



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.Nos.3269 & 3361 of 2009

Y.Damodaran ... Appellant in C.M.A.3269 of 2009

H.Premela Paul ... Appellant in C.M.A.3361 of 2009

Versus

1. K.Balaji

2. The United India Insurance Co.Ltd.,
H.O.No.38, Anna Salai,
Chennai - 600 002
Branch 52,
General Muthiah Mudali Street,
Chennai - 79. ... Respondents in both C.M.As.

Common Prayer: These Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 09.01.2009 made in M.A.C.T.O.P.Nos.4487 & 4489 of 2002 respectively, on the file of the learned Additional District Session Judge, III Fast Track Court, Chennai.

For Appellant
in both CMAs : Mr.K.A.Ravindran
For Mr.A.Shanmugaraj
For Respondents
in both CMAs
For R1 : Notice served
For R2 : Mr.R.Sree vidhya

COMMON JUDGMENT

These appeals are laid as against the judgment and decree dated 09.01.2009 passed by the learned Additional District Session Judge, III Fast Track Court, Chennai, in M.A.C.T.O.P.Nos.4487 & 4489 of 2002 respectively, thereby awarded the compensation to the tune of Rs.1,17,000/-, and Rs.1,07,000/- respectively.



2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the claimants is that on 01.05.2001, when the claimants were travelling in their car from Medavakkam to Tambaram, the driver of the tempo van owned by the first respondent, had driven the van in rash and negligent manner and dashed against the car driven by the claimants. Due to which both the claimants were sustained injuries. The claimant in M.C.O.P.No.4487 of 2002 sustained injuries fracture & crush injury in left leg and multiple injuries all over the body. The claimants in M.C.O.P.No.4489 of 2002 sustained fracture on her both bone in left leg and dislocation of wrist in both hands and head injury and sever cut injuries and multiple injuries all over the body. Both were admitted in Deepam Hospital, Tambaram and thereafter they were shifted to Bone & Joint Clinic, Anna Nagar, Chennai.

4. The first claimant was working as professor at D.B.Jain College and he was drawing salary of Rs.25,116/-. Due to the injuries, his partial and permanent disability assessed at 45%. Hence he filed petition for compensation claiming a sum of Rs.11,15,000/- . The second claimant is concerned, she was working as Principal of Christ-the-Kind Matric Higher Secondary School and she was drawing monthly salary of Rs.10,000/- per month. Due to the injuries, she could not able to go for her job for six months. Her disability was assessed at 45% and hence she filed petition for compensation claiming Rs.3,50,000/-.

5. Resisting the same, the second respondent filed counter stating that the claimants only drove the car in rash and negligent manner and caused the accident. The claimants failed to prove their age, occupation and income and also failed to produce the driving licence. Therefore, he sought for dismissal of the claim petitions.

6. Both the claim petitions were clubbed together and joint trial was conducted by the Tribunal. On the side of the claimants, they examined P.W.1 to P.W.3 and marked Ex.P.1 to Ex.P.22. On the side of the respondents no one was examined and no documents were marked. On the basis of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal awarded a sum of Rs.1,17,000/- to the first claimant and a sum of Rs.1,07,000/- as far as the second claimant is concerned. Being not satisfied with the quantum of the compensation awarded by the Tribunal, the claimants came forward with the present appeals for enhancement of the award amount.



7. The learned counsel appearing for the appellants/claimants submitted that the both the claimants are husband and wife. Only on the rash and negligent driving of the first respondent's driver, the accident was took place and due to which both the claimants were sustained grievous injuries. Both claimants were assessed 45% of permanent disability and even then the Tribunal awarded only a sum of Rs.60,000/- each towards permanent disability. Though the first claimant produced medical bills to the tune of Rs.60,000/-, the Tribunal awarded a sum of Rs.30,000/- for medical expenses. As far as the second claimant is concerned, she produced medical bills to the tune of Rs.76,246.50. Whereas the Tribunal awarded a sum of Rs.30,000/- towards medical bills. The Tribunal also awarded very meager amount insofar as the other heads also. Therefore, he prayed for enhancement of the award amount.

8. Per contra, the learned counsel appearing for the second respondent contended that both the claimants were sustained only partial disability. They had fracture on their left legs and they were treated and they became normal. Due to the disablement, they have not incur any loss of income and also there is no loss in respect of their avocation. Therefore, the Tribunal rightly awarded the compensation and no need to enhance the same. Therefore, he prayed for dismissal of these appeals.

