

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos. 1622 & 1623 of 2016

M. Ekambaram ... Appellant in C.M.A.No.1622/2016
/Petitioner

M.Thirunavukkarasu ... Appellant in C.M.A.No.1623/2016/
Petitioner

Vs.

1.N. Gunalan

(Since R1 remained exparte before the Tribunal,
his presence may be dispensed with)

2.The New India Assurance Co. Ltd.,
No. 45, Moore Street,
Chennai 1.

... Respondents in both appeals
/Respondents

Common Prayer: These Civil Miscellaneous Appeals are filed under
Section 173 of Motor Vehicles Act, 1988, against the common
award dated 23.01.2014, made in M.A.C.T.O.P. Nos. 5078 & 5080 of
2010, on the file of the VI Judge, Small Causes Court, (Motor
Accident Claims Tribunal), Chennai.

(In both appeals)

For Appellant : Ms. A. Subadra
for Ms. M. Malar

For Respondents: Mr. R. Neethi Perumal (For R2)
R1-Exparte

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

These Civil Miscellaneous Appeals have been filed for
enhancement of the compensation granted by the Tribunal in the
common award dated 23.01.2014, made in M.A.C.T.O.P. Nos. 5078 &
5080 of 2010, on the file of the VI Judge, Small Causes Court,
(Motor Accident Claims Tribunal), Chennai.

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

3.The appellant/claimant in both the appeals filed M.A.C.T.O.P. Nos. 5078 & 5080 of 2010, on the file of the VI Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.2,00,000/- each as compensation for the injuries sustained by them in the accident that took place on 22.09.2009.

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 van belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.25,000/- and Rs.1,10,000/- as compensation to the appellant/claimant in both the appeals respectively.

5.Not being satisfied with the amounts awarded by the Tribunal in the common award dated 23.01.2014, made in M.A.C.T.O.P. Nos. 5078 & 5080 of 2010, the appellants/claimants have come out with the present appeals.

6(a) Learned counsel appearing for the appellants contended that as far as the appellant in C.M.A. No. 1622 of 2016 [M.A.C.T.O.P. No. 5078 of 2010] is concerned, at the time of accident, he was aged 26 years and was working as a Mason and earning a sum of Rs.10,000/- per month. Due to the accident, the appellant sustained injuries like contusion in the right temporal region and took treatment as in-patient in Government General Hospital from 22.09.2009 to 02.10.2009, for a period of 11 days. P.W.4-Doctor assessed the disability of the appellant as 45%, but the Tribunal without assigning proper reasons, awarded lump sum compensation of Rs.25,000/- for loss of income, transport expenses, extra nourishment, damage to clothes, loss of earning and pain and suffering. The Tribunal considering the disability assessed by the Doctor, ought to have awarded compensation separately under the heads, permanent disability, pain and suffering, loss of earning capacity, transportation expenses, extra nourishment and damages to clothes. Considering the period of treatment taken, the Tribunal ought to have awarded compensation under the heads, attendant charges, medical expenses and future medical expenses. In any event, the total compensation awarded by the Tribunal is meagre and prayed for enhancement of the same.

6(b) As far as the appellant in C.M.A. No. 1623 of 2016 [M.A.C.T.O.P. No. 5080 of 2010] is concerned, the learned counsel appearing for the appellant contended that at the time

of accident, the appellant was working as a Construction Labour and was earning a sum of Rs.8,000/- per month. The Tribunal erred in fixing only a meagre sum of Rs.5,000/- per month as notional income. Due to the accident, the appellant suffered laceration of right knee, abrasion over right leg in the middle 1/3 fracture with deformity of both bones and contusion in the right fore head and took treatment in the Government General Hospital, Chenglepet. P.W.4-Doctor assessed the disability suffered by the appellant as 45%. The Tribunal without assigning proper reasons, reduced the same to 20% and awarded meagre amount towards permanent disability. The Tribunal has not awarded any amount towards damages to clothes, transport expenses, attendant charges and medical expenses. In any event, the compensation awarded by the Tribunal under different 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 awarded 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) It is the contention of the appellant in C.M.A. No. 1622 of 2016 that in the accident, he sustained contusion in the right temporal region and has taken treatment as in-patient in Government General Hospital, Chennai, from 22.09.2009 to 02.10.2009, for a period of 11 days. The appellant has examined P.W.4-Doctor to prove the injuries. The Tribunal has rejected the evidence of P.W.4 - Doctor on the ground that P.W.4 is not the Doctor who treated the appellant. The said reason is proper and the appellant is not entitled for any compensation for disability. The Tribunal awarded a lump sum compensation of Rs.25,000/- towards loss of income, transport to hospital charges, extra nourishment, damage to clothes, loss of earning and pain and suffering, which is meagre. The same is set aside. Considering the nature of injuries and period of treatment taken, the appellant is entitled to a sum of Rs.10,000/- towards attendant charges. Due to the accident, the appellant would have suffered more pain and suffering. A sum of Rs.10,000/- each is awarded towards pain and suffering and extra nourishment and Rs.1,000/- towards damages to clothes. The appellant has contended that he was working as a Mason and was earning a sum of Rs.10,000/- per month. He has not substantiated the same. The accident is of the year 2009. In the absence of any material evidence to prove the avocation and income of the appellant, a

