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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2021

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.2234 & 2235 of 2015

S.Gnanadurai ...Appellant/Claimant in C.M.A.No.2234 of 2015
T.Ramar Pandi ...Appellant/Claimant in C.M.A.No.2235 of 2015

..Vs..

1.P.Gurusamy

2.Bharti Axa General Insurance Company Ltd.,
No.162, Anna Salai,
Chennai - 2.

...Respondents in both CMAs.

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 09.02.2015 made in MCOP.Nos.541 & 570 of 2013 on the file of Motor Accident Claims Tribunal, (IIIrd Small Causes Court) Chennai.

For Appellant in both CMAs. : Mr.K.Varadhakamaraj
For 2nd Respondent in both CMAs. : Mr.S.Arun kumar
For 1st Respondent in both CMAs. : Ex parte

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the respective claimants seeking for enhancement under the impugned common award dated 09.02.2015 passed by the Motor Accident Claims Tribunal (III Court of Small Causes) in M.C.O.P.No.541 of 2013 and 570 of 2013.

2. Heard Mr.K.Varadha Kamaraj, learned counsel for the Appellants and Mr.S.Arunkumar, learned counsel for the second respondent. The first respondent has remained exparte both before the Tribunal as well as this Court.

3.The respective claimants unsatisfied with the quantum of compensation awarded by the Tribunal have challenged the impugned common award dated 09.02.2015 passed in M.C.O.P.No.541 of 2013 and 570 of 2013.



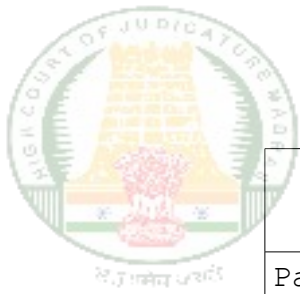
4. The Tribunal under the impugned common award dated 09.02.2015 directed the second respondent to pay the claimants compensation for the injuries sustained by them, as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent. The details of the compensation awarded to the respective claimants are as follows:

MCOP.No.541 of 2013 corresponds to CMA.No.2234 of 2015

Heads	Award Amount (Rs.)
Loss of earnings	10,000/-
Transport to Hospital	5,000/-
Extra nourishment	5,000/-
Damage to clothing	500/-
Medical Expenses	49,860/-
Loss of amenities	5,000/-
Pain and suffering	30,000/-
Disability	70,000/- (35 x 2000)
Total	1,75,360/-

MCOP.No.570 of 2013 corresponds to CMA.No.2235 of 2015

Heads	Award Amount (Rs.)
Loss of earnings	45,000/-
Transport to Hospital	15,000/-
Extra nourishment	15,000/-
Damage to clothing	500/-
Medical Expenses	1,91,830/-
Attender charges	9,000/-
Loss of amenities	25,000/-
Loss of expectation of life	10,000/-



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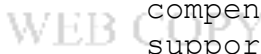
Heads	Award Amount (Rs.)
Pain and suffering	60,000/-
Disability	1,26,000/- (70 x 1800)
Total	4,97,330/-

5. The claimant in M.C.O.P.No.541 of 2013 which corresponds to C.M.A.No.2234 of 2015 has sustained the following injuries:

- both bone fracture at right hand
- fracture at neck of 4th toe at right foot.

6. The Doctor(PW3) who examined the claimant in MCOP.No.541 of 2013 has assessed that he has suffered 35% disability for the both bone fracture in his right hand and 15% disability for fracture in his neck and his 4th toe in his right foot and the total disability assessed by the Doctor was 50%. However, the Tribunal after giving due consideration to the nature of the injuries sustained by the claimant in MCOP.No.541 of 2013, fixed the disability at 35% and has awarded the disability compensation at Rs.70,000/- calculated at Rs.2000/- per percentage of disability for 35% disability. The injuries sustained by the claimant has not been disputed by the second respondent Insurance Company before the Tribunal. The accident happened on 16.11.2012. The Tribunal failed to give due consideration to the year of accident before assessing the disability compensation. Hence, this Court is of the considered view that the disability awarded by the Tribunal at Rs.70,000/- is low and it has to be enhanced to Rs.1,05,000/- by this Court, calculated at Rs.3000/- per percentage of disability for 35% disability assessed by the Tribunal instead of Rs.2000/- per percentage of disability fixed by the Tribunal.

