

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2020

CORAM :

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.3730 of 2013 and 1986 of 2014

Marimuthu ... Appellant in CMA.No.3730 of 2013

G.Ranganathan ... Appellant in CMA.No.1986 of 2014

.Vs.

1. J.D.Chains Pvt Ltd,
No.11, Hanumantharayan Koil Street,
Parrys, Chennai-3.

2.The ICICI Lombard General Insurance Co Ltd.,
No.140, Nungambakkam,
Chennai-34. ... Respondents in both the appeals

Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.Nos.1063 and 2477 of 2011 dated 20.02.2013 on the file of the III Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.M.Selvam
in both the appeals.

For Respondents : R1 - Served. Name printed.
No appearance.
Mrs.R.Sreevidhya for R2
in both the appeals.

COMMON JUDGMENT

The appellants are the claimants filed these appeals for enhancement of compensation, as against the judgment and decree made in MCOP.Nos.1063 and 2477 of 2011 dated 20.02.2013 on the file of the III Court of Small Causes, Chennai.

2. On 20.02.2011 at about 9.00am the appellants were proceeding in a motorcycle bearing Reg.No.TN20-BS-8652 from Maduravoyal to Tambaram Road, near Kanniamman Nagar, Sivanandam Travels, at that time, the first respondent's car bearing

Reg.No.TN04-AH-0916 was driven by its driver in a rash and negligent manner and hit the appellants motorcycle. Thereby, the appellants sustained grievous injuries, the driver of the car is responsible for the accident, the first respondent as the owner and the second respondent as the insurance company are jointly and severally liable to pay the compensation.

3. The second respondent/insurance company denied the place, date and time of the accident. The appellants have to prove the period of treatment and disability. The amount of compensation claimed is highly excessive. The second respondent denied the accident, the first respondent vehicle is falsely implicated in the accident.

4. In order to prove the case of the claimants, PW1 to PW3 were examined and marked Ex.P1 to Ex.P17. No oral and documentary evidence has been marked on the side of the respondents.

5. Though notice was served on the 1st respondent as early as on 25.08.2014, there is no representation for them either in person or through the learned counsel.

6. Heard the rival submissions made on both sides and perused the materials available on record.

7. The learned counsel for the appellants submits that the appellant in CMA.No.3730 of 2013 is aged about 28years, working as tinker and earning a sum of Rs.1,000/- per day. The Tribunal ought to have enhanced the amount under the head of loss of income and other heads. The amount taken for consideration at Rs.2000/- per percentage is very low, the Tribunal has fixed the income of the claimant at Rs.4,500/-p.m. after deducting 1/3rd of his income, the trial Court ought to have fixed a sum of Rs.3,000/-p.m. for calculating the disability factor. The Tribunal has not awarded any amount under the head of attendant charges to this appellant. The appellant in CMA.No.1986 of 2014 is aged about 36years and he was bus owner cum driver and earning a sum of Rs.50,000/-p.m. The Tribunal ought have fixed higher amount while calculating the permanent disability, the monthly income of the claimant ought to have been more comparatively, as the claimant is the owner cum driver of the bus.

8. The learned counsel for the second respondent/insurance company submits that the Tribunal has rightly considered the entire facts and the nature of injuries sustained by the claimant and awarded fair compensation which is on higher side.

9. From the available records, it is seen that the tribunal has rightly considered the case of the claimant in CMA.No.3730 of 2013 in fixing the disability at 25%, however, awarded only Rs.2,000/- per percentage taking into consideration the nature of the injuries suffered by the claimant, this Court is inclined to fix a sum of Rs.3000/- per percentage as a reasonable amount for permanent disability. Further, the Tribunal has not awarded any amount towards attendant charges, considering the nature of the injuries, this Court is of the view that a person would have assisted him to carry out even his day to day activities, hence, inclined to award a sum of Rs.5,000/- towards attendant charges and enhance the amount of Rs.3,000/- to Rs.5,000/- under the head of Transport to Hospital. In CMA.No.1986 of 2014, the Tribunal has rightly fixed the disability at 50% however, awarded only Rs.2,000/- per percentage and this Court is inclined to fix a sum of Rs.3000/- per percentage as a reasonable amount for permanent disability, because of the fact that he had suffered fracture of both bones at right leg and crush injury over right foot. Except the said modifications, the amount awarded by the Tribunal under other heads stands confirmed.

10. This Court however considering the material factors relevant for determination of just and fair compensation is inclined to enhance the compensation as stated below, the enhanced compensation in both the cases are as follows :-

CMA.No.3730 of 2013

Sl.No.	Heads	Amount
1	Loss of income	13,500
2	Transport to Hospital	5,000
3	Extra nourishment	5,000
4	Damage to clothing	1,000
5	Medical expenses	3,090
6	Pain and sufferings	15,000
7	Permanent disability (3000 x 25%)	75,000
8	Attendant charges	5,000
	Total	1,22,590

CMA.No.1986 of 2014

Sl.No.	Heads	Amount
1	Loss of income	27,000
2	Transport to Hospital	5,000
3	Extra nourishment	10,000

Sl.No.	Heads	Amount
4	Damage to clothing	1,000
5	Medical expenses	1,12,080
6	Attender charges	10,000
7	Pain and sufferings	40,000
8	Permanent disability (3000 x 50%)	1,50,000
	Total	3,55,080

11. The compensation of Rs.90,590/- is enhanced to Rs.1,22,590/- in CMA.No.3730 of 2013. The compensation of Rs.3,05,080/- is enhanced to Rs.3,55,080/- in CMA.No.1986 of 2014. The Second Respondent/Insurance Company is directed to deposit the enhanced compensation with interest at 7.5% per annum from the date of petition till the date of payment and with proportionate cost. The time for payment of amount is eight weeks from the date of receipt of copy of the Judgment and on such deposit of amount, the claimant are permitted to withdraw the entire amount by filing separate cheque application.

12. In the result, the Civil Miscellaneous appeals are partly allowed. No costs.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

tsh

To

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

+2cc to Mr.M.Selvam, Advocate, S.R.No.8518, 8519
+1cc to Mrs.R.Sree vidhya, Advocate, S.R.No.9436

C.M.A.Nos.3730 of 2013 and 1986 of 2014

NRJK (CO)
CB(19/04/2021)