

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.3298 & 3299 of 2019

R.Darshini .. Appellant in C.M.A.No.3298 of 2019

R.Manikandan .. Appellant in C.M.A.No.3299 of 2019

Vs.

1.Lathamaheswari

2.Reliance General Insurance Company Ltd.,
RAI'S Tower,
Plot No.2054, 2nd Avenue, 2nd floor,
(Next to Senthil Nursing Home)
Annanagar, Chennai 600 040.

.. Respondents in both the appeals.

(The 1st respondent remained exparte before the Tribunal, hence notice may be dispensed with for the 1st respondent in both the appeals)

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 17.09.2018 made in M.C.O.P.Nos.3915 & 3914 of 2012 on the file of the Special Subordinate No.1, Motor Accident Claims Tribunal, Small Causes Court, Chennai.

In both C.M.As :

For Appellants : Mr.K.V.Muthu Visakan

For R2 : Mr.S.Arunkumar

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

These Civil Miscellaneous Appeals filed by the appellants/claimants seeking enhancement of compensation granted by the Tribunal in the award dated 17.09.2018 made in M.C.O.P.Nos.3915 & 3914 of 2012 on the file of the Motor Accident Claims Tribunal, Small Causes Court, Chennai.

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

3.The appellants are claimants in M.C.O.P.Nos.3915 & 3914 of 2012 on the file of the Motor Accident Claims Tribunal, Small Causes Court, Chennai. The appellants filed the said claim petitions, claiming various amounts as compensation for the injuries sustained by them in the accident that took place on 17.07.2012.

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 Tata sumo belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said van to pay various amounts as compensation to the appellants, at the first instance and recover the same from the owner of the vehicle, the first respondent in both the appeals.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellants/claimants have come out with the present appeals seeking enhancement of compensation.

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

(i)In C.M.A.No.3298 of 2019 (M.C.O.P.No.3915 of 2012), the appellant was aged 23 years at the time of the accident, she was working as a Change Control Admin and was earning a sum of Rs.50,000/- per month. To substantiate the same, the appellant has marked Exs.P16 and P17. The Tribunal has fixed only a sum of Rs.44,308/- per month. Due to the accident, the appellant could not do her work as she was doing earlier. The Tribunal has granted only a sum of Rs.88,616/- towards loss of earning for a period of two months. The Tribunal considering the nature of injuries, ought to have adopted multiplier method in granting compensation. The appellant claimed a sum of Rs.50,000/- towards future medical expenses. The Tribunal has awarded only a sum of Rs.2,000/- towards future medical expenses, but wrongly typed as future prospects. The amounts awarded by the Tribunal towards transportation, extra nourishment, medical expenses and pain and sufferings are meagre. The Tribunal has not awarded any amount towards loss of amenities, loss of expectation of life and damage to clothes and prayed for enhancement of compensation.

(ii)In C.M.A.No.3299 of 2019 (M.C.O.P.No.3914 of 2012), the appellant was aged 20 years at the time of the accident, he was doing Computer service and was earning a sum of Rs.10,000/- per month. The Tribunal without considering the same, has fixed only

a sum of Rs.5,000/- as monthly income of the appellant. Due to the accident, the appellant sustained severe injuries and he could not do his work as he was doing earlier. The Tribunal has granted only a sum of Rs.10,000/- towards loss of earning for a period of two months. The Regional Medical Board has not properly examined the appellant and the Tribunal also failed to consider the nature of injuries sustained by the appellant. The amounts awarded by the Tribunal towards transportation, extra nourishment, medical expenses and pain and sufferings are meagre. The Tribunal has not awarded any amount towards loss of amenities, loss of expectation of life and damage to clothes and prayed for enhancement of compensation.

7.The learned counsel appearing for the second respondent/Insurance Company has made the following submissions:

(i)In C.M.A.No.3298 of 2019 (M.C.O.P.No.3915 of 2012), the appellant has not proved that she suffered functional disability. In the absence of any documentary evidence to prove that the appellant/claimant suffered functional disability, the percentage method applied by the Tribunal is proper. The Tribunal after considering the materials available on record, has awarded just compensation. The appellant/claimant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

(ii)In C.M.A.No.3299 of 2019 (M.C.O.P.No.3914 of 2012), the appellant was referred to Medical Board and marked the Disability Certificate as Ex.C1, which clearly shows that the appellant has not suffered any disability. The Tribunal has rightly considered that the appellant has not sustained any disability. The Tribunal after considering the materials available on record, has awarded just compensation. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellants as well as the 2nd respondent/Insurance Company and perused the materials available on record.

