

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.3424 and 3425 of 2019

Ezhil ... Appellant in CMA.No.3424 of 2019

1. Unnamalai

2. Palanivel

... Appellants in CMA.No.3425 of 2019

Vs

1. Muthu

2. United India Insurance Co., Ltd.,
Third Party Hub, Silingi building,
No.134, Greams road,
Murugesanaicker Street,
Chennai - 600 006.

... Respondents in both CMAs

C.M.A.No.3424 of 2019 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 24.08.2018 made in MACOP No.1173 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge No.2, Small Causes Court, Chennai.

C.M.A.No.3425 of 2019 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 24.08.2018 made in MACOP No.1528 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge No.2, Small Causes Court, Chennai.

For Appellant : Mr.K.V.Muthu Visakan
in both appeals

For R-2 : Mr.D.Bhaskaran
in both appeals
R1- Exparte

COMMON JUDGMENT

Both these appeals arise out of the common award passed by the Claims Tribunal, in MACOP Nos.1173 and 1528 of 2013 made by the claimants in respect of the very same accident, that took place on 15.10.2012. Hence, they were heard together and are being decided by this common judgment.

2.The facts of the case are that on 15.10.2012, the appellant in C.M.A.No.3424 of 2019 was riding the motorcycle bearing registration No.TN 20 CY 9501 along with one Anbu as pillion rider/son of the appellants in C.M.A.No.3425 of 2019. When they were going in Maduravoyal - Tambaram By-Pass Road, at Srinivasapuram bridge, a Tata ACE vehicle bearing registration No.TN 10 P 9751 belonging to the first respondent and insured with the second respondent insurance company, came in a rash and negligent manner and dashed against the motorcycle. Due to the said impact, the appellant in C.M.A.No.3424 of 2019 sustained grievous injuries and the pillion rider died in the accident. The injured and the legal heirs of the deceased filed separate claim petitions before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.4,35,600/- to the injured/appellant/claimant in CMA No.3424 of 2019 and Rs.9,58,200/- to the legal heirs of the deceased/appellants in CMA No.3425 of 2019, with interest at the rate of 7.5% per annum from the date of claim petitions. Feeling aggrieved and being dissatisfied with the quantum so awarded, the appellants/claimants have preferred these appeals seeking enhancement of the same.

3.The learned counsel for the appellants/claimants has submitted that considering the materials and evidence adduced by the claimants, the compensation awarded by the Tribunal in both these appeals are inadequate and hence, the same have to be enhanced to some extent.

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

5.Heard the learned counsel on either side and perused the materials available on record.

6.The present appeals are filed by the claimants seeking enhancement of the compensation awarded by the Tribunal and hence, there is no requirement for this Court to go into the question on negligence and the liability of the second respondent insurance company to pay compensation.

7.With regard to the quantum of compensation awarded to the injured/appellant in CMA No.3424 of 2019, it is significant to look into the materials and evidence adduced by the injured. The appellant/claimant himself examined as P.W.1, who deposed that at the time of accident, he was 29 years and was earning Rs.600/- per day as a painting contract worker; he sustained fractures and multiple injuries all over the body. Ex.P4-

discharge summary would reveal that he took treatment as inpatient from 15.10.2012 to 29.11.2012 in Rajiv Gandhi Government General Hospital, Chennai for the injuries of structure Urethra. As per C1 disability certificate, he sustained locomotor disability to the tune of 15%. Placing reliance on those oral and documentary evidence, the Tribunal has awarded Rs.2,78,460/- towards loss of earning capacity, Rs.45,000/- towards disability, Rs.16,575/- towards loss of income, Rs.20,000/- towards extra- nourishment, Rs.2,000/- towards damage to clothes, Rs.14,520/- towards medical expenses and Rs.12,000/- towards loss of income to the family members of the appellant/claimant, which, in the opinion of this Court, are just and very reasonable and hence, the same need not be interfered. However, the award of Rs.30,000/- towards pain and sufferings, Rs.2,000/- towards transport to hospital, Rs.15,000/- towards loss of amenities appear to be on the lower side, considering the nature of the injuries sustained by the appellant/claimant and having regard to the period of treatment undertaken by him and hence, the same are hereby enhanced to Rs.50,000/-, 15,000/- and 37,000/- respectively. Thus, the compensation awarded by the Tribunal is enhanced from Rs.4,35,600/- to Rs.4,90,600/-, the details of which are given below:

Head	Compensation awarded by the Tribunal (Rs.)	Compensation enhanced by this Court (Rs.)
Loss of earning capacity	2,78,460/-	2,78,460/-
Disability	45,000/-	45,000/-
Pain and suffering	30,000/-	50,000/-
Loss of Income	16,575/-	16,575/-
Transport to hospital	2,000/-	15,000/-
Extra-nourishment	20,000/-	20,000/-
Damage to clothes	2,000/-	2,000/-
Medical Expenses	14,520/-	14,520/-
Loss of Income to the Family members of the claimant	12,000/-	12,000/-
Loss of amenities	15,000/-	37,000/-
Total	4,35,555/- rounded off to 4,35,600/-	4,90,555/- rounded off to 4,90,600/-

It is made clear that the enhanced sum of Rs.55,000/- shall carry interest at 7.5%per annum only from the date of filing of this appeal.