9. Heard Mr.K.A.Ravindran, learned counsel appearing for the appellants/claimants and Ms.R.Sree Vidhya, learned counsel appearing for the second respondent.

10. On 01.05.2001, when the claimants were travelling in their car from Medavakkam to Tambaram, the tempo van owned by the first respondent, had driven by its driver in rash and negligent manner and dashed against the car driven by the claimants. Due to the accident, both the claimants were sustained fracture on their left legs. As far as the first claimant is concerned, he was admitted as in patient at Deepam Hospital, Tambaram from 01.05.2001 to 03.05.2001 and thereafter he was admitted to the Bone & Joint clinic, Anna Nagar, Chennai from 03.05.2001 to 20.05.2001. The medical bills were produced and marked as Ex.P.4 to the tune of Rs.60,443/-. Whereas the Tribunal awarded a sum of Rs.30,000/- for the medical expenses. Insofar as the disability is concerned the first claimant was assessed at 45% of disability by P.W.3 and he deposed that due to the fracture, there is reduction of movement up to 30 degree and assessed disability at 45%. Admittedly, it is a partial disablement and the Tribunal awarded a sum of Rs.60,000/- towards permanent disability.

11. Insofar as the second claimant is concerned, she sustained fracture on her left leg and wrist in both hands. She



was also admitted at Deepam Hospital from 01.05.2001 to 03.05.2001 and thereafter she was admitted into Bone & Joint clinic, Anna Nagar, Chennai from 03.05.2001 to 16.05.2001. The medical bills produced by the second claimant were marked as Ex.P.15 to the tune of Rs.76,246.50. Her disability was assessed at 45% by P.W.3 and he deposed that she faced very difficult while walking, standing and doing some work by her hands. It is also partial disablement and the Tribunal awarded a sum of Rs.60,000/- for her disablement. The accident took place in the year 2001 as such, the disability can be considered at Rs.2,000/- per percentage. The Tribunal also failed to award compensation under the heads of attender charges and loss of amenities.

12. Accordingly, the compensation awarded by the Tribunal in MCOP.No.4487 of 2002 stands modified as under :-

Sl.No	Heads	Awarded by the Tribunal	Awarded by this Court
1	Permanent disability	60,000	90,000
2	Medical expenses	30,000	60,000
3	Damage to the car	10,000	10,000
4	Pain and suffering	10,000	10,000
5	Extra nourishment	5,000	5,000
6	Transportation charges	2,000	2,000
7	Attender charges	Nil	5,000
8	Loss of amenities	Nil	5,000
	Total	1,17,000	1,87,000

13. The compensation awarded by the Tribunal in MCOP.No.4489 of 2002 stands modified as under :-

Sl.No	Heads	Awarded by the Tribunal	Awarded by this Court
1	Permanent disability	60,000	90,000
2	Medical expenses	30,000	76,250
3	Pain and suffering	10,000	10,000
4	Extra nourishment	5,000	5,000
5	Transportation charges	2,000	2,000
6	Attender charges	Nil	5,000
7	Loss of amenities	Nil	5,000
	Total	1,07,000	1,93,250



14. In the result both the Civil Miscellaneous Appeals are partly allowed as follows:-

(i) The award passed by the Tribunal is enhanced from Rs.1,17,000/-, and Rs.1,07,000/- to Rs.1,87,000 and Rs.1,93,250/- respectively.

(ii) The award amounts will carry the interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.

(iii) The second respondent is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of copy of this Judgment.

(iv) On such deposit, the claimants are permitted to withdraw the amount awarded by filing proper application before the Tribunal.

(v) The claimants are not entitled to any interest for the condoned delay (default) period, if any in these appeals.

(vi) The claimant shall pay requisite Court fee before the receipt of the copy of the judgment for the enhanced compensation.

(vii) There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rts

To

1.The Additional District Session Judge,
III Fast Track Court, Chennai.

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

+2ccs to Mr.A.Shanmugaraj, Advocate Sr Nos.24271 & 24273
+2ccs to Mr.R.Ravichandran, Advocate Sr Nos.24349 & 24350

C.M.A.Nos.3269 & 3361 of 2009

AKII (CO)
PR (09/11/2021)