sum of Rs.6,500/- per month is fixed as notional income. Due to the injuries sustained in the accident, the appellant would not have worked for atleast four months. In view of the same, the appellant is entitled to a sum of Rs.26,000/- [Rs.6,500/- x 4 months] towards loss of income. 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 income, transportation, extra nourishment, damage to clothes, loss of earning & pain and suffering	25,000/-	-	Set aside
2.	Extra nourishment	-	10,000/-	Granted
3.	Attendant charges	-	10,000/-	Granted
4.	Pain and suffering	-	10,000/-	Granted
5.	Loss of income	-	26,000/-	Granted
6.	Loss of clothes	-	1,000/-	Granted
	Total	25,000/-	57,000/-	Enhanced by Rs.32,000/-

9(b) As far as C.M.A. No. 1623 of 2016 is concerned, it is seen that the appellant has contended that due to the accident, he sustained laceration of right knee, abrasion over right leg, fracture with deformity of both bones and contusion in the right forehead. P.W.4-Doctor assessed the disability suffered by the appellant as 45% and produced Ex.P9 - Disability certificate to substantiate the same. The Tribunal reduced the percentage of disability suffered by the appellant to 20% on the ground that the assessment of P.W.4-Doctor is on the higher side. The reason given by the Tribunal for reducing the percentage of disability to 20% is not correct. Considering the nature of injuries and the deposition of P.W.4-Doctor, the appellant is entitled to compensation for 45% disability. Hence, the amount awarded by

the Tribunal towards disability is enhanced to Rs.90,000/- [45% x Rs.2,000/-]. The appellant has contended that he was working as a Construction Labour and was earning a sum of Rs.8,000/- per month. He has not substantiated the same. In the absence of any material evidence to prove the avocation and income, the Tribunal fixed a meagre sum of Rs.5,000/- per month as notional income of the appellant. The accident is of the year 2009. Considering the nature of work and year of the accident, the notional income of the appellant is fixed at Rs.6,500/- per month. The Tribunal has granted only a sum of Rs.20,000/- towards loss of income for 4 months. The same is meagre. Due to the injuries, the appellant would not have worked atleast for 5 months. Hence, the amount awarded by the Tribunal towards loss of income is enhanced to Rs.32,500/- [Rs.6,500/- x 5 months]. The Tribunal has granted a lumpsum of Rs.15,000/- towards transportation, extra nourishment and damages to clothes. The same is meagre. Considering the nature of injuries and the treatment taken, the same is enhanced to Rs.25,000/-. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, 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.	Disability	40,000/-	90,000/-	Enhanced
2.	Loss of income	20,000/-	32,500/-	Enhanced
3.	Medical expenses	5,000/-	5,000/-	Confirmed
4.	Transportation, extra nourishment & damage to clothes	15,000/-	25,000/-	Enhanced
5.	Pain and suffering	20,000/-	20,000/-	Confirmed
6.	Loss of amenities	10,000/-	10,000/-	Confirmed
	Total	1,10,000/-	1,82,500/-	Enhanced by Rs.72,500/-

10. In the result, both the appeals are partly allowed and amount awarded by the Tribunal at Rs.25,000/- and Rs.1,10,000/- are enhanced to Rs.57,000/- and Rs.1,82,500/- respectively along

with interest and costs. 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, to the credit of M.C.O.P. Nos. 5078 & 5080 of 2010 respectively. On such deposit, the appellant/claimant in both the appeals are permitted to withdraw their respective enhanced award amount, less the amount already withdrawn, if any, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

- 1.The VI Judge,
Small Causes Court,
(Motor Accident Claims Tribunal), Chennai.
- 2.The Section Officer,
V.R. Section,
High Court, Madras.

+2cc to M/s.M.Malar, Advocate Sr.4852 & 4853

C.M.A. Nos. 1622 & 1623 of 2016

spd[co]
srg 16/12/2020

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