8. In respect of the quantum of compensation awarded to the appellants in CMA No.3425 of 2019, the second appellant/father of the deceased was examined as P.W.2, who stated in his evidence that the deceased was aged about 27 years and was earning Rs.600/- per day by doing painting contract work. However, the Tribunal has taken the monthly income of the deceased only at Rs.6,500/-, which appears to be on the lower side and hence, the same is hereby, enhanced to Rs.9,000/-, to which, 40% towards future prospects i.e, Rs.12,600/- has to be added and half of the amount towards personal expenses has to be deduced. Ultimately, the compensation towards pecuniary loss would be quantified at Rs.12,85,200/- [6300 x 12 x 17]. Accordingly, the compensation awarded by the Tribunal under this head is enhanced to Rs.12,85,200/-. Considering the fact that the Tribunal has not awarded any amount towards loss of love and affection to the parents of the deceased, this Court is inclined to grant a sum of Rs.40,000/- each and the same is accordingly, awarded under this head. However, there is no modification with regard to the award of Rs.15,000/- towards Loss of estate and Rs.15,000/- towards Funeral expenses. Thus, the compensation awarded by the Tribunal is enhanced from Rs.9,58,200/- to Rs.13,95,200/-, the details of which are given below:

Head	Compensation awarded by the Tribunal (Rs.)	Compensation enhanced by this Court (Rs.)
Loss of Pecuniary Benefits	9,28,200/-	12,85,200/-
Funeral expenses	15,000/-	15,000/-
Loss of estate	15000/-	15,000/-
Loss of Love and affection to the claimants 1 & 2 Rs.40,000/- each	----	80,000/-
Total	9,58,200/-	13,95,200/-

It is made clear that the enhanced sum of Rs.4,37,000/- shall carry interest at 7.5% per annum only from the date of filing of this appeal.

9. Accordingly, these Civil Miscellaneous Appeals are partly allowed. No costs. The Second respondent/Insurance Company is directed to deposit the entire compensation amount, with interest and costs, after deducting the amount, 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 their respective shares as per the ratio of apportionment fixed by the Tribunal, on making proper applications before the Tribunal.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
Special Sub Judge No.2,
Small Causes Court, Chennai

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

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No. 92000

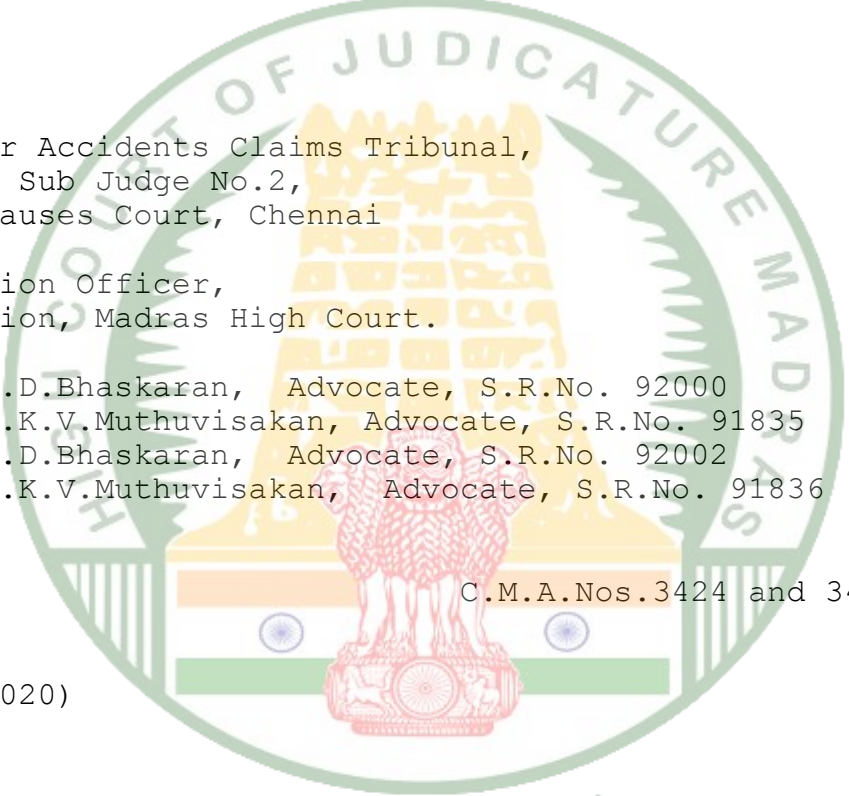
+1cc to Mr.K.V.Muthuvisakan, Advocate, S.R.No. 91835

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No. 92002

+1cc to Mr.K.V.Muthuvisakan, Advocate, S.R.No. 91836

C.M.A.Nos.3424 and 3425 of 2019

PM(CO)
GN(28/08/2020)



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