

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1181 to 1183 of 2017

1.Madhavaraj .. Appellant/Claimant in C.M.A.No.1181 of 2017
1.Annamalai .. Appellant/Claimant in C.M.A.No.1182 of 2017
1.Radhakrishnan .. Appellant/Claimant in C.M.A.No.1183 of 2017

Vs.

1.Amsaveni
2.Shriram General Insurance Co. Ltd.,
Opposite to Vinsor Castle Hotel,
Rajaji Road,
Salem. .. Respondents/Respondent in all the appeals.

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

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.08.2014 made in M.C.O.P.Nos.1222, 1223 and 1224 of 2011 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge No.I, Salem.
In all C.M.As :

For Appellants : Mr.K.Suryanarayanan
for Mr.K.Kuppusamy (in all CMA's)

For R2 : Mr.K.Poomalai (in all CMA's)
R1-Exparte (in all CMA's)

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 04.08.2014 made in M.C.O.P.Nos.1222, 1223 and 1224 of 2011 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge No.I, Salem.

2.All 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.1222, 1223 and 1224 of 2011 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge No.I, Salem. They filed the said claim petitions, claiming various amounts as compensation for the injuries sustained by them in the accident that took place on 21.05.2011.

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 lorry belonging to the 1st respondent and directed the 2nd respondent / Insurance Company being insurer of the said lorry to pay various amounts as compensation to the appellants /claimants in C.M.A.Nos.1181 to 1183 of 2017.

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.1181 of 2017: In the accident, the appellant suffered dislocation of right shoulder, a rib fracture 9th left side and sustained grievous injuries. P.W.5 - Doctor has assessed the disability of the appellant as 40%. The Tribunal, without considering the evidence of P.W.2-Doctor, the disability certificate issued by the Doctor, medical records and X-Ray, has erroneously reduced the percentage of disability to 30% and awarded only a meagre sum of Rs.60,000/- at the rate of Rs.2,000/- per percentage. The Tribunal has not awarded any amount towards attendant charges. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

(ii) In C.M.A.No.1182 of 2017: In the accident, the appellant suffered dislocation of left hip common united fracture posterior wall of acetabulum femoral head fracture. Due to the injuries, he suffered 40% permanent disability and he could not continue his work as he was doing earlier. The

appellant has examined P.W.5-Doctor to prove the disability and injuries suffered by him. The Tribunal erroneously reduced the percentage of disability from 40% to 35%. According to the appellant, he was aged 48 years at the time of the accident. The appellant was working as an assistant and was earning a sum of Rs.37,500/- per month. The Tribunal without considering the documents filed and marked as Exs.P19 to P21, fixed a meagre sum of Rs.17,630/- per month as the income of the appellant. Due to the injuries sustained in the accident, the appellant has taken treatment as in-patient at Ganga Hospital, Coimbatore from 26.05.2011 to 14.06.2011 and again post operative care at Salem Gopi Hospital, Salem from 15.06.2011 to 18.07.2011. The Tribunal without considering the period of treatment and nature of injuries, awarded a meager amount towards pain and sufferings, attendant charges and extra nourishment. The Tribunal has not awarded any amount towards loss of personal belongings. In any event, the total compensation granted by the Tribunal under different heads are also meager and prayed for enhancement of the same.

(iii) In C.M.A.No.1183 of 2017: In the accident, the appellant sustained a multiple lacerated wound in the left hand exposing tendons in the left little finger and mid finger, multiple abrasion over the hand and lips and rib fracture. P.W.5 - Doctor has assessed the disability of the appellant as 25%. The Tribunal, without considering the evidence of P.W.2-Doctor, the wound certificate issued by the Doctor, medical records and X-Ray, has erroneously reduced the percentage of disability to 15% and awarded only a meagre sum of Rs.30,000/- at the rate of Rs.2,000/- per percentage. The Tribunal has not awarded any amount towards attendant charges. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

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 all 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 all the appeals.

