

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.373 and 374 of 2018

Chinnasamy ... Appellant in CMA.No.373 of 2018
Saminathan ... Appellant in CMA.No.374 of 2018

Vs

- 1.Kanagaraj
(R1 remained ex-parte in the Lower Court)
- 2.M/s. Bajaj Aliance Insurance Co., Ltd.,
Door No.11, People's Park 3rd floor,
Govt. Arts College Road,
Coimbatore. ... Respondents in both appeals

C.M.A.No.373 of 2018 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 30.09.2013 made in MCOP No.279 of 2012 on the file of the Motor Accident Claims Tribunal, Additional District Judge (ADJ), Ariyalur.

C.M.A.No.374 of 2018 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 30.09.2013 made in MCOP No.278 of 2012 on the file of the Motor Accident Claims Tribunal, Additional District Judge (ADJ), Ariyalur.

For Appellant : Mr.S.Kaithamalai Kumaran
in both appeals

For R-2 : Mr.S.Arunkumar
in both appeals

COMMON JUDGMENT

Both these appeals arise out of the same accident, which took place on 17.12.2008. On 17.12.2008 at about 01.50 p.m., the appellant/claimant in C.M.A.No.373 of 2018 was riding the Super XL motorcycle bearing Reg.No.TN-46-E-7855 from Kurichinatham Village to Ariyalur. The appellant/claimant in C.M.A.No.374 of 2018 was travelling in the two-wheeler as a pillion rider. When the motorcycle reached near Ariyalur Government I.T.I., the Bolero Jeep bearing Reg.No.TN-47-S-4079 belonging to the first

respondent and insured with the second respondent herein, came in a rash and negligent manner and dashed against the motorcycle. Due to the impact, both the rider and pillion rider sustained grievous injuries. They filed claim petitions before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded compensation and the details of the same are as under:

CMA No.	MCOP No.	Amount of compensation (Rs.)
373 of 2018	279/2012	1,50,000/-
374 of 2018	278/2012	75,000/-

These amounts have been awarded, with interest at the rate of 7.5% per annum from the respective dates of petitions.

2.Challenging the awards, the appellants/claimants have preferred these appeals seeking enhancement of compensation.

3.The learned counsel for the appellants / claimants in these appeals has submitted that the Tribunal has awarded only a compensation of Rs.1,50,000/- as against the claim made to the tune of Rs.8,00,000/- in respect of the claimant in CMA No.373 of 2018, which is not in consonance with the injuries sustained by the claimant. He also submitted that the compensation of Rs.75,000/- awarded by the Tribunal in respect of the claimant in CMA No.374 of 2018 is very low and that the Tribunal has not granted any amount towards future medical expenses, and hence, the compensation awarded by the Tribunal has to be enhanced to some extent.

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

5.Heard the learned counsel for the appellants / claimants and the learned counsel for the second respondent Insurance Company and perused the materials and evidence available on record, carefully and meticulously.

6.Since these appeals are filed by the claimants seeking enhancement of the compensation amounts awarded by the Tribunal, there is no requirement for this Court to go into the question of negligence and the liability of the second respondent

insurance company to pay compensation.

CMA No.373 of 2018:

7. With regard to the quantum of compensation relating to the injured in CMA No.373 of 2018, the appellant/claimant himself examined as P.W.2, who deposed that at the time of accident, he was 42 years and was earning Rs.6,000/- per month as an Agriculturist and also doing painter work. The Doctor, who treated the appellant/claimant, was examined as P.W.3. According to him, the appellant/claimant sustained 41% permanent disability. Ex.P7 is the Wound Certificate and Ex.P15 is the Disability Certificate. Placing reliance on those oral and documentary evidence, the Tribunal has awarded a sum of Rs.51,910/- towards medical expenses, Rs.10,000/- towards Transport expenses, Rs.5,000/- towards sumptuous food, Rs.5000/- towards loss of earning during hospitalization and Rs.75,000/- towards loss of future earnings reduced earning capacity (notional). The amounts awarded towards these heads are reasonable and hence the same are confirmed. But, the Tribunal has not awarded any amount towards future medical expenses. Considering the nature of the injuries and the period of treatment undergone by the appellant/claimant, this Court is inclined to grant a sum of Rs.45,000/- towards future medical expenses, besides enhancing the compensation awarded by the Tribunal under the head "pain and suffering" from Rs.5,000/- to Rs.10,000/-. The details of the modified compensation are as follows:

