

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1862 and 1863 of 2015

Abraham .. Appellant in
C.M.A.No.1862 of 2015/Petitioner

Pitchamuthu .. Appellant in
C.M.A.No.1863 of 2015 /Petitioner

Vs.

1.M/s.Jet Associates
Thiruvenkaranai village
Kunnavakkam post
Thennesi Via
Kanchipuram District.
(R1 remained exparte before the Tribunal
and hence, his presence is dispensed with)

2.Royal Sundaram Alliance Insurance Co. Ltd.,
No.6, L.B.Road
Adyar, Chennai-600 020. ... Respondents in
both C.M.As./Respondent

Prayer: These Civil Miscellaneous Appeals are filed under
Section 173 of Motor Vehicles Act, 1988, against the judgment
and decree dated 23.12.2014 made in M.C.O.P.Nos.4657 and 4690 of
2009 on the file of the Motor Accident Claims Tribunal, Small
Causes Court No.III, Chennai.

In C.M.A.No.1862 of 2015

For Appellant : Mr.F.Terry Chellaraja

For R2 : No appearance

In C.M.A.No.1863 of 2015

For Appellant : Mr.F.Terry Chellaraja

For R2

: No appearance

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

These Civil Miscellaneous Appeals are filed for enhancement of compensation granted by the Tribunal in the award dated 23.12.2014 made in M.C.O.P.Nos.4657 and 4690 of 2009 on the file of the Motor Accident Claims Tribunal, Small Causes Court No.III, 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 as claimants filed M.C.O.P.Nos.4657 and 4690 of 2009 on the file of the Motor Accident Claims Tribunal, Small Causes Court No.III, Chennai, claiming a sum of Rs.6,00,000/- each as compensation for the injuries sustained by them in the accident that took place on 15.07.2008.

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 lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said lorry to pay a sum of Rs.89,500/- and Rs.1,69,500/- respectively as compensation to the appellants.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with C.M.A.Nos.1862 and 1863 of 2015 seeking enhancement of compensation.

6.The learned counsel appearing for the appellants contended that the Tribunal ought to have awarded compensation considering loss of earning capacity as 100%. The appellants were aged 55 & 31 years at the time of accident and were working as a coolie & owner-cum-rider of the tyre cart and were earning a sum of Rs.300/- and Rs.500/- per day respectively. The Tribunal without considering the same, has fixed only a sum of Rs.5,000/- as monthly income of the appellants, which is meagre. In the accident, the appellant in C.M.A.No.1862 of 2015 sustained fracture of nasal bone, head injury, diastasis, temporal parietal bone, concussion brain, injury over right eyebrow and multiple injuries all over his body. He took treatment as in-patient in Government Head Quarters Hospital, Villupuram, from 15.07.2008 to 29.07.2008 and subsequently, in Pondicherry Institute of Medical Science from 30.07.2008 to 04.08.2008. The appellant in C.M.A.No.1863 of 2015 sustained compression injury C4, C5 with C4 and C5 strain, dislocation of

right wrist, concussion brain and multiple injuries all over his body. He took treatment in Government Head Quarters Hospital, Villupuram, from 15.07.2008 to 29.07.2008 and subsequently, in Pondicherry Jipmer hospital from 30.07.2008 to 06.08.2008. P.W.3/Dr.Thiagarajan has assessed the disability of both the appellants as 50% & 70% respectively and the Tribunal has reduced the disability to 25% & 45% respectively on the ground that the disability assessed by the Doctor is on the higher side. The Tribunal ought to have awarded compensation towards permanent disability and loss of earning capacity on separate heads. The Tribunal ought to have adopted multiplier method while awarding compensation towards permanent disability. The Tribunal has not awarded any compensation towards attendant charges, future medical expenses and loss of amenities. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7. Though notice was served on the 2nd respondent and its name is printed in the cause list, there is no representation on behalf of the 2nd respondent either in person or through counsel.

