



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 09.11.2020

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WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)Nos.948, 949 and 950 of 2008

Jeyarani .. Appellant in CMA(MD)No.948/2008/Petitioner
Kunjammal .. Appellant in CMA(MD)No.949/2008/Petitioner
Karnal Devadoss .. Appellant in CMA(MD)No.950/2008/Petitioner

vs.

1.Arumugam

2.Oriental Insurance Company Ltd.,
through its Branch Manager,
"Dwaraha"
79, National Highways Road,
Chennai - 600 034. .. Respondents 1 and 2 in CMA(MD)Nos.948 and
949 of 2008 and respondents in CMA(MD)
No.950/2008

3.Devadoss

4.United India Insurance Company Ltd.,
through its Branch Manager,
50/1, S.N. High Road,
First Floor,
Tirunelveli. ..Respondents 3 and 4 in CMA(MD)Nos.948 and
949 of 2008

(Respondents 1&3 are Exparte in the trial Court and hence Dispense
with in CMA(MD).948/2018)

(1st Respondent in Exparte before the trial court, Hence Dispense
with in CMA 950/2008).

Common Prayer: Civil Miscellaneous Appeals filed under Section 173
of Motor Vehicles Act 1988 to set aside the Common Judgment and
Decree dated 16.11.2007, made in M.C.O.P.Nos.369, 371 and 370 of
2006 respectively on the file of the Motor Accident Claims Tribunal,
(Principal Sub Judge) (In-Charge), Tirunelveli.

In all CMAs:-

For Appellant	: Mr.T.Selvakumaran
For Respondents	: Mr.C.Ramachandran (for R2)
	Mr.J.S.Murali (for R4)
R2	: Mr.C.Ramachandren
R1	: Exparte in CMA 950/2008

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**COMMON JUDGMENT**

Dissatisfied with the quantum awarded by the Motor Accident Claims Tribunal, Principal Sub-Judge, (In-charge), Tirunelveli, in MCOP Nos.369, 370 and 371 of 2006 dated 16.11.2007, the claimants have preferred these appeals seeking enhancement of compensation. The appellant in CMA(MD)No.948 of 2008 is the claimant in MCOP No.369 of 2006, the appellant in CMA(MD)No.949 of 2008 is the claimant in MCOP No.371 of 2006 and the appellant in CMA(MD)No.950 of 2008 is the claimant in MCOP No.370 of 2006.

2.This is a case of injury. The brief facts of the case are that on 09.02.2006, the claimant/Karnal Devadoss was driving in a Qualis bearing registration number TN-72-L-2223. In the said vehicle, the claimants/Jeyarani and Kunjammal also travelled. When the vehicle reaching near Marukalkurichi Branch Road on the Tirunelveli - Kanyakumari N.H, a lorry bearing registration No.TN-72-B-2999 loaded with the cement pipe protruding outside without any warning lamp or signal, parked on the middle of the road. The driver of the Qualis able to see only 10 feet away from the lorry. Even though he applied the brake and try to negotiate his vehicle on the right side, due to the protruding cement pipe outside the rear edge of the lorry hit the leftern side of the Qualis. As a result of which, all the passengers including these appellants sustained injuries. Immediately, the claimants were taken into Nagercoil Thiraviyam Hospital, wherein, they were taken treatment as inpatient. According to the claimants, the respondents are the owner and insurer of the offending vehicle and hence, they are liable to pay the compensation. Therefore, the claimants/Jeyarani and Kunjammal filed claim petitions seeking compensation of Rs.5,00,000/- each and the claimant/Karnal Devadoss filed a claim petition seeking compensation of Rs.2,00,000/-.

3.The Tribunal, upon consideration of the oral and documentary evidence held that the driver of the parked lorry was responsible for the accident. The said finding has become final as no appeal was filed by the respondents questioning the same.

4.Insofar as the quantum is concerned, according to the claimants, they suffered fracture in the accident. The claimant/Jeyarani produced Ex.P.7 Wound Certificate, Ex.P.8 C.T Scan Report, Exs.P.9 and 21 medical bills, Ex.P.11 X-rays. P.W.4 Dr.Ramaguru gave Disability Certificate stating that the claimant Jeyarani suffered 20% disability. Ex.P.19 is the disability certificate and Ex.P.20 is the X-ray. Based on the evidence, the Tribunal has awarded total compensation of Rs.35,500/- with interest at the rate of 7.5% per annum.

5.The claimant/Karnal Devadoss produced Ex.P.12 C.T.Scan report, Ex.P.13 Medical Bills, and Ex.P.14 Discharge Summary. P.W.4 Dr.Ramaguru gave Disability Certificate stating that the claimant



Karnal Devadoss suffered 15% disability. Ex.P.22 is the disability certificate and Ex.P.23 is the X-ray. Based on the evidence, the Tribunal has awarded total compensation of Rs.33,400/- with interest at the rate of 7.5% per annum.

