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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 04.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.2510 and 2511 of 2010

Subramanian @ Suresh ...Appellant/ Claimant in
CMA No2510 of 2010

Chellapandi @ Durai ...Appellant/ Claimant in
CMA No.2511 of 2010

Vs.

1. P.V.Sanmugam

2. The New India Assurance Co. Ltd.,
No.45, Moore Street, V floor,
Chennai.

...Respondents/Respondents in
both the CMAs.

Prayer in both the appeals:

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 10.03.2010 passed in M.C.O.P.No.2728 & 2729 of 2006 by the V Judge, Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

In both the cases

For Appellant : Mr.R.Kalai Arasan

For respondents : Mrs.R.Sreevidhya for R2
No appearance for R1

COMMON JUDGMENT

Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant in both the cases are before this court for enhancement of the compensation.

2. The claimant in MCOP No.2728 of 2006 has filed a claim petition before the Tribunal seeking compensation of Rs.4,00,000/- for the injuries sustained by him in a road accident that took place on 02.04.2006.



3. The claimant in MCOP No.2729 of 2006 has filed a claim petition before the Tribunal seeking compensation of Rs.7,00,000/- for the injuries sustained by him in a road accident that took place on 02.04.2006.

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4. The brief case of the claimant is as follows: On 02.04.2006, the claimant namely Subramaniam @ Suresh was riding his motorcycle bearing registration No.TN-07-AV-3277 along Teynampet-Adyar Road and one Chellapandi @ Durai was travelling as a Pillion rider and while nearing the place opposite to Ezhil Illam at Greenways Road, a speedy car bearing registration No.TN-07-AX-4699 dashed against the motorcycle riding by the claimant, thereby both of them sustained grievous injuries and they were admitted to Government Hospital, Royapettah and had taken treatment as inpatients. According to the claimants, the rash and negligent driving of the car was the cause of accident and since the first respondent/ owner of the vehicle insured his car with the second respondent/ insurance company, both of them are liable to pay compensation. Accordingly MCOP No.2728 of 2006 was filed by the rider Subramanniam @ Suresh seeking compensation of Rs.4,00,000/- and the MCOP No.2729 of 2006 was filed by the pillion rider Chellapandi @ Durai, seeking compensation of Rs.7,00,000/-.

5. The claim petitions were resisted by the second respondent/ insurance company by filing counter affidavit.

6. The Tribunal, has taken both the cases for common trial and before Tribunal, on the side of the claimants, the claimants are examined as PW1 and PW2 and Dr.K.J.Mathiazhagan was examined as PW3 and Ex.P1 to Ex.P15 were marked. On the side of the respondents, no oral and documentary evidence was adduced.

7. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.55,000/- (wrongly stated as Rs.57,000) to the claimant in MCOP No.2728 of 2006 and a sum of Rs.1,43,000/-(wrongly stated as Rs.1,73,000) to the claimant in MCOP No.2729 of 2006 as compensation under various heads, which are extracted hereunder.

MCOP No.2728 of 2006

Sl No	Heads	Amount in Rs.
1	Loss of earning	9,000
2	Transportation charges	2,000
3	Extra nourishment	1,000



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Sl No	Heads	Amount in Rs.
3	Damages to cloths and articles	1,000
4	Attender charges	2,000
5	Pain and sufferings	15000
6	Continuing permanent disability	25,000
	Total	55,000

MCOP No.2729 of 2006

Sl No	Heads	Amount in Rs.
1	Loss of earning	24,000
2	Transportation charges	3,000
3	Extra nourishment	5,000
3	Damages to cloths and articles	1,000
4	Medical expenses	7,000
5	Attender charges	8,000
6	Pain and sufferings	15,000
7	Continuing permanent disability	80,000
	Total	1,43,000

Aggrieved over the award passed by the Tribunal, the claimants are before this court by filing the appeals for enhancement of compensation.

8. Heard the learned counsel for the appellants and the counsel appearing for the insurance company and I have perused the materials on record.