8. Heard the learned counsel appearing for the appellants and perused the materials available on record.

C.M.A.No.1862 of 2015 (M.C.O.P.No.4657 of 2009):

9. It is the contention of the appellant that he was aged 55 years at the time of accident and was earning a sum of Rs.300/- per day by working as a coolie. The appellant has not filed any document to prove the same. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal has fixed a sum of Rs.5,000/- as monthly income of the appellant and awarded a sum of Rs.10,000/- towards loss of earning for a period of two months. The accident is of the year 2008 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.6,500/- is fixed as monthly income of the appellant. Due to the injuries, the appellant would not have attended his work at least for a period of six months. Therefore, the appellant is entitled to a sum of Rs.39,000/- (Rs.6,500/- X 6) towards loss of income for six months. The appellant examined Dr.Thiagarajan as P.W.3, who has assessed the disability of the appellant as 25% for head ache, giddiness, tremor left hand and leg, memory deficits and 25% for nasal bridge depressed, nostrils narrowed, nasal block and headache. P.W.3/Doctor in his evidence has deposed that he has not given treatment to the appellant and the appellant has not undergone any surgery. The Tribunal considering the evidence of P.W.3/Doctor, reduced the disability from 50% to 25% holding that P.W.2 is not the doctor who treated the appellant and the percentage of disability assessed by him is on the higher side

and awarded a sum of Rs.45,000/- (Rs.1,800/- X 25%) towards disability by awarding a sum of Rs.1,800/- per percentage of disability. The appellant has not proved that he suffered functional disability and there is loss of earning capacity. Therefore, the percentage method adopted by the Tribunal is proper and the same does not warrant any interference by this Court. But the reason given by the Tribunal for reducing the percentage of disability is not proper. The appellant is entitled to compensation for 40% disability. The accident is of the year 2008 and a sum of Rs.2,000/- is fixed per percentage of disability. Thus, a sum of Rs.80,000/- (Rs.2,000/- X 40%) is awarded towards disability.

10. According to the appellant, he has taken treatment as in-patient in Government Head Quarters Hospital, Villupuram, from 15.07.2008 to 29.07.2008 and subsequently, in Pondicherry Institute of Medical Sciences from 30.07.2008 to 04.08.2008. The Tribunal has not awarded any amount towards attendant charges. Considering the nature of injuries and period of treatment taken by the appellant, this Court awards a sum of Rs.10,000/- towards attendant charges. The amounts awarded by the Tribunal towards extra nourishment and damage to clothes are meagre and the same are hereby enhanced to Rs.10,000/- and Rs.1,000/- respectively. The appellant has not produced any document to prove that he requires money for future medical expenses and therefore, he is not entitled any compensation towards future medical expenses. The amounts awarded by the Tribunal under all the other heads are just and reasonable and the same 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 or reduced
1.	Loss of earning	10,000	39,000	Enhanced
2.	Transportation	7,000	7,000	Confirmed
3.	Extra nourishment	7,000	10,000	Enhanced
4.	Damage to clothes	500	1,000	Enhanced
5.	Pain and suffering	20,000	20,000	Confirmed
6.	Disability	45,000	80,000	Enhanced

7.	Attendant charges	-	10,000	Granted
	Total	89,500	1,67,000	Enhanced by Rs.77,500/-

C.M.A.No.1863 of 2015 (M.C.O.P.No.4690 of 2009):

11.It is the contention of the appellant that he was aged 31 years at the time of accident and was working as owner-cum-rider of the tyre cart and was earning a sum of Rs.500/- per day. The appellant has not filed any document to prove the same. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal has fixed a sum of Rs.5,000/- as monthly income of the appellant and awarded a sum of Rs.20,000/- towards loss of earning for a period of four months. The accident is of the year 2008 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.7,000/- is fixed as monthly income of the appellant. Due to the injuries, the appellant would not have attended his work atleast for a period of eight months. Therefore, the appellant is entitled to a sum of Rs.56,000/- (Rs.7,000/- X 8) towards loss of income for eight months. In the accident, the appellant has sustained compression injury C4, C5 with C4, C5 strain, dislocation of right wrist and concussion brain. P.W.3/Doctor has assessed the disability of the appellant as 70%. The Tribunal reduced the disability to 45% holding that P.W.2 is not the doctor who treated the appellant, the appellant has not undergone any surgery and awarded a sum of Rs.90,000/- at the rate of Rs.2,000/- per percentage of disability. The reason given by the Tribunal for reducing the percentage of disability is not proper. The appellant is entitled to compensation for 50% disability. The appellant has not proved that he suffered functional disability and there is loss of earning capacity. Therefore, the percentage method adopted and the amount awarded by the Tribunal per percentage of disability is proper. Thus, a sum of Rs.1,00,000/- (Rs.2,000/- X 50%) is awarded towards disability.

