

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2020

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

CMA.Nos.2951 and 2952 of 2017

R.Varun

... Appellant
(in CMA.No.2951 of 2017)

1. Shakila

2. Syed Sadathullah

3. Syed Feroz Ahmed (minor)

rep by his mother and next appellant herein

S/o.T.Syed Sadathullah

... Appellants
(in CMA.No.2952 of 2017)

...vs...

1. G.Venugopal

2. Bajaj Allianz General Insurance Co.Ltd.,
Prince Towers, IV Floor,
No.25/26, College Road,
Chennai-600 041.

... Respondents
(in both CMAs)

Prayer in CMA.No.2951 of 2017 : Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order made in MCOP.No.1117 of 2012 dated 30.11.2016 on the file of the V Court of Small Causes, MCOP Tribunal, Chennai.

Prayer in CMA.No.2952 of 2017 : Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order made in MCOP.No.1118 of 2012 dated 30.11.2016 on the file of the V Court of Small Causes, MCOP Tribunal, Chennai.

For Appellants : Mr.K.Suryanarayanan
for M/s.S.Ravi Kumar
(in both CMAs)

For Respondents : Mr.Michael Visuvasam for R2
(in both CMAs)

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

One R.Varun is the claimant in MCOP.No.1117 of 2012 and

Shakila, Syed Sadathulla and S.Syed Feroz Ahamed are the claimants in MCOP.No.1118 of 2012. Aggrieved over the quantum awarded by the claims tribunal at Rs.6,75,500/- and Rs.15,26,000/-, the claimants have filed these Appeals.

2.The facts of the case is that the appellant (claimant in MCOP No.1117 of 2012) in CMA.No.2951 of 2017 and one Mr.Thameem Ansari @ Thameem had travelled in a motorcycle bearing Regn.No.TN-20-BQ-8476 as rider and the pillion rider respectively at Kamarajar Salai near Vivekanandar Illam, Chennai proceeding from south to north, and at that time, a car bearing Regn.No.TN-07-AW-2315, belonging to the first respondent and insured with the second respondent Insurance Company in both these appeals, came from the opposite direction in a rash and negligent manner and dashed against the motorcycle, as a result of which, Varun and Thameem Ansari sustained grievous injuries. Despite treatment, Thameem Ansari died and hence his legal representatives have filed a claim petition and as far as Varun is concerned, he himself has filed the claim petition. Both the petitions were taken up for hearing and the Tribunal, based on documents and materials available on record, has awarded a sum of Rs.6,75,500/- and Rs.15,26,000/- as compensation payable to the respective claimants.

3.In both theses cases, in common, the learned counsel for the appellants / claimants submitted that the award of the tribunal is against law and probabilities of case; the monthly income taken by the tribunal is too low and needs considerable enhancement; the settled principles laid down by this Court and Apex Court for awarding just compensation is not appreciated by the tribunal; the claim claimed by the claimants should be awarded as prayed for.

4. In so far as CMA.No.2951 of 2017 (injury case), the learned counsel for the appellant/claimant specifically submitted that the tribunal has fixed the disability at 60% instead of 80% as assessed by the Doctor and awarded only a sum of Rs.1,80,000/- which is not proper; the amount awarded towards attendant charges and loss of future earning is too low.

5. In so far as CMA.No.2952/2017 is concerned, the learned counsel for the appellants/claimants has submitted that the tribunal erred in awarding Rs.1,00,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses, which needs considerable increase.

6.On the other hand, the learned counsel for the second respondent / insurance company submitted that in both these appeals the tribunal has taken into consideration each and every aspect and has arrived at the quantum, which is nothing but just

and hence interference of the same is uncalled for. He further submitted that the accident was of the year 2012 and the total quantum arrived at by the tribunal commensurates to the nature of injury, period of treatment and the settled principles of law. He further submitted that the tribunal has taken the evidence of P.W.1 to P.W.3 and exhibits Ex.P.1 to Ex.P.16 to arrive at the aforesaid total compensation, which cannot be assailed in the absence of any contra evidence or documents. Hence, the learned counsel prayed to confirm the common award of the tribunal.

7. This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

8. In so far as CMA.No.2951 of 2017 (Injury case) is concerned, the tribunal has taken into consideration Ex.P.13 Medical bills, along with the evidence of P.W.2, to the tune of Rs.40,250/- and hence the tribunal has awarded a sum of Rs.40,250/- under that head. The tribunal has also considered Exs.P.10 to P.12 Discharge Summaries and observed that the claimant therein was hospitalized for about 25 days and taking into account of the same, the tribunal has awarded Rs.6,250/- under the head attendant charges. Considering the Exs.P.11 to 13 and Exs.P.15 and P.16 along with the evidence of P.W.3 Doctor, the Tribunal has awarded a sum of Rs.2,98,961/- and Rs.1,80,000/- towards medical expenses and disability.

9. So far as Pain and Suffering and trauma is concerned, though the petitioner has claimed Rs.1,20,000/- , based on Ex.P.10 to P.12 and the evidence of the Doctor that the claimant had sustained fracture of right femur and fracture of fibula with raw area right leg, rightly, the tribunal has awarded Rs.75,000/- . Also the tribunal has taken into account the settled principles of law of the Supreme Court and this court in the case of Divisional Controller, Karnataka State Road, Transport Corporation Vs Mahadev Shetty reported in ACJ 1775 SC and in the case of Cholan Roadways Corporation Ltd., Kumbakonam Vs Ahmed Thambi and Others reported in 2006 (4) CTC 433 and has ultimately awarded a sum of Rs.75,000/- towards Loss of Amenities. Thus, the tribunal has awarded a sum of Rs.6,75,500/- to the claimant payable by the second respondent herein.

