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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.Nos.2739 & 2950 of 2013
and C.M.A.No.1010 of 2016

Baby	... Appellant in C.M.A.2739 of 2013
Anjali	... Appellant in C.M.A.2950 of 2013
Minor Pavithra, Rep. by her mother Geetha.	... Appellant in C.M.A.1010 of 2016

Versus

1. Sugumar (R1 remained exparte before the Tribunal)	
2. The Divisional Manager, Bajaj Alliance General Insurance Co. Ltd., No.25/26, Prince Towers, Nungambakkam, Chennai.	... Respondents in all C.M.As.

Common Prayer: These Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 06.01.2012 made in M.A.C.T.O.P.Nos.231 & 230 of 2007 & 54 of 2010 respectively, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Tiruvannamalai.

For Appellant	
in all CMAs	: Mr.R.Terry Chellaraja
For Respondents	
in all CMAs	
R1	: Exparte
For R2	: Ms.R.Sree Vidhya



COMMON JUDGMENT

These appeals are laid as against the judgment and decree dated 06.01.2012 made in M.A.C.T.O.P.Nos.231 & 230 of 2007 & 54 of 2010 respectively, on the file of the learned Chief Judicial Magistrate, Motor Accident Claims Tribunal, Tiruvannamalai, thereby awarded the compensation to the tune of Rs.7,10,000/-, Rs.1,25,000/- and Rs.90,000/- respectively.

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

3. All the Civil Miscellaneous Appeals are filed for enhancement of compensation awarded by the Tribunal. The case of the claimants is that on 11.03.2007 all the claimants were travelled in a car driven by the first respondent. Due to the rash and negligent driving of the first respondent the car was capsized. In that accident, all the claimants were sustained injuries and hence they filed claim petitions seeking compensation.

4. Resisting the same, the second respondent filed counter stating that all the claimants and the first respondent are belonging to the same family and the first respondent only had driven the car in rash and negligent manner and caused the accident. Due to the accident the claimants were sustained injury as such, the second respondent is not at all liable to pay any compensation as claimed by the claimants. Admittedly, all the claimants were travelled in the car driven by the first respondent and no other vehicle was involved. The first respondent only drove the car in rash and negligent manner and dashed against culvert and caused accident. Therefore he sought for dismissal of the claim petition.

5. Though all the claimants filed separate claim petitions, all the 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.5 and marked Ex.P.1 to Ex.P.38. 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.7,10,000/- in MCOP.No.231 of 2007, a sum of Rs.1,25,000/- in MCOP.No.230 of 2007 and a sum of Rs.90,000/- in MCOP.No.54 of 2010, as compensation payable by the respondents. Being not satisfied with the quantum of the compensation awarded by the Tribunal, the claimants came forward with the present appeal.



6. The learned counsel appearing for the appellants/claimants submitted that the accident took place in the year 2007. The claimant in MCOP.No.230 of 2007 sustained fracture on her left leg and she admitted as inpatient. Her disability was assessed at 35%. Even then, the Tribunal awarded a sum of Rs.35,000/- for her permanent disability. Insofar as other heads are concerned very meager amount was awarded as compensation. The claimant in MCOP.No.231 of 2007 was aged about 65 years at the time of accident and she sustained multiple injury in her head. Though she was 65 years old, she had undergone several surgery and she was admitted as inpatient for more than 82 days. Her disability was assessed at 60%. However the Tribunal awarded very meager amount as compensation and it has to be enhanced. Insofar as claim petition in MCOP.No.54 of 2010 is concerned, the claimant was two years old at the time of accident and due to the accident she sustained fracture on her left shoulder. Her disability was assessed at 25%. In respect of the other heads also the Tribunal awarded very meager amount and therefore, he prayed for enhancement of the award amount.

7. Per contra, the learned counsel appearing for the second respondent contended that all the claimants and the first respondent are belonging to the same family. The first respondent had driven the car in rash and negligent manner and dashed against the culvert and caused accident. Due to the accident all of them sustained injuries. The first respondent is the tort-feasor and he himself had driven the car in rash and negligent manner and caused the accident without involving any other vehicle. Therefore, all the claimants are not at all entitled for any compensation and sought for dismissal of the claim petition.

