

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.523 and 524 of 2018

Gajendran

.. Appellant in
C.M.A.No.523/2018

Venugopal

.. Appellant in
C.M.A.No.524/2018

Vs.

1. M/s.Ultra Fragrance,
rep. By its Proprietor,
R.S.No.91/2A Manna Pattuvell via,
Kattukuppam,
Pondicherry 607 402.
(R1 was set exparte before the Tribunal)

2. United India Insurance Co. Ltd.,
No.38, Anna Salai,
Chennai 600 002 .. Respondents in both appeals

Common Prayer:

These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the common award dated 08.06.2009, made in M.C.O.P.Nos.3881 & 3886 of 2005, on the file of the III Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

(In both appeals)

For Appellant : Mr.F.Terry Chella Raja
in both the Appeals for Mr.V.Velu
For R2 : Mr.S.Arunkumar
R1 : Exparte

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the appellants/claimants, challenging the quantum of compensation granted by the Tribunal in the common award dated 08.06.2009, made in M.C.O.P.Nos.3881 & 3886 of 2005, on the file of the III Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.Both the appeals arise out of the same accident and common award and hence, they are disposed of by this common judgment.

3.The appellants/claimants filed M.C.O.P.Nos.3881 & 3886 of 2005, on the file of the III Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.2,50,000/- and Rs.3,50,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 28.11.2004.

4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Maruti car belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.1,30,500/- and Rs.1,62,000/- as compensation to the appellants/claimants in both the appeals respectively.

5.Not being satisfied with the amounts granted by the Tribunal in the common award dated 08.06.2009, made in M.C.O.P.Nos.3881 & 3886 of 2005, the appellants/claimants have come out with the present appeal.

6(a).The learned counsel appearing for the appellants contended that as far as the appellant in C.M.A.No.523/2018 [M.C.O.P.No.3881 of 2005] is concerned, he suffered open head injuries, CSF, Rhinorrhoea, fracture in the right frontal bone, Osteoarthritis left knee and left patella femoral arthrosis and laceration all over the body. The Tribunal ought to have considered the evidence of P.W.2-Doctor who assessed 70% disability suffered by the appellant and fixed 100% loss of earning capacity. The Tribunal erred in not granting compensation towards disability at the rate of Rs.2,000/- per percentage for 70%. The appellant was working as a barber and was earning a sum of Rs.9,000/- per month. The appellant took treatment both as inpatient and out patient at private hospital. The Tribunal failed to grant any amount towards pain and suffering, attender charges and future medical expenses. In any event, the compensation granted by the Tribunal under other heads are meagre and prayed for enhancement of the same.

6(b).As far as the appellant in C.M.A.No.524/2018 [M.C.O.P.No.3886 of 2005] is concerned, the learned counsel appearing for the appellant contended that the appellant suffered closed head injuries, left frontal extra dural haematoma, left posterior frontal contusion, diffuse brain swelling, fracture in the left frontal bone and fracture in left

frontal bone and roof of left orbit and laceration all over the body. The Tribunal ought to have considered the evidence of P.W.2-Doctor who assessed 45% disability suffered by the appellant and fixed 100% loss of earning capacity. The Tribunal erred in not granting compensation towards disability at the rate of Rs.2,000/- per percentage for 45%. The appellant was working as a carpenter and was earning a sum of Rs.9,000/- per month. The appellant took treatment both as inpatient and out patient at private hospital. The Tribunal failed to grant any amount towards pain and suffering, attender charges and future medical expenses. In any event, the compensation granted by the Tribunal under other heads are meagre and prayed for enhancement of the same.

7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering all the materials on record in entirety has granted compensation in both the claim petitions, which are not meagre. The appellants have not made out any case for enhancement of the compensation and hence, prayed for dismissal of both the appeals.

8.Heard the learned counsel appearing for the appellants as well as the 2nd respondent and perused the materials available on record.

9(a).As far as M.C.O.P.No.3881 of 2015 [C.M.A.No.523 of 2018] is concerned, the appellant suffered severe injuries all over the body. The Tribunal has only granted a sum of Rs.50,000/- towards disability. Considering the evidence of P.W.3 and P.W.4-Doctors and the disability certificates produced by them, the disability suffered by the appellant is fixed at 70% and a sum of Rs.1,40,000/- is granted towards disability at the rate of Rs.2,000/- per percentage for 70%. The appellant has taken treatment in hospital from 28.11.2004 to 04.12.2004. The Tribunal failed to grant any amount towards attender charges. Hence, a sum of Rs.10,000/- is granted towards the same. The appellant was working as a barber and was earning a sum of Rs.9,000/- per month. The compensation granted by the Tribunal towards loss of earning, loss of future earning and loss of amenities are very meagre. Hence, the same are enhanced to Rs.20,000/- each. The amounts granted by the Tribunal under other heads are just and reasonable and they 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	5,000/-	20,000/-	enhanced
2.	Transportation	2,000/-	2,000/-	Confirmed
3.	Extra nourishment	10,000/-	10,000/-	Confirmed
4.	Loss of future earning	10,000/-	20,000/-	enhanced
5.	Medical expenses	3,500/-	3,500/-	Confirmed
6.	Loss of amenities	10,000/-	20,000/-	Enhanced
7.	Loss of expectation of life	10,000/-	10,000/-	Confirmed
8.	Pain and suffering	30,000/-	30,000/-	Confirmed
9.	Permanent disability	50,000/-	1,40,000/-	enhanced
10.	Attender charges	-	10,000/-	granted
	Total	1,30,500/-	2,65,500/-	Enhanced by Rs.1,35,000/-

