

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.10.2020
CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
C.M.A.Nos.272 and 273 of 2016
and
C.M.P.Nos.2237 and 2366 of 2016

M/s.Reliance General Insurance Company Limited,
Rai's Tower, Plot No.2054,
2nd Avenue, Anna Nagar,
Chennai - 600 040. ...Appellant in both cases

/versus/

1.Ravi
2.K.Daniel Seshavahan ...Respondents in
C.M.A.No.272 of 2016

1.K.Ranganathan
2.K.Daniel Seshavahan ...Respondents in
C.M.A.No.273 of 2016

Prayer in C.M.A.No.272 of 2016: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree in M.C.O.P.No.1474 of 2013, dated 04.06.2015 on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai.

Prayer in C.M.A.No.273 of 2016: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree in M.C.O.P.No.1549 of 2013, dated 04.06.2015 on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : M/s.Harini
for Mr.M.B.Gopalan(both cases)
For R1 : No appearance(in both cases)
For R2 : Ex-parte(in both cases)

COMMON JUDGMENT

(The case has been heard through video conference)
Heard the learned counsel appearing for the appellant.

2.Inspite of giving four opportunity for the respondents to make their submission, they have not come forward to submit their submissions. The adjudication of past four hearings is as below:

"Dr.GJJ: The learned counsel for the appellant is present. No representation for the respondent. Call the case after four weeks.
Dr.GJJ: Counsel for the appellant is present. No representation for the respondent/claimant. Call the matter on 24.09.2020.
Dr.GJJ: At request, post the matter on 29.09.2020.
Dr.GJJ: Learned counsel for the respondent is not ready. post the case next week."

Hence, the matter is taken up for disposal and the following order is passed on perusal of records.

3.Two claim petitions have been filed by the accident victims, who were travelling in a motor cycle bearing Reg.No.TN 21 F 9129 from their native village towards Vellore hit by a car bearing Reg.No.Ka 03 MH 7438 belonging to one Daniel Seshavahan insured under the Reliance General Insurance Company, on the Madras to Vellore Trunk Road, near Kalathur Junction Road, Kaveripakkam. The rider of the motorcycle and the pillion rider both were thrown out and sustained severe injury.

4.Claiming a sum of Rs.2,00,000/-, the injured claimant Ravi filed M.C.O.P.No.1474 of 2013 alleging that in the accident he sustained fracture of left wrist, injury on the left leg and on face. He took treatment at Vellore C.M.C Hospital for two weeks and thereafter, taking treatment in the private hospital. The other injured claimant Ranganathan filed a claim petition in M.C.O.P.No.1549 of 2013 claiming a sum of Rs.2,00,000/- as compensation alleging that in the accident, he sustained fracture of left feet and also right clavicle fracture. He took treatment at Vellore C.M.C. Hospital for two weeks and thereafter, taking treatment in the private hospital.

5.The insurer has filed counter stating that the claimant Ravi in M.C.O.P.No.1474 of 2013 already filed a petition in M.C.O.P.No.3364 of 2008 before V Small Causes Court, Chennai and that petition was dismissed for default on 12.09.2012. After lapse of five years, the claimant Ravi filed another claim petition. On the factual aspect, the claim petition was contested on the ground that the quantum of compensation sought is very excessive and injury caused is very simple in nature and does not deserve the compensation sought. It is also contended in the counter that the First Information Report regarding the

accident is a collusive complaint. As far as the Insurance Company is concerned, no intimation from the vehicle owner was received by them. In the claim petition filed by Ranganathan in M.C.O.P.No.1549 of 2013, the Insurance Company has filed its counter with an identical defence.

6.The Motor Accident Claims Tribunal, Chennai tried both the claim petitions together and passed a common judgment wherein it has awarded a sum of Rs.4,85,800/- for the claimant (Ravi) in M.C.O.P.No.1474 of 2013 and a sum of Rs.3,89,900/- for the claimant (Ranganathan) in M.C.O.P.No.1549 of 2013.