12.According to the appellant, he took treatment in Government Head Quarters Hospital, Villupuram, from 15.07.2008 to 29.07.2008 and subsequently, in Pondicherry Jipmer hospital from 30.07.2008 to 06.08.2008. The Tribunal has not awarded any amount towards attendant charges. Considering the nature of injuries and period of treatment taken by the appellant, this Court awards a sum of Rs.12,500/- towards attendant charges. The amounts awarded by the Tribunal towards extra nourishment and damage to clothes are meagre and the same are hereby enhanced to Rs.10,000/- and Rs.1,000/- respectively. The appellant has not produced any document to prove that he is taking treatment till

today and therefore, he is not entitled any compensation towards future medical expenses. The amounts awarded by the Tribunal under all the other heads are just and reasonable and the same 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 or reduced
1.	Loss of earning	20,000	56,000	Enhanced
2.	Transportation	7,000	7,000	Confirmed
3.	Extra nourishment	7,000	10,000	Enhanced
4.	Damage to clothes	500	1,000	Enhanced
5.	Loss of properties & loss of value of bullocks	15,000	15,000	Confirmed
6.	Pain and suffering	30,000	30,000	Confirmed
7.	Disability	90,000	1,00,000	Enhanced
8.	Attendant charges	-	12,500	Granted
	Total	1,69,500	2,31,500	Enhanced by Rs.62,000/-

13. In the result,

(i) C.M.A.No.1862 of 2015 (M.C.O.P.No.4657 of 2009) is partly allowed and the compensation awarded by the Tribunal at Rs.89,500/- is hereby enhanced to Rs.1,67,000/-;

(ii) C.M.A.No.1863 of 2015 (M.C.O.P.No.4690 of 2009) is partly allowed and the compensation awarded by the Tribunal at Rs.1,69,500/- is hereby enhanced to Rs.2,31,500/-;

(iii) The rate of interest awarded by the Tribunal is confirmed.

(iv) The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court 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. On such deposit, the appellants/claimants in both the appeals are permitted to withdraw their respective award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

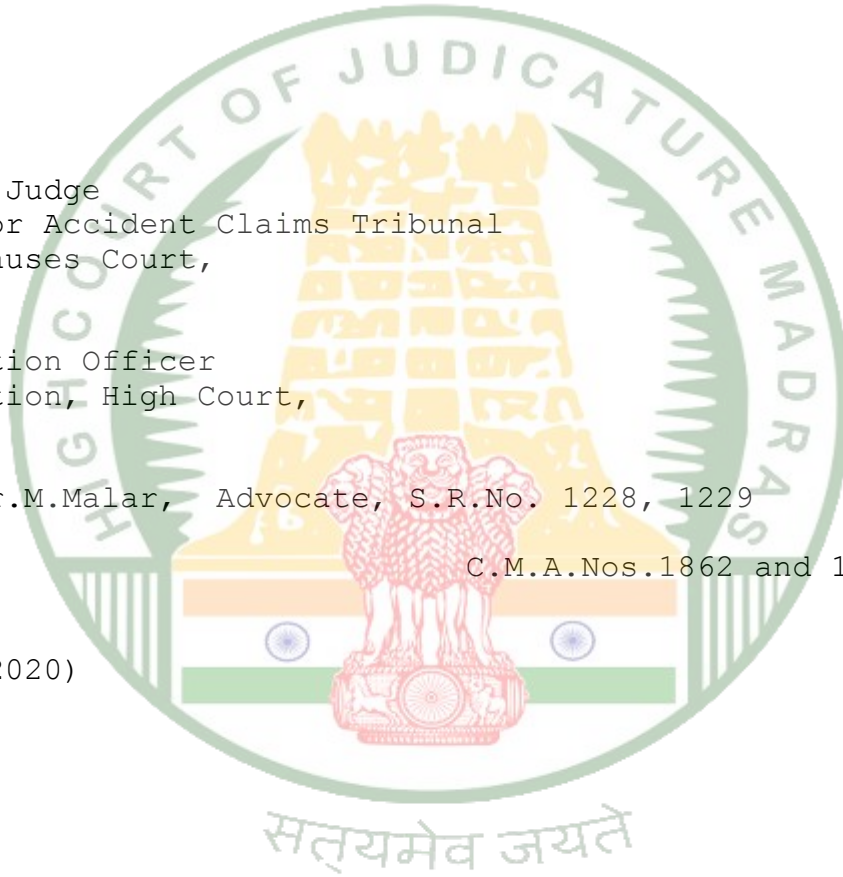
1.The III Judge
The Motor Accident Claims Tribunal
Small Causes Court,
Chennai.

2.The Section Officer
V.R.Section, High Court,
Chennai.

+2cc to Mr.M.Malar, Advocate, S.R.No. 1228, 1229

C.M.A.Nos.1862 and 1863 of 2015

RSV (CO)
GN (03/09/2020)



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