9(b).As far as M.C.O.P.No.3886 of 2005 [C.M.A.No.524 of 2018] is concerned, the appellant suffered severe injuries all over the body. The Tribunal has only granted a sum of Rs.45,000/- towards disability. Considering the evidence of P.W.3 and P.W.4-Doctors and the disability certificates produced by them, the disability suffered by the appellant is fixed at 45% and a sum of Rs.90,000/- is granted towards disability at the rate of Rs.2,000/- per percentage for 45%. The appellant has taken treatment in hospital from 28.11.2004 to 13.12.2004. The Tribunal failed to grant any amount towards attender charges. Hence, a sum of Rs.10,000/- is granted towards the same. A sum of Rs.2,000/- awarded by the Tribunal towards extra nourishment is enhanced to Rs.10,000/-. The amounts granted by the Tribunal under other heads are just and reasonable and they 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.	Transportation	1,000/-	1,000/-	Confirmed
2.	Extra nourishment	2,000/-	10,000/-	Enhanced
3.	Damages to clothing and articles	1,000/-	1,000/-	Confirmed
4.	Loss of future earning	25,000/-	25,000/-	Confirmed
5.	Medical expenses	28,000/-	28,000/-	Confirmed
6.	Future medical expenses	10,000/-	10,000/-	Confirmed
7.	Pain and suffering	20,000/-	20,000/-	Confirmed
8.	Permanent disability	45,000/-	90,000/-	Enhanced
9.	Loss of amenities	10,000/-	10,000/-	Confirmed
10.	Loss of expectation	10,000/-	10,000/-	Confirmed
11.	Loss of enjoyment	10,000/-	10,000/-	confirmed
12.	Attender charges	-	10,000/-	granted
	Total	1,62,000/-	2,25,000/-	Enhanced by Rs.63,000/-

10. In the result, both the appeals are partly allowed and compensation granted by the Tribunal at Rs.1,30,500/- and Rs.1,62,000/- are enhanced to Rs.2,65,500/- and Rs.2,25,000/- respectively along with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount 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, to the credit of M.C.O.P.Nos.3881 & 3886 of 2005 respectively. On such deposit, the appellants/claimants are permitted to withdraw their respective award amount, less the amount already withdrawn, if any, by filing necessary applications before the Tribunal. No costs. However, it is made clear that the appellants are not

entitled for any interest for the delay period on the amount enhanced by this Court.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gsa

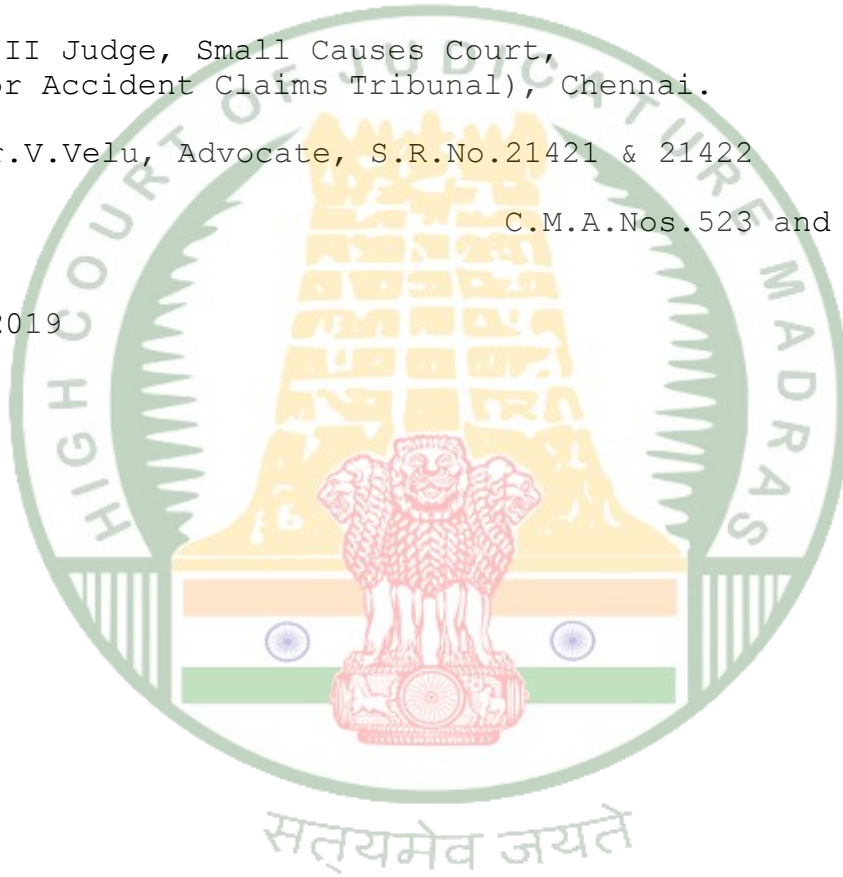
To

1. The III Judge, Small Causes Court,
(Motor Accident Claims Tribunal), Chennai.

+2cc to Mr.V.Velu, Advocate, S.R.No.21421 & 21422

C.M.A.Nos.523 and 524 of 2018

TM(CO)
CS/17/10/2019



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