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

9. (i) In C.M.A.No.1181 of 2017 (M.C.O.P.No.1222 of 2011)

It is the contention of the appellant that he sustained dislocation of right shoulder, lacerated wound on the left foot and fracture in the left side rib. P.W.5 - Doctor has assessed the disability of the appellant as 40% disability. The appellant

has marked two discharge summaries as Exs.P4 and P5, medical bills as Ex.P6 and disability certificate as Ex.X1, to prove the injuries sustained by him in the accident and the treatment taken for the same. The Tribunal, without considering the evidence of P.W.5/Doctor, the disability certificate issued by the Doctor, medical records and X-Ray, has reduced the percentage of disability to 30% stating that the disability assessed by the Doctor is on the higher side and awarded only a sum of Rs.60,000/- at the rate of Rs.2,000/- per percentage. The reason given by the Tribunal for reducing the percentage of disability is proper. The appellant is entitled to compensation for 30% disability at the rate of Rs.3,000/- per percentage of disability. Hence, the amounts granted towards disability is modified to Rs.90,000/-. The appellant has taken treatment as in-patient at Kurunji Hospital, Salem, from 21.05.2011 to 27.05.2011 and again advance treatment at London Ortho Specialty Hospital, Salem from 30.05.2011 to 03.06.2011. The Tribunal has not granted any amount towards attendant charges. Considering the period of treatment and nature of injuries, a sum of Rs.15,000/- is granted towards attendant charges. The Tribunal has awarded a meagre amount towards food and extra nourishment and personal belongings and the same are hereby enhanced to Rs.15,000/- and Rs.2,000/- respectively. The amounts awarded by the Tribunal under the heads pain and sufferings and medical expenses are just and reasonable and hence, the same are 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.	Pain & sufferings	20,000/-	20,000/-	Confirmed
2.	Food & extra nourishment	5,000/-	15,000/-	Enhanced
3.	Medical expenses	16,000/-	16,000/-	Confirmed
4.	Disability	60,000/-	90,000/-	Enhanced
5.	Loss of personal belongings	1,000/-	2,000/-	Enhanced
6.	Attendant charges	-	15,000/-	Granted

	Total	1,02,000/-	1,58,000/-	Enhanced by Rs.56,000/-
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(ii) In C.M.A.No.1182 of 2017 (M.C.O.P.No.1223 of 2011)

It is the contention of the appellant that he suffered dislocation of left hip common united fracture posterior wall of acetabulum femoral head fracture. P.W.5 - Doctor has assessed the disability of the appellant as 40% disability. The appellant has marked two discharge summaries as Exs.P16 and P17, medical bills as Ex.P18 and disability certificate as Ex.X8, to prove the injuries sustained by him in the accident and the treatment taken for the same. The Tribunal, without considering the evidence of P.W.5/Doctor, the disability certificate issued by the Doctor, medical records and X-Ray, has reduced the percentage of disability to 35% stating that the disability assessed by the Doctor is on the higher side and awarded only a sum of Rs.1,05,000/- at the rate of Rs.3,000/- per percentage. The reason given by the Tribunal for reducing the percentage of disability is not proper. The appellant is entitled to compensation for 40% disability at the rate of Rs.3,000/- per percentage of disability. Hence, the amounts granted towards disability is modified to Rs.1,20,000/-. According to the appellant, he was aged 48 years at the time of the accident. The appellant was working as an assistant and was earning a sum of Rs.37,500/- per month. The Tribunal without considering the documents filed and marked as Exs.P19 to P21, has fixed a meagre sum of Rs.17,630/- per month as the income of the appellant. The notional income fixed by the Tribunal is not proper. Considering the documents filed by the appellant, a sum of Rs.37,500/- per month is fixed as notional income of the appellant. Due to the injuries, the appellant would not have worked at least for a period of five months. Hence, a sum of Rs.1,87,500/- (Rs.37,500/- x 5) is awarded towards loss of income for a period of five months. The appellant has taken treatment as in-patient at Ganga Hospital, Coimbatore from 26.05.2011 to 14.06.2011 and again post operative care at Salem Gopi Hospital, Salem from 15.06.2011 to 18.07.2011. The Tribunal has awarded a meagre amounts towards pain and sufferings, food and extra nourishment and attendant charges. Considering the nature of injuries and period of treatment taken by the appellant, the amounts granted by the Tribunal are enhanced to Rs.50,000/-, Rs.25,000/- and Rs.60,000/- respectively. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are 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.	Pain & sufferings	30,000/-	50,000/-	Enhanced
2.	For shock & mental agony	25,000/-	25,000/-	Confirmed
3.	Loss of income during treatment	88,150/-	1,87,500/-	Enhanced
4.	Food & extra nourishment	5,000/-	25,000/-	Enhanced
5.	Medical expenses	62,850/-	62,850/-	Confirmed
6.	Transportation	22,000/-	22,000/-	Confirmed
7.	Disability	1,05,000/-	1,20,000/-	Enhanced
8.	Attendant charges	25,000/-	60,000/-	Enhanced
9.	Loss of personal belongings	1,000/-	1,000/-	Confirmed
10.	Loss of amenities	50,000/-	50,000/-	Confirmed
	Total	4,14,000/-	6,03,350/-	Enhanced by Rs.1,89,350/-