9. The learned counsel appearing for the appellant s submitted that the disability suffered by the claimant was not taken into account, as assessed by the Doctor (PW3) and it was reduced by the Trial Court on its own. Further, the claimants were admitted as inpatients and have taken treatment for their grievous injuries. However, without considering the nature of the injuries sustained by them and the period of the treatment, has awarded a meagre amounts towards "Pain and sufferings". He also submitted that without considering the evidence on record



produced by the claimants and the facts and circumstances of the case, the Tribunal has awarded a very meagre amount, and hence he prayed for enhancement of compensation in both the appeals.

10. The learned counsel appearing for the second respondent/ insurance company submitted that after analysing the evidence and the documents on record, the Tribunal has awarded a just and reasonable compensation and therefore, the award passed by the Tribunal does not warrant any interference by this court.

11. Now the point for consideration is

(i) Whether the compensation awarded by the Tribunal has to be enhanced in both the appeals?

12. Point

The doctor (PW3) has assessed the disability suffered by the claimants in MCOP No.2728 and 2729 of 2006 at 30% and 45% respectively and he has given disability certificate Ex.P12 to the claimant Subramaniam @ Suresh and Ex.P14 to the claimant Chellapandi @ Durai. He also examined as PW3 and deposed about the disablement of the claimants before Tribunal. But the Tribunal on its own, has reduced the same to 25% and 40% respectively, without any basis. Accordingly, a sum of Rs.30,000/- and a sum of Rs.90,000/- is awarded to the claimants in MCOP No.2728 of 2006 and MCOP No.2729 of 2006 respectively, Further, no proof of income was produced by the claimants to prove their income. By considering the year of accident, a sum of Rs.4,000/- is fixed at monthly income of the claimant in MCOP No.2728 of 2006. However, as far as the monthly income of the claimant in MCOP No.2729 of 2006 is concerned, the Tribunal has rightly fixed as Rs.3,000/-. Further, no amount was awarded towards " loss of amenities" by the Tribunal. Accordingly, the revised compensation awarded under the various heads in the present appeals is extracted hereunder.

CMA No.2510 of 2010

Sl. No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
1	Loss of earning	9,000	12,000
2	Transportation charges	2,000	5,000
3	Extra nourishment	1,000	5,000



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Sl. No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
4	Damages to cloths and articles	1,000	1,000
5	Attender charges	2,000	5,000
6	Pain and sufferings	15,000	15,000
7	Continuing permanent disability	25,000	30,000
8	Loss of amenities	-	5,000
	Total	55,000	78,000

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

CMA No.2511 of 2010

Sl. No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
1	Loss of earning	24,000	24,000
2	Transportation charges	3,000	5000
3	Extra nourishment	5,000	10,000
3	Damages to cloths and articles	1,000	2,000
4	Medical expenses	7,000	7,000
5	Attender charges	8,000	8,000
6	Pain and sufferings	15,000	20,000
7	Continuing permanent disability	80,000	90,000
8	Loss of amenities		10,000
	Total	1,43,000	1,76,000

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

13. In the result,
CMA No.2510 of 2010

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced from Rs.55,000/- to Rs.78,000/-. No costs.



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(ii) The second respondent/insurance company is directed to deposit the revised compensation of Rs.78,000/- with interest at the rate of 7.5.% p.a. from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the claimant is entitled to withdraw the same, after following due process of law.

CMA No.2511 of 2010

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced from Rs.1,43,000/- to Rs.1,76,000/-. No costs.

(ii) The second respondent/insurance company is directed to deposit the revised compensation of Rs.1,76,000/- with interest at the rate of 7.5.% p.a. from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the claimant is entitled to withdraw the same, after following due process of law.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mst

To

The V Judge,
Motor Accident Claims Tribunal,
Court of Small Causes,
Chennai.

+1cc to Mrs.R.Sreevidhya, Advocate, S.R.No.14258

+1cc to Mr.N.M.Muthurajan, Advocate, S.R.No.13897

CMA. No.2510 and 2511 of 2010

PA[co]

NSK 07/10/2021