6.The claimant/Kunjammal produced Ex.P.15 Wound Certificate Ex.P.16 C.T.Scan report, Ex.P.17 Medical Bills, and Ex.P.18 X-rays. P.W.4 Dr.Ramaguru gave Disability Certificate stating that the claimant Kunjammal suffered 45% disability. Ex.P.25 is the disability certificate and Ex.P.26 is the X-ray. Based on the evidence, the Tribunal has awarded total compensation of Rs.95,100/- with interest at the rate of 7.5% per annum.

7.The grievance of the appellants/claimants is that the award is very meager and instead of applying multiplier, the Tribunal has awarded Rs.1,000/- per percentage.

8.Per contra, the learned counsel for the second respondent/Insurance Company would submit that the award of the Tribunal is reasonable and the appellants are not entitled for enhancement.

9.Heard Mr.T.Selvakumaran, learned counsel for the appellants/claimants, Mr.C.Ramachandran, learned counsel for the second respondent/Oriental Insurance Company and Mr.J.S.Murali, learned counsel for the 4th respondent/United India Insurance Company and perused the materials available on records.

10.A perusal of the Judgment of the Tribunal would show that a sum of Rs.35,500/- was awarded to the claimant/Jeyarani based on Ex.P.19 disability certificate and Ex.P.20 X-ray. It is not in dispute that the claimant/Jeyarani suffered injury in the accident that had taken place on 09.02.2006. It is pertinent to note that the claimant/Jeyarani had suffered fracture and she was under treatment in a hospital for considerable time. P.W.4 and Ex.19 would prove that the claimant Jeyarani has sustained 20% disability. But the Tribunal has awarded only Rs.20,000/- by applying Rs.1,000/- per percentage. Therefore, this Court awards Rs.40,000/- towards permanent disability by applying Rs.2,000/- per percentage. Further, Rs.10,000/- awarded by the Tribunal for pain and suffering is enhanced to Rs.20,000/-. Further, this Court awards Rs.4,500/- towards attendant charges. The amounts granted in other heads by the Tribunal are confirmed. Therefore, the total award of the Tribunal granted to the claimant Jeyarani is enhanced to Rs.70,000/- from Rs.35,500/- with interest at 7.5% per annum.

11.Further, a perusal of the Judgment of the Tribunal would show that a sum of Rs.33,400/- was awarded to the claimant/Karnal devadoss based on Ex.P.22 disability certificate and Ex.P.23 X-ray. It is not in dispute that the claimant/Karnal Devadoss suffered



injury in the accident that had taken place on 09.02.2006. It is pertinent to note that the claimant/Karnal Devedoss had suffered fracture and he was under treatment in a hospital for considerable time. P.W.4 and Ex.P.22 would prove that the claimant has sustained 15% disability. But the Tribunal has awarded only Rs.15,000/- by applying Rs.1,000/- per percentage. Therefore, this Court awards Rs.30,000/- towards permanent disability by applying Rs.2,000/- per percentage. Further, this Court awards Rs.1,600/- towards attendant charges. The amounts granted in other heads by the Tribunal are confirmed. Therefore, the total award of the Tribunal is enhanced to Rs.50,000/- from Rs.33,400/- with interest at 7.5% per annum.

12.Further, a perusal of the Judgment of the Tribunal would show that a sum of Rs.95,100/- was awarded to the claimant/Kunjammal based on Ex.P.25 disability certificate and Ex.P.26 X-ray. It is not in dispute that the claimant/Kunjammal suffered injury in the accident that had taken place on 09.02.2006. It is pertinent to note that the claimant/Kunjammal had suffered fracture and she was under treatment in a hospital for considerable time. P.W.4 and Ex.P.25 would prove that the claimant has sustained 45% disability. But the Tribunal has awarded only Rs.45,000/- by applying Rs.1,000/- per percentage. Therefore, this Court awards Rs.90,000/- towards permanent disability by applying Rs.2,000/- per percentage. Further, this Court awards Rs.4,900/- towards attendant charges. The amounts granted in other heads by the Tribunal are confirmed. Therefore, the total award of the Tribunal is enhanced to Rs.1,45,000/- from Rs.95,100/- with interest at 7.5% per annum.

13. The second respondent - Insurance Company is directed to deposit the above award amount with accrued interest and costs, less the amount already deposited, before the Tribunal within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimants are permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs.

14. With the above modification, these civil miscellaneous appeals is disposed of. No costs.

Sd/-

Assistant Registrar (CSIII)

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/ /2021

Sub Assistant Registrar(CS)



To

1.The Motor Accident Claims Tribunal,
(Principal Sub Judge) Tirunelveli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2C)

C.M.A(MD)Nos.948, 949 and 950 of 2008
09.11.2020

KMV(CO)

KB(05.03.2021) 5P 4C