9.C.M.A.No.3298 of 2019 (M.C.O.P.No.3915 of 2012):

It is the contention of the appellant that in the accident, she sustained type II (Gustilo-Anderson) open fracture with type VI schatzkar fracture of proximal tibia and fracture in proximal fibula - right lower limb. P.W.2/Doctor has not treated the appellant. The Tribunal referred the appellant to the Medical Board and the Medical Board after examining the appellant, certified that the appellant suffered 15% disability. There is nothing on record to show that the appellant suffered functional disability. In the absence of any material evidence to substantiate the said contention, she is not entitled to

compensation by applying multiplier method. According to the appellant, she was working as a Change Control Admin and was earning a sum of Rs.50,000/- per month. To prove the avocation and income of the appellant, she has produced the Salary slip/ Ex.P16 and Employee Identity Card /Ex.P17. The Tribunal after considering the materials, fixed the income of the appellant at Rs.44,308/- per month and awarded a sum of Rs.88,616/- (Rs.44,308/- x 2) towards loss of income for 2 months. The notional income fixed by the Tribunal is proper. Due to the injuries, the appellant would not have attended her work atleast for a period of six months. Therefore, the appellant is entitled to a sum of Rs.2,65,848/- (Rs.44,308/- X 6) towards loss of income for six months. The appellant has taken treatment in Government Royapettah Hospital as in-patient from 17.07.2012 to 25.07.2012 and surgery was done on 18.07.2012. The amounts awarded by the Tribunal towards attendant charges, transportation and extra nourishment are meagre. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.10,000/-, Rs.15,000/- and Rs.25,000/- are awarded towards attendant charges, transportation and extra nourishment respectively. The Tribunal has not awarded any amount towards loss of amenities and loss of cloth. A sum of Rs.25,000/- and Rs.2,000/- are respectively awarded for the same. The amounts awarded by the Tribunal under other heads are just and reasonable and hence the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

C.M.A.No.3298 of 2019 (M.C.O.P.No.3915 of 2012):

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	45,000/-	45,000/-	Confirmed
2.	Pain and sufferings	25,000/-	25,000/-	Confirmed
3.	Medical expenses	31,035/-	31,035/-	Confirmed
4.	Attendant charges	2,250/-	10,000/-	Enhanced
5.	Transportation	5,000/-	15,000/-	Enhanced
6.	Extra nourishment	15,000/-	25,000/-	Enhanced
7.	Loss of earnings	88,616/-	2,65,848/-	Enhanced

8.	Loss of future prospects	20,000/-	20,000/-	Confirmed
9.	Loss of amenities	-	25,000/-	Granted
10.	Loss of cloth	-	Rs.2,000/-	Granted
	Total	Rs.2,31,901/-	Rs.4,63,883/-	
	Rounded off to	Rs.2,31,900/-	Rs.4,63,890/-	Enhanced by Rs.2,31,990/-

10.C.M.A.No.3299 of 2019 (M.C.O.P.No.3914 of 2012):

It is the contention of the appellant that in the accident, he sustained Blunt trauma right leg, Necrotic area-right shin of tibia with lacerated wound-posterior aspect of right heel. The appellant was not examined by Doctor and no disability certificate was marked. The appellant was referred to Medical Board and the Medical Board issued 'Nil' disability certificate. The disability certificate issued by the Medical Board was marked as Ex.C1. There is nothing on record to show that the appellant suffered disability. In the absence of any material evidence to substantiate the said contention, he is not entitled to compensation towards disability. According to the appellant, he was doing computer service and was earning a sum of Rs.10,000/- per month. In the absence of any material evidence to prove the income of the appellant, the Tribunal fixed the notional income at Rs.5,000/- per month. The same is meagre. The accident is of the year 2012. The notional income of the deceased is fixed at Rs.8,000/- per month. Due to the injuries, the appellant would not have attended his work atleast for a period of six months. Therefore, the appellant is entitled to a sum of Rs.48,000/- (Rs.8,000/- X 6) towards loss of earnings for six months. The appellant has taken treatment in Apollo First Med Hospital as in-patient from 19.07.2012 to 25.07.2012. The amounts awarded by the Tribunal towards attendant charges, transportation and extra nourishment are meagre. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.10,000/-, Rs.10,000/- and Rs.15,000/- are awarded towards attendant charges, transportation and extra nourishment respectively. The Tribunal has not awarded any amount towards loss of amenities and loss of damages to cloth. A sum of Rs.10,000/- and Rs.2,000/- are awarded for the same. The amounts awarded by the Tribunal under the heads pain and sufferings and medical expenses are just and reasonable and hence the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