7. The claimant in M.C.O.P.No.541 of 2013 was a Supervisor for a construction company and aged about 23 years at the time of accident. Considering the nature of the avocation of the claimant and the year of the accident, he would certainly be entitled to get higher monthly income. The Tribunal has fixed the monthly income of the claimant at Rs.6,000/- which in the considered view of this Court is low and it has to be fixed at Rs.8,000/-. This Court is also of the considered view that atleast for a period of three months, the claimant would have been unable to do his work. Hence, this Court awards a compensation of Rs.24,000/- to the claimant towards loss of income for the treatment period calculated at Rs.8,000/- per



8. The Tribunal under the impugned award has awarded a compensation of Rs.49,860/- towards medical expenses which is supported by the bills and Rs.30,000/- towards pain and suffering which is a just compensation and accordingly, the same is confirmed by this Court. However, the Tribunal has awarded a lesser compensation towards Rs.5,000/- towards transport, Rs.5,000/- towards extra nourishment and Rs.5,000/- towards loss of amenities which has to be enhanced to Rs.10,000, Rs.10,000/- and Rs.10,000/- respectively. This Court also confirms the assessment made by the Tribunal at Rs.500/- towards damage of clothing.

10. For the foregoing reasons, the compensation awarded by the Tribunal to the claimant in M.C.O.P.No.541 of 2013 which corresponds to C.M.A.No.2234 of 2014 is enhanced from Rs.1,75,360 to Rs.2,44,360/- by this Court as detailed hereunder:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of earnings	10,000/-	24,000/-
Transport to Hospital	5,000/-	10,000/-
Extra nourishment	5,000/-	10,000/-
Damage to clothing	500/-	500/-
Medical Expenses	49,860/-	49,860/-
Loss of amenities	5,000/-	10,000/-
Pain and suffering	30,000/-	30,000/-
Disability	70,000/-	1,05,000/-



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Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
	(35 x 2000)	(35 x 3000)
Total	1,75,360/-	2,44,360/-

11. Insofar as other claim which is the subject matter of M.C.O.P.No.570 of 2013 corresponding to C.M.A.No.2234 of 2015 is concerned, the claimant in that case is also entitled for enhancement of compensation for the following reasons:

a. The claimant sustained the following injuries as a result of the accident: commutated fracture at right leg and 5 Inch shortening in right leg and limping and walking with stick. The Doctor who examined the claimant (P.W.3) has assessed his disability at 70%. The Tribunal has awarded disability compensation at Rs.1,26,000/- for the 70% disability calculated at Rs.1,800/- per percentage of disability. The claimant was hospitalized for a period of 61 days from 21.11.2012 to 20.01.2013. The injuries sustained by the claimant as indicated above and the period of his hospitalization have not been disputed by the second respondent Insurance Company before the Tribunal. As in the earlier case, this court fixes the disability compensation calculated at Rs.3,000/- per percentage of disability instead of Rs.1,800/-. Hence, the disability compensation is enhanced by this Court to Rs.2,10,000/- calculated at Rs.3,000/- per percentage of disability for 70% disability from Rs.1,26,000 calculated at Rs.1,800/- per percentage of disability fixed by the Tribunal.