(iii) In C.M.A.No.1183 of 2017 (M.C.O.P.No.1224 of 2011)

It is the contention of the appellant that he sustained a multiple lacerated wound in the left hand left little finger and mid finger and multiple abrasion over the hand, lips and rib. P.W.5 - Doctor has assessed the disability of the appellant as 25% disability. The appellant has marked discharge summary as Ex.P9, medical bills as Ex.P11, wound certificate as Ex.X7 and disability certificate as Ex.X4, to prove the injuries sustained by him in the accident, disability and the treatment taken for the same. The Tribunal, without considering the evidence of P.W.5/Doctor, the disability certificate issued by the Doctor, medical records and X-Ray, has reduced the percentage of disability to 15% stating that the disability assessed by the Doctor is on the higher side and awarded only a sum of Rs.30,000/- at the rate of Rs.2,000/- per percentage. The reason given by the Tribunal for reducing the percentage of disability

is not proper. The appellant is entitled to compensation for 25% disability at the rate of Rs.3,000/- per percentage of disability. Hence, the amounts granted towards disability is modified to Rs.75,000/-. The appellant has taken treatment as in-patient at Kurunji Hospital, Salem, from 21.05.2011 to 27.05.2011. The Tribunal has not granted any amount towards attendant charges. Considering the period of treatment and nature of injuries, a sum of Rs.10,000/- is granted towards attendant charges. The Tribunal has awarded a meagre sum of Rs.5,000/- towards food and extra nourishment and the same is hereby enhanced to Rs.10,000/-. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are 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.	Pain & sufferings	20,000/-	20,000/-	Confirmed
2.	Food & extra nourishment	5,000/-	10,000/-	Enhanced
3.	Medical expenses	41,000/-	41,000/-	Confirmed
4.	Disability	30,000/-	75,000/-	Enhanced
5.	Loss of personal belongings	1,000/-	1,000/-	Confirmed
6.	Attendant charges	-	10,000/-	Granted
	Total	97,000/-	1,57,000/-	Enhanced by Rs.60,000/-

10. In the result, C.M.A.Nos.1181 to 1183 of 2017 are partly allowed and the compensation amounts awarded by the Tribunal at Rs.1,02,000/-, Rs.4,14,000/- and Rs.97,000/- are hereby enhanced to Rs.1,58,000/-, Rs.6,03,350/- and Rs.1,57,000/- respectively along with the interest at the rate of 7.5% per annum from the date of petition till the date of deposit. In all 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. On such deposit, the appellants/claimants in all 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

//True copy//

Sub Assistant Registrar

vkr

To

1.The Special Subordinate Judge No.I,
Motor Accidents Claims Tribunal,
Salem.

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

+1cc to M/s.K.Poomalai, Advocate SR.No.4454

+3cc to Mr.K.Kuppusamy, Advocate SR.No.4814, 4815

C.M.A.Nos.1181 to 1183 of 2017

VBA (CO)
GMY (28/07/2020)

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