

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CMA.Nos.2272 to 2274 of 2012

and

MP.Nos.1, 1 and 1 of 2015

V.Karthik .. Appellant in CMA.No.2272 of 2012

S.Gokul .. Appellant in CMA.No.2273 of 2012

J.Arun .. Appellant in CMA.No.2274 of 2012

vs.

1.C.Vaiyapuri

2.M/s.Prasad and Co. Ltd.,
H No. 6-1-125 B,
Ammaiya Naickanoor,
Kodai Road, Nila Kottai,
Pin - 624 201.

3.United India Insurance Co. Ltd.,

D.O.7, 3-5-817, 5th Floor,
Basheer Bagh,
Hyderabad - 500 029,
Andhra Pradesh.
(Policy No.051500/31/08/01
00000289 26-4-2008 to
25-4-2009)

4.Millennium Liners Pvt. Ltd.,

RS 5/1, 46 Pudur Road,
Rudush Colony,
Kollampalayam,
Erode - 638 002.

5.IFFCO TOKYO General Insurance Co. Ltd.,

Tulsi Chambers, 3rd Floor,
195, TV Swamy Road (West),
R.S.Puram, Coimbatore - 641 002.
(Policy No.39094916
2-6-2008 to 1-6-2009)

.. Respondents in CMA.Nos.2272 & 2273 of 2012/
Respondents

- 1.C.Vaiyapuri
- 2.M/s.Prasad and Co. Ltd.,
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00000289 26-4-2008 to
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- 4.V.Karthik
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(Policy No.39094916
2-6-2008 to 1-6-2009)

.. Respondents in CMA.No.2274 of 2012/
Respondents

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 20.07.2011 passed in MCOP.Nos.205 of 2009, 254 of 2009 and 280 of 2009 on the file of the Motor Accident Claims Tribunal / Principal Subordinate Court, Erode.

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CMA.Nos.2272 & 2273 of 2012

For Appellant : Mr.K.Govi Ganesan

For R1, R2, R4 : No appearance

R3 : Mrs.I.Malar

R5 : Mr.E.Rajadurai
for Mr.M.B.Gopalan

CMA.No.2274 of 2012

For Appellant : Mr.K.Govi Ganesan

For R1, R4 : No appearance

R2, R5 : Not ready

R3 : Mrs.I.Malar

R6 : Mr.E.Rajadurai
for Mr.M.B.Gopalan

COMMON JUDGMENT

The appellants are the claimants in MCOP.Nos.205 of 2009, 254 of 2009 and 280 of 2009 on the file of the Motor Accident Claims Tribunal / Principal Subordinate Court, Erode. They filed the claim petitions seeking compensation for the injuries sustained by them in a road accident that took place on 28.02.2009.

2. The claimant in MCOP.No.205 of 2009, namely, V.Karthik is referred as the first claimant, the claimant in MCOP.No.254 of 2009, namely, S.Gokul is referred as the second claimant and the claimant in MCOP.No.280 of 2009, namely, J.Arun is referred as the third claimant. Other parties are referred as per their ranking in these Civil Miscellaneous Appeals.

3. The case of the claimants is that on 28.02.2009, at about 10.30 pm, the first, second and the third claimants were travelling in a Bolero car bearing Registration No. TN 33 AL 2261 near Kalingam Patti Pirivu, Dindugal - Madurai National Highway. The first claimant was driving the said car, while the other two travelled on the back side of the car. At that time, a tipper lorry bearing Registration No.TN 57 W 7518 came in the opposite direction in a rash and negligent manner and hit the car, as a result of which, the claimants sustained grievous injuries. According to the claimants, the rash and negligent driving of the driver of the tipper lorry was the cause of the

accident. Therefore, they filed respective MCOPs seeking compensation for the injuries sustained by them.