7.In these appeals, the learned counsel appearing for the Insurance company canvassed that nature of the injury sustained by the claimants are partial disability which is not a scheduled injury to award compensation based on the multiplier. The Tribunal without any medical evidence to substantiate that the injuries sustained by the claimants have impaired their earning capacity had applied multiplier contrary to law and judgment and has awarded exorbitant compensation.

8.The award of the Tribunal in these two claimants is as below:-

Sl. No.	Particulars	M.C.O.P.No.1474 /2013 award amount (Rs.)	M.C.O.P.No.1549/2013 award amount (Rs.)
1.	Medical expenses	15,600-00	15,000-00
2.	Loss of income for 1 month (9000x1)	9,000-00	9,000-00
3.	Transportation	5,000-00	5,000-00
4.	Extra Nourishment	5,000-00	5,000-00
5.	Attender charges	5,000-00	5,000-00
6.	Damage to clothes	5,000-00	5,000-00
7.	Loss of future earning capacity 9000+30% FPx12x15x20% 9000+30% FPx12x15x15%	4,21,200-00	3,15,900-00
8.	Pain and sufferings	10,000-00	15,000-00

Sl. No.	Particulars	M.C.O.P.No.1474 /2013 award amount (Rs.)	M.C.O.P.No.1549/2013 award amount (Rs.)
9.	Loss of amenities	10,000-00	15,000-00
	Total	4,85,800-00	3,89,900-00

9. On the face of it, the award of the Tribunal bristles with illegality and infirmity. The Tribunal has fixed Rs.9,000/- as monthly income of the injured persons. For fixation of compensation under the head of loss of income, the Tribunal has extracted certain commentaries regarding the road accident victims and has elaborated how and why he has fixing such a huge compensation unrelated to the evidence placed before the Tribunal. The Tribunal has erroneously applied the multiplier for the injury which is not a scheduled injury. The Tribunal has fixed Rs.9,000/- as monthly income without any basis and added 30% towards future prospects. The list of documents relied by the claimants are the First Information Report, medical bills, disability certificate, X-rays and copy of the charge sheet.

10. This is a case where the claim petition was filed after 5 years of the accident, after laying the claim petition before the other Court and allowing it to get dismissed for default. Suppressing the fact, the second set of petition has been filed by the claimants and in spite of pointing out this before the Tribunal, the Tribunal has not taken serious note of the dubious attempt made by the claimants and gone into the extent of awarding exorbitant amount of Rs.4,85,800/- for the claimant in M.C.O.P.No.1474 of 2013 and a sum of Rs.3,89,900/- as compensation to the claimant Ranganathan in M.C.O.P.No.1549 of 2013. Ranganathan has sustained injury such as tender over the right shoulder joint, medical of clavicle, laceration over the right parietal region and medial malleolus tenderness. He has taken treatment as out patient in Scudder Memorial Hospital as per the Ex.P2 and incurred medical expenses of Rs.15,000/-.

11. In the said Circumstances, this Court finds that the exorbitant compensation awarded to these claimants has to be reduced and modified particularly, loss of future earning capacity computed and awarded to these claimants are to be deleted for want of evidence.