(b) Similarly, after giving due consideration to the nature of injuries sustained by the claimant which resulted in 5 inch shortening of his right leg and has made him limping and walking with stick, the compensation awarded by the Tribunal towards loss of income during the period of treatment has to be necessarily enhanced by this Court. The notional monthly income of the claimant fixed by the Tribunal at Rs.5,000/- is also low as the Tribunal has not given due consideration to the nature of the avocation of the claimant who was a Supervisor in a construction company at the time of accident. This Court is of the considered view that the notional income of the claimant will have to be enhanced to Rs.8,000/- from Rs.5,000/- fixed by the Tribunal. The nature of injuries sustained by the claimant would have certainly prevented him from doing his regular avocation for atleast a period of 9 months which the Tribunal



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has rightly assessed. Since the notional monthly income is enhanced to Rs.8,000/- by this Court, the Loss of Income during the period of treatment is enhanced by this Court to Rs.72,000/- from Rs.45,000/- fixed by the Tribunal calculated at Rs.8,000/- per month for a period of 9 months.

(c) Similarly, the compensation awarded by the Tribunal under the heads transport at 15,000/-, extra nourishment at Rs.15,000/-, attender charges at Rs.9,000/- and loss of amenities at Rs.25,000/- are also low and this Court enhances the same to Rs.25,000/-, Rs.25,000/-, Rs.20,000/- and Rs.40,000/- respectively.

(d) As regards the compensation awarded by the Tribunal under the head loss of expectation of life is concerned, the claimant is not entitled as per the settled law and therefore, the same is set aside by this Court.

(e) As regards the compensation awarded by the Tribunal, towards damage to clothing at Rs.500/-, medical expenses at Rs.1,91,830/- which is supported by bills and Rs.60,000/- towards pain and sufferings are concerned, the same is confirmed by this Court.

12. For the foregoing reasons, this Court enhances the award passed by the Tribunal from Rs.4,97,330/- to Rs.6,44,330/- as below:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of earnings	45,000/-	72,000/-
Transport to Hospital	15,000/-	25,000/-
Extra nourishment	15,000/-	25,000/-
Damage to clothing	500/-	500/-
Medical Expenses	1,91,830/-	1,91,830/-
Attender charges	9,000/-	20,000/-
Loss of amenities	25,000/-	40,000/-
Loss of expectation of life	10,000/-	--



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Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Pain and suffering	60,000/-	60,000/-
Disability	1,26,000/- (70 x 1800)	2,10,000/- (70 x 3000)
Total	4,97,330/-	6,44,330/-

13. In the result, CMA.No.2234 of 2015 shall stand partly allowed by enhancing the compensation from Rs.1,75,360/- to Rs.2,44,360/- and CMA.No.2235 of 2015 shall stand partly allowed by enhancing the compensation from Rs.4,97,330/- to Rs.6,44,330/-. No costs.

14. The second respondent Insurance company is directed to deposit the modified compensation amount of Rs.2,44,360/- together with interest at the rate of 7.5% per annum as assessed by the Tribunal from the date of claim till the date of deposit, after deducting the amount already deposited if any to the credit of MCOP.No.541 of 2013 and also directed to deposit another sum of Rs.6,44,330/- as compensation together with interest at the rate of 7.5% per annum as assessed by the Tribunal from the date of claim till the date of deposit, after deducting the amount already deposited if any to the credit of MCOP.No.570 of 2013 within a period of four weeks from the date of receipt of a copy of this common judgment. On such deposit being made, the Tribunal shall transfer the amount lying to the credit of MCOP.No.541 of 2013 to the bank account of the claimant in MCOP.No.541 of 2013 who is the Appellant in CMA.No.2234 of 2015 and also transfer the amount lying to the credit of MCOP.No.570 of 2013 to the bank account of the claimant in MCOP.No.570 of 2013 who is the Appellant in CMA.No.2234 of 2015 through RTGS within a period of one week thereafter.

Sd/-

Assistant Registrar

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Sub Assistant Registrar



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1.The (IIIrd Small Causes Court) Chennai

2.The Section Officer

V.R.Section, High Court of Madras.

+2 Ccs to Mr.K.Varadha Kamaraj, Advocate sr 26920, 29943.

+1 CC to Mr.S.Arunkumar, Advocate sr 26944.

C.M.A.Nos.2234 & 2235 of 2015

GP(CO)

SP(25/11/2021)