4. The learned Motor Accident Claims Tribunal / Principal Subordinate Judge, Erode after analysing the evidence on record, awarded a compensation of Rs.1,70,000/-, Rs.1,50,000/- and Rs.2,57,000/- together with interest at the rate of 7.5% per annum to the claimants in MCOP.Nos. 205 of 2009, 254 of 2009 and 280 of 2009 respectively and directed the first, second and third respondents therein to pay the respective compensation to the claimants jointly and severally. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeals.

5. Heard, Mr.K.Govi Ganesan, learned counsel appearing for the claimants, Mrs.I.Malar, learned counsel appearing for the United India Insurance Company and Mr.E.Rajadurai, learned counsel appearing for the Iffco Tokyo General Insurance Company.

6.The learned counsel appearing for the appellants/claimants made the following submissions:

(i) In C.M.A.No.2272 of 2012 (M.C.O.P.No.205 of 2009), the first claimant was aged 22 years at the time of the accident, he was a driver in Millennium Liners Private Limited Company, earning a sum of Rs.5,000/- per month. The Tribunal without considering the same, fixed a meagre sum of Rs.3,000/- as his monthly income. Due to the accident, he sustained fractures of thigh bones, right hand and maxilla bone. A perusal of Exs.P19, P20, P24 and P25 shows that the claimant had incurred a medical expense of Rs.1,14,167/-. However, the Tribunal had erroneously reduced the same to Rs.85,000/-. The Tribunal has also awarded meagre amounts towards other heads and therefore, he prayed for enhancement of compensation.

(ii) In C.M.A.No.2273 of 2012 (M.C.O.P.No.254 of 2009), the second claimant was aged 23 years at the time of the accident, he was a student and coolie, earning a sum of Rs.5,000/- per month. The Tribunal without considering the same, fixed a meagre sum of Rs.3,000/- as his monthly income. Due to the accident, the second claimant sustained head injury, his left eye vision reduced and memory power reduced. A perusal of Exs.P31, 32, 55 and 56 shows that he had incurred a medical expense of Rs.67,017/-. However, the Tribunal had reduced the same to Rs.66,000/-. The Tribunal has also awarded meagre amounts towards other heads and therefore, he prayed for enhancement of compensation.

(iii) In C.M.A.No.2274 of 2012 (M.C.O.P.No.280 of 2009), the third claimant was aged 30 years at the time of the accident, he was a sales executive cum representative, earning a sum of Rs.10,000/- per month. The Tribunal without considering the same, fixed a meagre sum of Rs.3,000/- as his monthly income. Due to the accident, he sustained fracture of three bones of left hand, two bones of left shoulder, grievous injury in stomach and fractures of right leg and right thigh. He also sustained some other simple injuries. A perusal of Exs.5,9,10,16 and 38 shows that he had incurred a medical expense of Rs.2,29,765/-. However, the Tribunal had erroneously reduced the same to Rs.1,70,000/-. He also submitted that the third claimant took treatment as inpatient in Dindigul Hospital from 28.02.2009 to 25.03.2009. However, the Tribunal has awarded meagre amounts towards transportation, extra nourishment, disability, loss of income and pain & sufferings, without considering the nature of injuries sustained by the third claimant. He therefore, prayed for the enhancement of compensation awarded by the Tribunal.

7. Per contra, the learned counsel appearing for both the Insurance Company contended that the Tribunal after considering the materials available on record, has awarded just compensation and the appellants/claimants have not made out any case for enhancement of compensation and prayed for dismissal of the appeals.

8. Heard the learned counsel appearing for the appellants/ claimants as well as both the Insurance Company and perused the materials available on record.

9.(i) C.M.A.No.2272 of 2012 (M.C.O.P.No.205 of 2009):

From the materials available on record, it is seen that the first claimant has contended that he sustained fractures of thigh bones, right hand and maxilla bone. Dr.K.Periyasamy (PW4) has assessed the permanent disability at 38% and the Tribunal has reduced the same to 30% and awarded a sum of Rs.60,000/- (Rs.2000/- per percentage of disability), which is just and it need not be disturbed at this stage. The first claimant was aged 22 years on the date of accident and was earning a sum of Rs.5,000/- per month. The first claimant did not file any document to prove the same. In the absence of any material evidence to prove the avocation and income, the Tribunal has fixed a sum of Rs.3,000/- as monthly income and awarded a sum of Rs.4,000/- towards loss of income for a period of 40 days. Considering the nature of injuries sustained by him, this Court is inclined to award loss of income for three months. Accordingly, a sum of Rs.9,000/-(Rs.3,000 X 3 months) towards loss of income is awarded. He took treatment as in-patient in

