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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2748 and 2749 of 2016

S.Rajesh Kumar .. Appellant in C.M.A.No.2748 of 2016/Claimants

E.Saravanan .. Appellant in C.M.A.No.2749 of 2016/Claimants

Vs.

1.M/s.Capricorn Logistics Pvt Ltd.,
No.578, Shree Park 1st Floor,
Anna Salai, Chennai-600 006.

2.Universal Sompo General Insurance Co. Ltd,
Capitale Towers 5th Floor,
No.554 and 555 Anna Salai,
Teynampet, Chennai-600 018

.. Respondents in both C.M.As./Respondent

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.06.2016 made in M.C.O.P.Nos.578 and 577 of 2014 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

(In both C.M.As)

For Appellants : Mr.R.Nalliyappan

For RR2 : Mrs.R.Sree Vidhya

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

These Civil Miscellaneous Appeals have been filed against the award dated 20.06.2016 made in M.C.O.P.Nos.578 and 577 of 2014 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.The appellants are claimants in M.C.O.P.Nos.578 and 577 of 2014 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. They filed the above claim petition



claiming a sum of Rs.7,00,000/- and Rs.8,00,000/- respectively, as compensation for the injuries sustained by the them in the road accident that took place on 13.01.2014. 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 car belonging to the 1st respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.32,000/- and Rs.2,48,000/- respectively, as compensation to the appellants/claimants. Not being satisfied with the award of the Tribunal made in M.C.O.P.Nos.578 and 577 of 2014, the appellants have come out with the present appeal for enhancement of compensation.

3.The learned counsel appearing for the appellant contended that the appellants have examined P.W.3/Doctor and to prove the nature of injuries, treatment taken and the disability suffered by them. The Tribunal erred in reducing the percentage of disability on the ground that the P.W.3/Doctor has not filed the worksheet and guidelines. The amounts awarded by the Tribunal is meager and prayed for enhancement of compensation.

4.Per Contra, Mrs.R.Sree Vidhya, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the P.W.3/Doctor did not treat the appellants and without proper examining the appellants and without considering the medical report assessed the disability excessively. The Tribunal properly appreciating the evidences has reduced the percentage of disability by giving valid reason and the amounts awarded by the Tribunal under different heads are not meager and prayed for dismissal of the appeal.

5.Heard the learned counsel for the appellant as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the entire materials available on record.

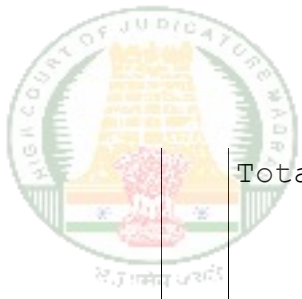
6.From the materials available on record, it is seen that both the appellants have claimed that they sustained fractures in their right leg and examined P.W.3/Doctor to prove the nature of injuries and disability. P.W.3/Doctor certified that the appellants have suffered 60% and 40% disability respectively. The Tribunal reduced the percentage of disability from 60% to 40% and 40% to 35% on the ground that P.W.3 has not filed the worksheet and guidelines. Further, the Tribunal held that the disability fixed by the Doctor relates to only part of the body and not for whole body. The reason given by the Tribunal for reducing the disability by 20% and 5% respectively are not valid reason. The percentage of disability may differ from Doctor to Doctor by 5%. The respondents have not let in any evidence to prove that the percentage fixed by the Tribunal for disability



as assessed by the P.W.3/Doctor is excessive. In view of the above materials, the appellants are entitled to compensation for the disability assessed by the Doctor. In M.C.O.P.No.577 of 2014 a sum of Rs.1,20,000/- awarded by the Tribunal towards disability is meagre and the same is enhanced to Rs.1,80,000/- (60 x 3,000). A sum of Rs.5,000/- and Rs.4,000/- awarded towards extra nourishment and attendant charges are meagre and the same are enhanced to Rs.10,000/- each. The Tribunal has awarded a sum of Rs.5,000/- and Rs.2,500/- respectively towards loss of education and loss of marriage prospects are meagre and the same are enhanced to Rs.15,000/- and Rs.25,000/- respectively. The amounts awarded by the Tribunal under other heads are confirmed. Thus, the amounts awarded by the Tribunal are modified as follows:

C.M.A.No.2749 of 2016 (M.C.O.P.No.577 of 2014):

SL No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Disability	1,20,000/-	1,80,000/-	Enhanced
2.	Pain & Suffering	40,000/-	40,000/-	Confirmed
3.	Extra nourishment	5,000/-	10,000/-	Enhanced
4.	Transportatio n	5,000/-	5,000/-	Confirmed
5.	Damages to clothes	1,000/-	1,000/-	Confirmed
6.	Attender charges	4,000/-	10,000/-	Enhanced
7.	Medical expenses	50,200/-	50,200/-	Confirmed
8.	Future medical expenses	5,000/-	5,000/-	Confirmed
9.	Loss of amenities	10,000/-	10,000/-	Confirmed
10.	Loss of education	5,000/-	15,000/-	Enhanced
11.	Loss of marriage prospects	2,500/-	25,000/-	Enhanced



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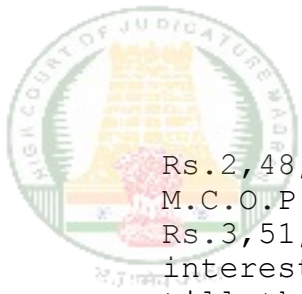
Total	Rs.2,47,700/- (rounded off to Rs.2,48,000/-)	Rs.3,51,200/-	Enhanced by Rs.1,03,200/-
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In M.C.O.P.No.577 of 2014 the Tribunal has awarded a sum of Rs.15,000/- towards disability which is meager and the same is enhanced to Rs.1,20,000/- (40 x 3,000). A sum of Rs.5,000/-, Rs.2,500/- and Rs.2,000/- awarded towards pain and suffering, Extra nourishment and loss of education are meagre and the same are enhanced to Rs.10,000/-, Rs.5,000/- and Rs.15,000/- respectively. The amounts awarded by the Tribunal under other heads are confirmed. Thus, the amounts awarded by the Tribunal are modified as follows:

C.M.A.No.2748 of 2016 (M.C.O.P.No.578 of 2014):

SL No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Disability	15,000/-	1,20,000/-	Enhanced
2.	Pain & Suffering	5,000/-	10,000/-	Enhanced
3.	Extra nourishment	2,500/-	5,000/-	Enhanced
4.	Transportatio n	1,000/-	1,000/-	Confirmed
5.	Damages to clothes	1,000/-	1,000/-	Confirmed
6.	Attender charges	250/-	250/-	Confirmed
7.	Medical expenses	5,000/-	5,000/-	Confirmed
8.	Loss of education	2,000/-	15,000/-	Enhanced
	Total	Rs.31,750/- (rounded off to Rs.32,000/-)	Rs.1,57,250/-	Enhanced by Rs.1,25,250/-

7.In the result, the Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal at



Rs.2,48,000/- (in M.C.O.P.No.577 of 2014) and Rs.32,000/- (in M.C.O.P.No.578 of 2014) are hereby enhanced to a sum of Rs.3,51,200/- and Rs.1,57,250/- respectively together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court 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 appellant in both CMA's are permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

gbi/rst

To

1.The IV Judge,
Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.

Copy To :
The Section Officer,
VR Section,
High Court,
Madras.

+2cc to Mr.R.Nalliyappan, Advocate SR.No.14768, 14767

+1cc to Mrs.R.Sree Vidhya, Advocate SR.No.15289

C.M.A.Nos.2748 and 2749 of 2016

SJ(CO)
GMY(30/08/2019)