her, this Court is of the opinion that the amount of Rs.6,000/- awarded by the Tribunal towards loss of income during the period of treatment shall be enhanced to Rs.7,000/-. For pain and suffering, taking note of the age of the claimant and the period of her hospitalisation, this Court is inclined to enhance the amount from Rs.10,000/- to Rs.20,000/-. Similarly, the amount under the other heads, namely transportation to hospital and extra-nourishment is meagre. Therefore, the amount awarded under these heads are enhanced to Rs.10,000/- each. Except these modifications, the compensation amount awarded by the Tribunal under other heads remain unaltered. The breakup details of the same are as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Permanent Disability	Rs.60,000/-	Rs.70,000/-
Loss of earnings during treatment	Rs.6,000/-	Rs.7,000/-
Transport to Hospital	Rs.1,000/-	Rs.10,000/-
Extra Nourishment	Rs.2,000/-	Rs.10,000/-
Damages to clothes & articles	Rs.1,000/-	Rs.1,000/-
Medical expenses	Rs.1,000/-	Rs.1,000/-
Pain and suffering	Rs.10,000/-	Rs.20,000/-
Total	Rs.81,000/-	Rs.1,19,000/-

14. In the result, both the appeals are allowed to the extent indicated above and the compensation awarded by the Tribunal at Rs.81,000/- in MCOP.No.278 of 2007 is hereby enhanced to Rs.1,19,000/- and the compensation awarded by the Tribunal at Rs.71,000/- in MCOP.No.50 of 2007 is hereby enhanced to Rs.1,40,000/-. Both the amounts shall carry interest at the rate of 7.5% per annum from the date of claim petitions till the date of realisation. The second respondent/Insurance company is directed to deposit the modified and enhanced award amounts along with interest and costs, less the amounts, if any already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the appellants/claimants in the both appeals, are permitted to withdraw the modified and enhanced award amounts along with interest and costs, after adjusting the amounts if any, already withdrawn by them. The claimants in the both appeals shall pay necessary court fee, if any, on the enhanced compensation. No costs.

Sd/-
Assistant Registrar(CS VI)
//True Copy//

Sub Assistant Registrar

klt

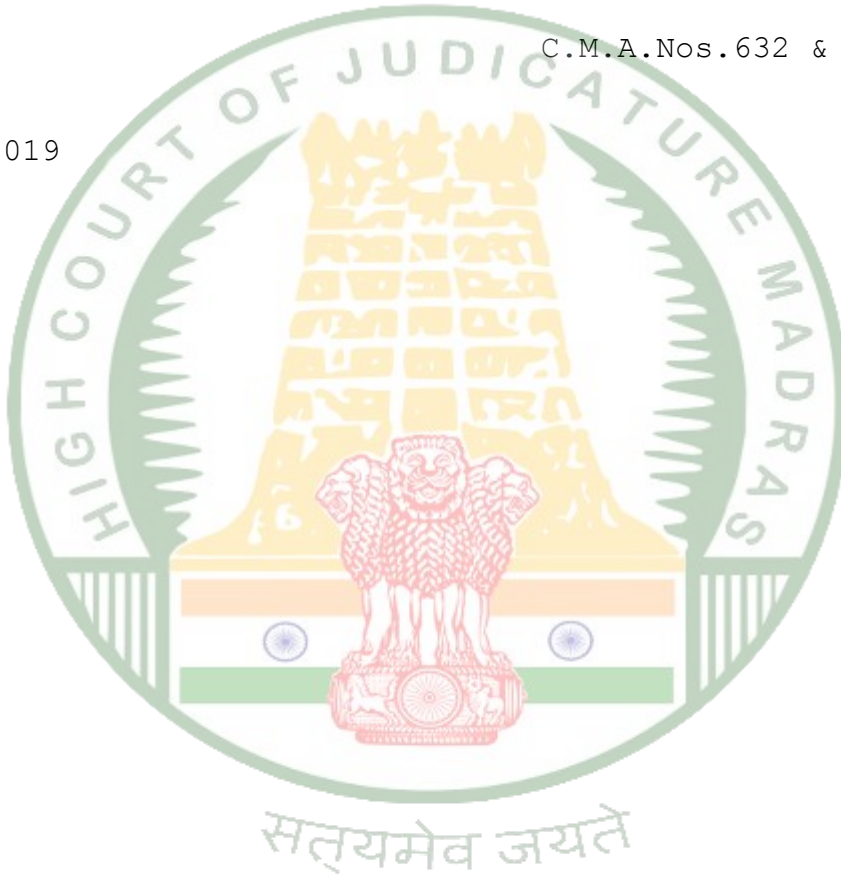
To

1. The Motor Accidents Claims Tribunal
(II Small Causes Court), Chennai.
2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+lcc to M/s.N.M.Muthurajan, Advocate sr.15867
+lcc to Mr.N.Vijayaraghavan, Advocate sr.16225

C.M.A.Nos.632 & 633 of 2011

cnr(co)
nr 15/11/2019



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