City Hospital, Dindigul from 13.03.2009 to 23.03.2009. However, the Tribunal has not awarded any amount towards Attender's charges, therefore, a sum of Rs.5,000/- is awarded towards attender's charges. A sum of Rs.3,000/- and Rs.3,000/- awarded by the Tribunal towards transportation & extra nourishment is meagre and hence, sum of Rs.5,000/- and Rs.5,000/- are awarded towards transportation and extra nourishment respectively. A sum of Rs.15,000/- awarded towards pain and sufferings is enhanced to Rs.20,000/-. A perusal of Exs.P19, P20, P24 and P25 shows that the claimant had incurred a medical expense of Rs.1,14,167/-. Therefore, a sum of Rs.85,000/- awarded by the Tribunal towards medical bill is enhanced to Rs.1,14,167/-. Thus, the compensation awarded by the Tribunal is modified as follows:

C.M.A.No.2272 of 2012 (M.C.O.P.No.205 of 2009):

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of income	4,000	9,000
2.	Transportation	3,000	5,000
3.	Extra nourishment	3,000	5,000
4.	Medical expenses	85,000	1,14,167
5.	Attender charges	nil	5,000
6.	Pain and sufferings	15,000	20,000
7.	Disability	60,000	60,000
	Total	Rs.1,70,000/-	Rs.2,18,167/- rounded off to Rs.2,18,200/-

(ii) In C.M.A.No.2273 of 2012 (M.C.O.P.No.254 of 2009):

From the materials available on record, it is seen that the second claimant has contended that he sustained head injury, his left eye vision reduced and memory power reduced. Dr.Selvaperumal (PW6) assessed the permanent disability at 25% and Dr.Shanmuganathan (PW7) has assessed the permanent disability for partial loss of eye vision at 25% and the Tribunal has assessed the total disability at 30% and awarded a

sum of Rs.60,000/- (Rs.2000/- per percentage of disability), which need not be disturbed at this stage. He was aged 23 years on the date of the accident, earning a sum of Rs.5,000/- per month. The second claimant did not file any document to prove the same. In the absence of any material evidence to prove the avocation and income, the Tribunal fixed a sum of Rs.3,000/- as monthly income and awarded a sum of Rs.3,000/- towards loss of income for a period of one month. Considering the nature of injuries sustained by him, this Court is inclined to award loss of income for five months. Accordingly, a sum of Rs.15,000/- (Rs.3,000 X 5) towards loss of income is awarded. He also took treatment as in-patient in City Hospital, Dindigul from 28.02.2009 to 12.03.2009. However, the Tribunal has not awarded any amount towards Attender's charges, therefore, a sum of Rs.5,000/- is awarded towards the same. Sum of Rs.3,000/- and Rs.3,000/- awarded by the Tribunal towards transportation & extra nourishment are meagre and hence, sum of Rs.5,000/- and Rs.5,000/- are awarded towards transportation and extra nourishment respectively. A sum of Rs.15,000/- awarded towards pain and sufferings is enhanced to Rs.20,000/-. A perusal of Exs.P31, 32, 55 and 56 shows that the second claimant had incurred a medical expense of Rs.67,017/-. Therefore, a sum of Rs.66,000/- awarded by the Tribunal towards medical bill is enhanced to Rs.67,017/-. Thus, the compensation awarded by the Tribunal is modified as follows:

C.M.A.No.2273 of 2012 (M.C.O.P.No.254 of 2009):

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of income	3,000	15,000
2.	Transportation	3,000	5,000
3.	Extra nourishment	3,000	5,000
4.	Medical expenses	66,000	67,071
5.	Attender charges	nil	5,000
6.	Pain and sufferings	15,000	20,000
7.	Disability	60,000	60,000