Head	Amount (Rs.)
Medical expenses	51,910/-
Transport expenses	10,000/-
Sumptuous food	5,000/-
Loss of earning during hospitalization	5,000/-
Loss of future earnings reduced earning capacity (notional)	75,000/-
Pain and sufferings	10,000/-
Future medical expenses	45,000/-
Total...	2,01,910/-

Thus the appellant / claimant is entitled to the modified compensation of Rs.2,01,910/-. It is seen that this Court has condoned the delay of 128 days in filing this CMA, by order dated 06.02.2018, on condition that the claimant has to forego interest for the delayed period. Hence, it is made clear that

only for the compensation of Rs.1,50,000/- 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.51,910/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal. It is also made clear that the claimant has to pay the appropriate Court fee in order to receive the awarded amount.

CMA No.374 of 2018:

8. In respect of the quantum of compensation relating to the injured in CMA No.374 of 2018, the appellant/claimant himself examined as P.W.1, who deposed that at the time of accident, he was 60 years and was earning Rs.6,000/- per month as an agriculturist and also earning through riding of bullocks carts on rental basis. The Doctor, who treated the appellant/claimant, was examined as P.W.3. According to him, the appellant/claimant sustained 39% permanent disability. Ex.P2 is the Wound Certificate and Ex.P17 is the Disability Certificate. Placing reliance on those oral and documentary evidence, the Tribunal has awarded a sum of Rs.40,600/- towards medical expenses, Rs.10,000/- towards Transport expenses, Rs.5,000/- towards sumptuous food, Rs.2,500/- towards loss of earning during hospitalization, Rs.12,000/- towards loss of future earnings reduced earning capacity (notional) and Rs.5,000/- towards pain and sufferings. The amounts awarded towards these heads are reasonable and hence the same are confirmed. But, the Tribunal has not awarded any amount towards future medical expenses. Considering the nature of the injuries and the period of treatment undergone by the appellant/claimant, this Court is inclined to grant a sum of Rs.25,000/- towards future medical expenses. The details of the modified compensation are as follows:

Head	Amount (Rs.)
Medical expenses	40,600/-
Transport expenses	10,000/-
Sumptuous food	5,000/-
Loss of earning during hospitalization	2,500/-
Loss of future earnings reduced earning capacity (notional)	12,000/-
Pain and sufferings	5,000/-
Future medical expenses	25,000/-
Total....	1,00,100/-

Thus the appellant / claimant is entitled to the modified compensation of Rs.1,00,100/-. It is seen that this Court has condoned the delay of 128 days in filing this CMA, by order dated 06.02.2018, on condition that the claimant has to forego interest for the delayed period. Hence, it is made clear that only for the compensation of Rs.75,000/- 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.25,100/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal. It is also made clear that the claimant has to pay the appropriate Court fee in order to receive the awarded amount.

9. Accordingly, the appeals are partly allowed. No costs.

10. The second respondent/Insurance Company is directed to deposit the modified compensation amounts, as ordered above, after deducting the amounts, 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 appellants / claimants are permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

av/km

To

1. The learned Additional District Judge,
Motor Accidents Claims Tribunal,
Ariyalur.

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

+1cc to Mr.S.Kaithamalai kumaran, Advocate, S.R.No. 90101
+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 90006

C.M.A.Nos.373 and 374 of 2018

CP(CO)
GN(09/09/2020)