C.M.A.No.3299 of 2019 (M.C.O.P.No.3914 of 2012):

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and sufferings	20,000/-	20,000/-	Confirmed
2.	Medical expenses	40,707/-	40,707/-	Confirmed
3.	Attendant charges	2,000/-	10,000/-	Enhanced
4.	Transportation	5,000/-	10,000/-	Enhanced
5.	Extra nourishment	10,000/-	15,000/-	Enhanced
6.	Loss of earnings	10,000/-	48,000/-	Enhanced
7.	Loss of amenities	-	10,000/-	Granted
8.	Loss of damages to cloth	-	2,000/-	Granted
	Total	Rs.87,707/-	Rs.1,55,707/-	
	Rounded off to	Rs.87,700/-	Rs.1,55,700/-	Enhanced by Rs.68,000/-

11. In the result, C.M.A.Nos.3298 & 3299 of 2019 are partly allowed and the compensation amounts awarded by the Tribunal at Rs.2,31,900/- and Rs.87,700/- are hereby enhanced to Rs.4,63,890/- and Rs. 1,55,700/- respectively along with the interest at the rate of 7.5% per annum from the date of petition till the date of deposit. In both the appeals, the appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. 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, at the first instance and recover the same from the owner of the vehicle, the first respondent. On such deposit, the appellants/claimants in both 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.

Sd/-
Assistant Registrar(CO MDU)

//True copy//

Sub Assistant Registrar

vkrr

To

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

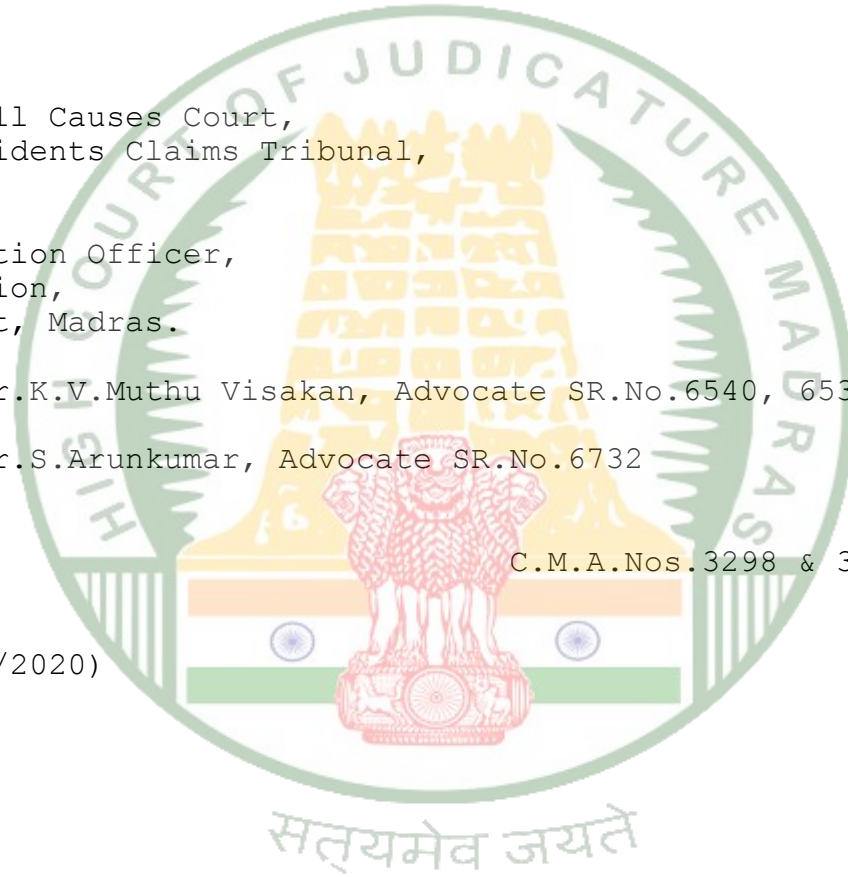
2.The Section Officer,
V.R. Section,
High Court, Madras.

+2cc to Mr.K.V.Muthu Visakan, Advocate SR.No.6540, 6538

+1cc to Mr.S.Arunkumar, Advocate SR.No.6732

C.M.A.Nos.3298 & 3299 of 2019

SAI (CO)
GMY (26/08/2020)



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