	Total	Rs.1,50,000/-	Rs.1,77,017/- rounded off to Rs.1,77,100/-
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(iii) In C.M.A.No.2274 of 2012 (M.C.O.P.No.280 of 2009):

From the materials available on record, it is seen that the third claimant has contended that he sustained fracture of three bones of left hand, two bones of left shoulder, grievous injury in stomach and fractures in right leg and right thigh. The Doctor has assessed the permanent disability at 52% and the Tribunal has reduced the same to 30% and awarded a sum of Rs.60,000/- (Rs.2000/- per percentage of disability). Considering the nature of injuries sustained by him, this Court is of the considered opinion that 40% can be fixed as the permanent disability, therefore, a sum of Rs.80,000/- (Rs.2000/- per percentage of disability) is awarded towards disability. He was aged 30 years on the date of the accident, earning a sum of Rs.10,000/- per month. In the absence of any material evidence to prove the avocation and income, the Tribunal fixed a sum of Rs.3,000/- as monthly income and awarded a sum of Rs.6,000/- towards loss of income for a period of two months. Considering the nature of injuries sustained by him, this Court is inclined to award loss of income for six months. Accordingly, a sum of Rs.18,000/- (Rs.3,000 X 6) towards loss of income is awarded. He also took treatment in Rajeswari Hospital, Dindigul from 28.02.2009 to 25.03.2009. However, the Tribunal has not awarded any amount towards Attender's charges, therefore, a sum of Rs.5,000/- is awarded towards the same. Sum of Rs.3,000/- and Rs.3,000/- awarded by the Tribunal towards transportation and extra nourishment are meagre and hence, a sum of Rs.10,000/- and Rs.5,000/- are awarded towards transportation and extra nourishment respectively. A sum of Rs.15,000/- awarded towards pain and sufferings is enhanced to Rs.25,000/-. A perusal of Exs.5,9,10,16 and 38 shows that the second claimant had incurred a medical expense of Rs.2,29,765/-. However, some medical bills adduced by the third claimant are not acceptable. Therefore, a sum of Rs.1,70,000/- towards medical bill, awarded by the Tribunal is confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

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C.M.A.No.2274 of 2012 (M.C.O.P.No.280 of 2009):

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of income	6,000	18,000
2.	Transportation	3,000	10,000
3.	Extra nourishment	3,000	5,000
4.	Medical expenses	1,70,000	1,70,000
5.	Attender charges	nil	5,000
6.	Pain and sufferings	15,000	25,000
7.	Disability	60,000	80,000
	Total	Rs.2,57,000/-	Rs.3,13,000/-

10. In the result, C.M.A.Nos.2272 to 2274 of 2012 are partly allowed and the compensation amounts awarded by the Tribunal at Rs.1,70,000/-, Rs.1,50,000/- and Rs.2,57,000/- in MCOP.Nos.205, 254 and 280 of 2009 are hereby enhanced to Rs.2,18,200/-, Rs.1,77,100/- and Rs.3,13,000/- respectively along with the interest at the rate of 7.5% per annum from the date of petition till the date of deposit. In all the appeals, the appellants / claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The respondents 1 to 3 herein are directed to deposit the enhanced award amount now determined by this Court jointly and severally along with interest and costs, less the amount already deposited if any, to the credit of MCOP.Nos.205, 254 and 280 of 2009 respectively within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants in all the appeals are permitted to withdraw their respective enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, the connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
The Principal Subordinate Judge,
Erode.

2.The Section Officer
VR Section
High Court, Madras-104

+1 cc to Mr.T.Ravichandran Advocate sr6320
+3 ccs to Mr.M.B.Gopalan Advocate sr7336 to 7338
+3 ccs to Mr.K.Govi Ganesan Advocate sr6407 to 6409

CMA.Nos.2272 to 2274 of 2012
and
MP.Nos.1, 1 and 1 of 2015

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