

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CMA.Nos.2497 to 2500 of 2013
and
MP.Nos.1, 1, 1 and 1 of 2013

- 1.The Branch Manager,
The United India Insurance Company Limited,
54, Kamaraj Nagar, 2nd floor,
Annai Indhra Gandhi Salai,
(behind bus stand), Panruti.
- 2.The Branch Manager,
The United India Insurance Company Limited,
42, Madathu Street,
First Floor, Kumbakonam. ... Appellants in all C.M.As/
Respondents 2 and 4 in all

vs.

Saravanan
S/o.Sabapathy ...R1 in C.M.A.No.2497 of 2013/
Petitioner

Saravanan
S/o.Perumal ...R1 in C.M.A.No.2498 of 2013/
Petitioner

Ganesan ...R1 in C.M.A.No.2499 of 2013/
Petitioner

Ravikumar ...R1 in C.M.A.No.2500 of 2013/
Petitioner

2.Rani ...R2 in all C.M.A's/1stRespondent

3.Duraisingam ...R3 in all C.M.A's/3rd Respondent

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 15.10.2012 passed in MCOP.Nos.63 to 66 of 2010 on the file of the Motor Accident Claims Tribunal (Sub-ordinate Judge), Neyveli.

For Appellant : Mr.M.Krishnamoorthy
(in all CMAs)

For Respondents : Mr.MA.P.Thangavel
(in all CMAs) for R1
R3-Ex-parte

COMMON JUDGMENT

The United India Insurance Company, the second and fourth respondents in MCOP.Nos.63 to 66 of 2010 on the file of the Motor Accident Claims Tribunal (Sub-ordinate Court), Neyveli has filed the present appeals questioning the quantum of compensation awarded to the claimants.

2. The claimant in MCOP.No.63 of 2010, namely, Saravanan is referred as the first claimant, the claimant in MCOP.No.64 of 2010, namely, Saravanan is referred as the second claimant, the claimant in MCOP.No.65 of 2010, namely, Ganesan is referred as the third claimant and the claimant in MCOP.No.66 of 2010, namely, Ravikumar is referred as the fourth claimant. Other parties are referred as per their ranking in these Appeals.

3. The case of the claimants is that on 06.10.2010, at about 8.00 a.m, they were travelling in a Qualis car bearing Registration No. TN 51 V 0955 along GST Road, Chennai near Palaveli Hotel Vaigai. An Eicher Mini lorry bearing Registration No.TN 50 Z 8616 was travelling ahead of the Qualis car and at that time, the driver of the said lorry applied sudden brakes, as a result of which, the Qualis car hit the Eicher Mini lorry. Due to the above accident, the claimants sustained grievous injuries. According to them, the rash and negligent driving of the driver of the Eicher Mini lorry was the cause of the accident. Therefore, they filed respective MCOPs seeking compensation for the injuries sustained by them.

4. The learned Subordinate Judge / Motor Accident Claims Tribunal, Neyveli, after analysing the evidence on record, awarded compensation of Rs.3,03,442/-, Rs.4,65,675/-, Rs.1,44,443/- and Rs.7,77,730/- together with interest at the rate of 7.5% per annum to the claimants in MCOP.Nos.63 to 66 of 2010 respectively.

5. Challenging the said award dated 15.10.2012, passed in MCOP.Nos.63 to 66 of 2010, the appellants / Insurance Company have come out with the present appeals.

6. Heard, Mr.M.Krishnamoorthy learned counsel appearing for the appellant and Mr.MA.P.Thangavel, learned counsel appearing for the claimants.

7. (i) C.M.A.No.2497 of 2013 (M.C.O.P.No.63 of 2010):

In the Spiral CT scan of Facial Bones (Ex.P12) issued by MIOT Hospitals, it is observed that (i) right hemi mandible is fractured with displacement supero inferiorly (ii) fracture is lateral to the lateral incisor. In the discharge summary (Ex.P13), it is stated that right mandible fracture with chest injury. It is also seen from Ex.P14 that the first claimant was advised to attend physiotherapy for walking training in the parallel bar. Dr.Balamurugan (PW6) has assessed the partial permanent disability at 45% and the Tribunal has reduced the same to 25% and awarded a sum of Rs.1,70,000/- (Rs.6,800/- per percentage of disability) to the first claimant and the same is excessive and needs interference by this Court. Considering the nature of injuries, the disability can be fixed at 35% and since the accident is of the year 2010, only Rs.3,000/- per percentage of disability can be awarded. Therefore, a sum of Rs.1,05,000/- is awarded towards partial permanent disability. The Tribunal has not awarded any amount towards loss of income. According to the first claimant, he was aged 40 years on the date of accident, earning a sum of Rs.30,000/- per month. In the absence of any material evidence, this Court fixes a sum of Rs.3,000/- as monthly notional income and accordingly, Rs.12,000/-(Rs.3,000 X 4) is awarded towards loss of income for four months. He took treatment in MIOT Hospital, Chennai from 06.10.2010 to 11.10.2010 and once again he took treatment in the same Hospital on 26.10.2010. In such circumstances, Rs.40,000/- awarded towards pain and sufferings, extra nourishment and future medical expenses in total is enhanced to Rs.45,000/-. The sum of Rs.93,442/- awarded towards medical expenses is hereby confirmed. However, the Tribunal has not awarded any amount towards attender's charges and transportation and therefore, sum of Rs.5,000/- and Rs.10,000/- are awarded towards the same respectively. Thus, the compensation awarded by the Tribunal is modified as follows:

C.M.A.No.2497 of 2013 (M.C.O.P.No.63 of 2010):

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Partial permanent disability	1,70,000	1,05,000

2.	Pain and sufferings, extra nourishment and future medical expenses	40,000	45,000
3.	Medical expenses	93,442	93,442
4.	Transportation	nil	10,000
5.	Attender's charges	nil	5,000
6.	Loss of income	nil	12,000
	Total	Rs.3,03,442/-	Rs.2,70,442/-

(ii) C.M.A.No.2498 of 2013 (M.C.O.P.No.64 of 2010):

In the Spiral CT scan of Brain (Ex.P21), it is observed that the second claimant had sustained fracture of medial wall of left orbit with enophthalmos. In CT - orbit report (Ex.P22), it is stated that (i) minimal intraorbital hemorrhage with periorbital haematoma on left side (ii) fracture of medial wall of left orbit. In Spiral CT of Chest (Plain) (Ex.P23), it is observed that 'bilateral posterior basal dependent atelectasis'. In Discharge Summary (Ex.P24), it is seen that 'left globe dislocation'. Dr.Balamurugan (PW6) has assessed the partial permanent disability at 30% and the Tribunal has taken up the same and awarded a sum of Rs.1,95,000/- (Rs.6,500/- per percentage of disability) and the same is excessive and needs interference by this Court. Considering the nature of injuries sustained by him, the disability can be fixed at 35% and since the accident is of the year 2010, only Rs.3,000/- per percentage of disability can be awarded. Therefore, a sum of Rs.1,05,000/- is awarded towards partial permanent disability. The Tribunal has also awarded a sum of Rs.1,00,000/- towards loss of vision and the same is hereby confirmed. The Tribunal has not awarded any amount towards loss of income. According to the second claimant, he was aged 42 years on the date of accident, earning a sum of Rs.10,000/- per month. In the absence of any material evidence, this Court fixes a sum of Rs.3,000/- as monthly notional income and accordingly, Rs.12,000/- (Rs.3,000 X 4) is awarded towards loss of income for four months. The Tribunal has awarded a sum of Rs.1,00,000/- towards future loss of earnings, future medical expenses, pain and sufferings, mental agony and extra nourishment in total and the respective heads are hereby modified and a sum of Rs.1,00,000/- towards pain and sufferings and mental agony is alone awarded. The sum of Rs.62,275/- awarded towards medical expenses is hereby

confirmed. The Tribunal has not awarded any amount towards attender's charges and therefore, a sum of Rs.5,000/- is awarded towards the same. A sum of Rs.8,400/- awarded towards transportation is hereby enhanced to Rs.10,000/- since he has gone to Hospital many times. A sum of Rs.2,000/- is awarded towards extra nourishment under separate head. Thus, the compensation awarded by the Tribunal is modified as follows:

C.M.A.No.2498 of 2013 (M.C.O.P.No.64 of 2010):

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1	Partial permanent disability	1,95,000	1,05,000
2	Future loss of earning, future medical expenses, mental agony caused to the family members, pain and sufferings, extra nourishment	1,00,000	nil
3	Pain and sufferings and mental agony	nil	1,00,000
4	Loss of vision	1,00,000	1,00,000
5	Medical expenses	62,275	62,275
6	Extra nourishment	nil	2,000
7	Attender's charges	nil	5,000
8	Loss of income	nil	12,000
9	Transportation	8,400	10,000
	Total	Rs.4,65,675/-	Rs.3,96,275/-

(iii) In C.M.A.No.2499 of 2013 (M.C.O.P.No.65 of 2010):

In the discharge summary (Ex.P35), issued by MIOT Hospitals, the diagnosis of the third claimant is mentioned as head injury for evaluation. It is also seen that he was treated conservatively with antibiotic analgesis and other supportive medication. Dr.Balamurugan (PW6) has assessed the partial permanent disability at 30% and the Tribunal has reduced the same to 15% and awarded a sum of Rs.97,500/- (Rs.6,500/- per percentage of disability) and the same is excessive and needs interference by this Court. Considering the nature of injuries

sustained, the disability can be fixed only at 10% and since the accident is of the year 2010, only Rs.3,000/- per percentage of disability can be awarded. Therefore, a sum of Rs.30,000/- is awarded towards partial permanent disability. He has sustained only simple injuries and hence a sum of Rs.20,000/- awarded towards pain and sufferings is hereby reduced to Rs.15,000/-. The sum of Rs.26,943/- awarded towards medical expenses is hereby confirmed. The Tribunal has not awarded any amount towards transportation and extra nourishment and hence a sum of Rs.1,000/- and Rs.1,000/- are awarded towards them respectively. Thus, the compensation awarded by the Tribunal is modified as follows:

C.M.A.No.2499 of 2013 (M.C.O.P.No.65 of 2010):

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Partial permanent disability	97,500	30,000
2.	Pain and sufferings	20,000	15,000
3.	Medical expenses	26,943	26,943
4.	Transportation	nil	1,000
5.	extra nourishment	nil	1,000
	Total	Rs.1,44,443/-	Rs.73,943/-

(iv) In C.M.A.No.2500 of 2013 (M.C.O.P.No.66 of 2010):

In the Spiral CT scan of Facial Bones (Ex.P40), it is observed that comminuted fracture of ramus of right hemi mandible is seen with subluxation of temporomandibular joint. He was admitted in the MIOT Hospitals from 06.10.2010 to 16.10.2010 and in discharge summary (Ex.P42), it is seen that (i) fracture shaft femur left (ii) right mandible ramus and subcondylar fracture and (iii) diabetes mellitus. It is also seen that on 07.10.2010, he underwent closed IM nailing left femur and on 12.10.2010, he underwent miniplate osteosynthesis right mandible. It is also seen from Ex.P43, that he was advised to attend physiotherapy for walking training in the parallel bar with support of 10% weight bearing. He was once again admitted in the same Hospital from 18.01.2011 to 20.01.2011 and in that discharge summary (Ex.P42), it is seen that he had underwent implant removal on 19.01.2011. Dr.Balamurugan (PW6) has assessed the partial permanent disability at 45% on left thigh and 30% on head and the Tribunal has taken up the total

disability as 45% and awarded a sum of Rs.2,92,500/- (Rs.6,500/- per percentage of disability) and the same is excessive and needs interference by this Court. Considering the nature of injuries sustained by him, the disability can be fixed at 45% and since the accident is of the year 2010, only Rs.3,000/- per percentage of disability can be awarded. Therefore, a sum of Rs.1,35,000/- is awarded towards partial permanent disability. The Tribunal has awarded a sum of Rs.50,000/- towards future medical expenses, pain and sufferings, and extra nourishment in total and the same is excessive and it is hereby reduced to Rs.45,000/-. The Tribunal has not awarded any amount towards loss of income. According to the fourth claimant, he was aged 42 years on the date of accident and was earning a sum of Rs.18,000/- per month. In the absence of any material evidence this Court fixes Rs.3,000/- as monthly notional income and accordingly, Rs.12,000/-(Rs.3,000 X 4) is awarded towards loss of income for four months. The sum of Rs.4,04,162/- awarded towards medical expenses is hereby confirmed. The Tribunal has not awarded any amount towards attender's charges and therefore, a sum of Rs.5,000/- is awarded towards the same. A sum of Rs.31,068/- awarded towards transportation is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

C.M.A.No.2500 of 2013 (M.C.O.P.No.66 of 2010):

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1	Partial permanent disability	2,92,500	1,35,000
2	Future medical expenses, pain and sufferings, extra nourishment	50,000	45,000
3	Medical expenses	4,04,162	4,04,162
4	Attender's charges	nil	5,000
5	Loss of income	nil	12,000
6	Transportation	31,068	31,068
	Total	Rs.7,77,730/-	Rs.6,32,230/-

8. In the result, C.M.A.Nos.2497 to 2500 of 2013 are partly allowed and the compensation amounts awarded by the Tribunal at Rs.3,03,442/-, Rs.4,65,675/-, Rs.1,44,443/- and Rs.7,77,730/- in MCOP.Nos.63 to 66 of 2010 together with

interest at the rate of 7.5% per annum are hereby reduced to Rs.2,70,442/-, Rs.3,96,275/-, Rs.73,943/- and Rs.6,32,230/- respectively along with the interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants, second and third respondents herein are directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited if any, jointly and severally to the credit of MCOP.Nos.63 to 66 of 2010 on the file of the Motor Accident Claims Tribunal / Sub-ordinate Judge, Neyveli within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first, second, third and fourth claimants in all the appeals are permitted to withdraw their respective award amounts along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
The Sub-ordinate Judge, Neyveli.

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

+4ccs to the M/s.M.Krishnanoorthy, Advocate, Sr.No. 7330 to 7333
+1 cc to M/s.Ma.P.Thangavel, Advocate Sr.No. 7836

CMA.Nos.2497 to 2500 of 2013
and
MP.Nos.1, 1, 1 and 1 of 2013

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RMP (27/01/2021)

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