12. With these deletions, the modified award of this Court is as below:-

Sl. No.	Particulars	M.C.O.P.No . 1474/2013 award amount (Rs.)	Modified award of this Court in C.M.A.N o. 272/ 2016 (Rs.)	M.C.O.P.No.1549/2013 award amount (Rs.)	Modified award of this Court in C.M.A.No. 273/ 2016 (Rs.)
1.	Medical expenses	15,600-00	15,600-00	15,000-00	15,000-00
2.	Loss of income for 1 month (9000x1)	9,000-00	9,000-00	9,000-00	9,000-00
3.	Transportation	5,000-00	5,000-00	5,000-00	5,000-00
4.	Extra Nourishment	5,000-00	5,000-00	5,000-00	5,000-00
5.	Attender charges	5,000-00	5,000-00	5,000-00	5,000-00
6.	Damage to clothes	5,000-00	5,000-00	5,000-00	5,000-00
7.	Loss of future earning capacity 9000+30% FPx12x15x20% 9000+30% FPx12x15x15%	4,21,200-00	NIL	3,15,900-00	NIL
8.	Disability	-----	40,000-00 (20% x2000)	-----	30,000-00 (15% x2000)
9.	Pain and sufferings	10,000-00	10,000-00	15,000-00	15,000-00
10.	Loss of amenities	10,000-00	10,000-00	15,000-00	15,000-00
	Total	4,85,800-00	1,04,600-00	3,89,900-00	1,04,000-00

13. Learned counsel appearing for the appellant/insurance Company states that the entire award amount has already been deposited before the Tribunal in respective MCOPS account. If

it is so, the Insurance Company is permitted to withdraw the excess amount lying in the Court deposit on filing appropriate application. The claimants are permitted to withdraw the modified award amount on proper application.

14. In the result, these Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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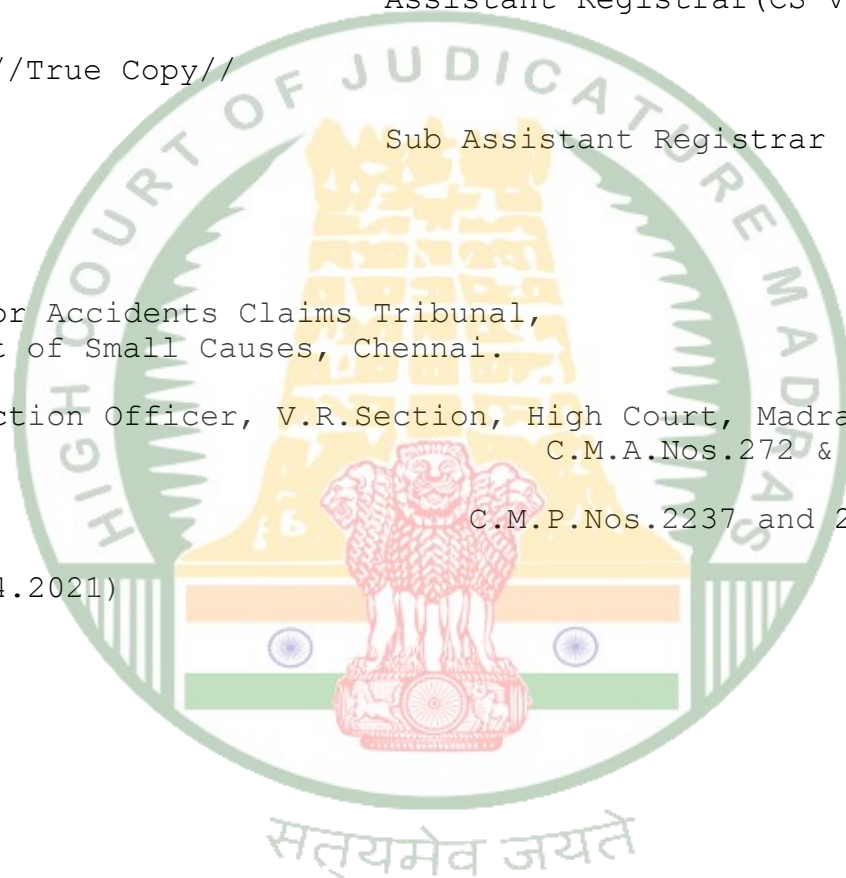
1. The Motor Accidents Claims Tribunal,
VI Court of Small Causes, Chennai.

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

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and

C.M.P.Nos.2237 and 2366 of 2016

MG CO
A.SK(29.04.2021)



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