10. This Court is of the considered opinion that in the absence of any contra evidence or in the absence of any pleadings by the second respondent, it cannot be contended that the tribunal erred in awarding more compensation. Also, the tribunal has taken note of the evidence as well as the documents on record and has arrived the total compensation, which in the opinion of this court cannot be said on the higher side.

11. As far as CMA.No.2952 of 2017 (Fatal case) is concerned, the tribunal has taken note of Exs.P.1, P2 and P4 and awarded Rs.5,000/- towards transportation. Taking note of Ex.P.7, the age was taken at 21 and based on the evidence of P.W.1 and the case reported in Managing Director, TNSTC Ltd., Vs. V.Sathiyavani and four others reported in 2015 (2) TN MAC 310 (DB) the tribunal has taken monthly income at Rs.8,000/- and added 50% towards future prospects and arrived the income at Rs.12,000/- and awarded a sum of Rs.12,96,000/- towards loss of pecuniary benefits. Based on Ex.P.5 Legalheirship certificate and based on the evidence of P.W.1 the tribunal has awarded Rs.1,00,000/- towards Loss of Love and Affection and based on the evidence of P.W.1 and considering the fact that the claimants might have expected that the deceased could have taken care of their life in future, the loss of expectation of life at Rs.1,00,000/- was awarded. In fine, the tribunal has awarded a sum of Rs.15,26,000/- payable by the second respondent herein. This court finds no impropriety or irregularity in the quantum arrived at by the Tribunal, since the same are based on record, probabilities of case and settled principles of law. No contra evidence is available on record to set aside the findings of the tribunal.

12. In view of the above reasonings, both these Civil Miscellaneous Appeals are dismissed, by confirming the common award passed by the tribunal. No costs.

13. The Insurer / R-2 shall deposit the total compensation amounts, along with interest and costs, as arrived at by the Tribunal, less the amounts already deposited, if any, within a period of six weeks, from the date of receipt of a copy of this judgment. The third appellant in CMA No.2952 of 2017 would have attained majority by now. Hence, on such deposit being made, the Tribunal is directed to transfer the deposited amount to the Savings Bank Accounts of the claimants, within one week thereafter, through RTGS, as per the ratio of apportionment fixed by the Tribunal. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

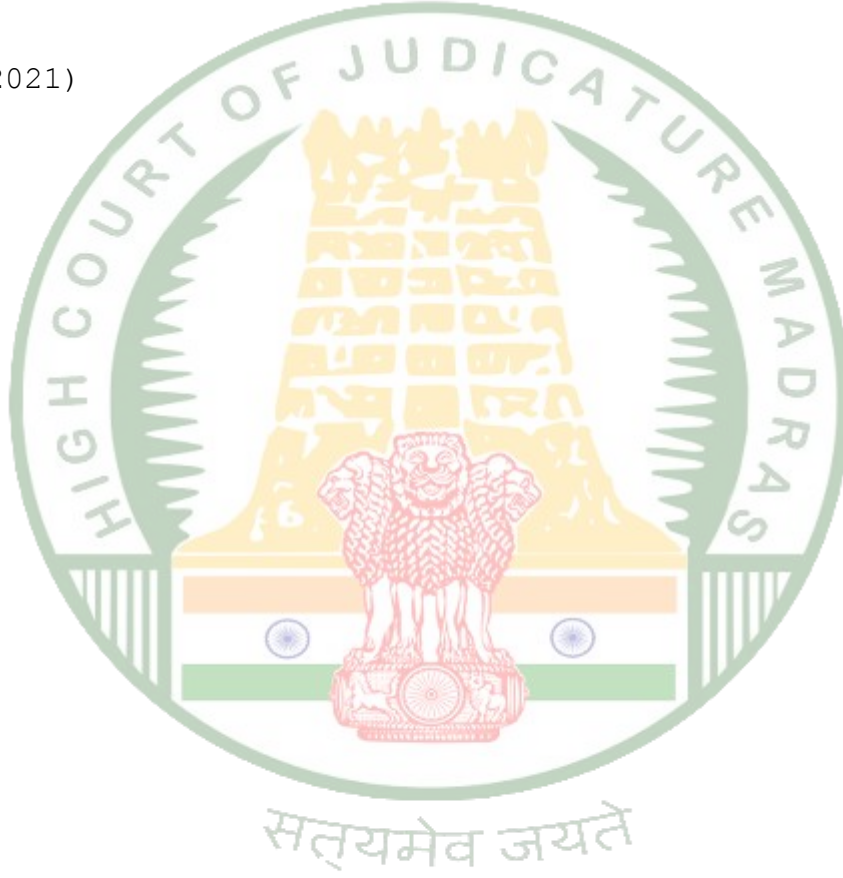
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To

1. The V Judge,
Court of Small Causes,
MCOP, Chennai.
2. The Section Officer,
V.R.Section, Madras High Court,
Chennai-104.

CMA Nos.2951 and 2952 of 2017

SVI (CO)
GN(28/04/2021)



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