8. Heard Mr.F.Terry Chellaraja, learned counsel appearing for the appellants/claimants and Ms.R.Sree Vidhya, learned counsel appearing for the second respondent.

9. On 11.03.2007, all the claimants and the first respondent were travelling in a car. The first respondent had driven the car in rash and negligent manner and hit the culvert and committed the accident. Due to the rash and negligent driving of the first respondent the car was capsized and all the claimants sustained grievous injury.

C.M.A.No.2739 of 2013:-

10. Insofar as the claimant in MCOP.No.231 of 2007 is concerned, she was aged about 65 years and she sustained head injury. She was immediately admitted to the Government Hospital, Thiruvannamalai and thereafter she shifted to Sri Ramachandra Medical College Hospital, Chennai, as inpatient. She had undergone three surgeries on three different days. Finally she



was discharged from the hospital only on 01.06.2007. She was aged about 65 years and after seeing her death bed, she revived and she incurred medical expenses at Rs.4,78,161/-. The Tribunal awarded a sum of Rs.6,00,000/- for the medical bills, further medical bills, transportation and nourishment. This Court is inclined to grant a sum of Rs.7,00,000/- towards the above head. For pain and suffering, the Tribunal awarded a sum of Rs.50,000/- and it is liable to be enhanced at Rs.75,000/-. The claimant was assessed partial disability at 60% and the Tribunal awarded Rs.60,000/- as compensation. It is liable to be enhanced at Rs.2,000/- per percentage.

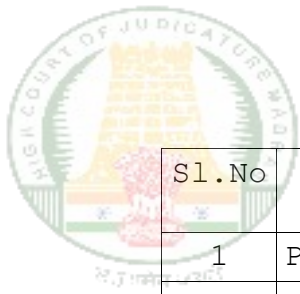
11. Accordingly the compensation awarded by the Tribunal in MCOP.No.231 of 2007 stands modified as under :-

Sl.No	Heads	Awarded by the Tribunal	Awarded by this Court
1	Permanent disability	60,000	1,20,000
2	Pain and suffering	50,000	75,000
3	Medical expenses, Transportation, attender charges etc.,	6,00,000	7,00,000
	Total	7,10,000	8,95,000

C.M.A.No.2950 of 2013 :-

12. Insofar as the claimant in MCOP.No. 230 of 2007 is concerned, she sustained two fracture on her left leg. Initially she was admitted in the Government Hospital, Thiruvannamalai, thereafter she was shifted to Shri Ramachandra Medical College Hospital, Chennai for further treatment. She had undergone surgery on 13.03.2007 and thereafter she was discharged on 20.03.2007. She was treated as inpatient for nine days and the medical bills were marked as Ex.P.11. The injuries sustained by her was assessed at 35% of disability and it is partial disablement as such the Tribunal awarded a sum of Rs.35,000/- for disability. The accident took place in the year 2007 and as such it is liable to be enhanced at Rs.2000/- per percentage. Insofar as the pain and suffering, the Tribunal awarded a sum of Rs.15,000/- and it is liable to be enhanced at Rs.25,000/-. The Tribunal awarded a sum of Rs.5,000/- towards loss of income and it is liable to be enhanced at Rs.10,000/-. Under the head of the Medical expenses, Transportation expenses, attender charges etc., the Tribunal awarded a sum of Rs.70,000/- and this Court is inclined to grant a sum of Rs.85,000/- towards the said head.

13. Accordingly the compensation awarded by the Tribunal in MCOP.No.230 of 2007 stands modified as under :-



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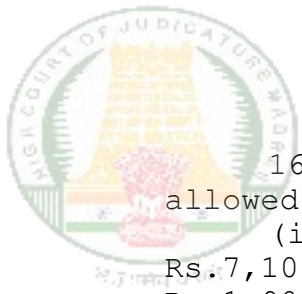
Sl.No	Heads	Awarded by the Tribunal	Awarded by this Court
1	Permanent disability	35,000	70,000
2	Pain and suffering	15,000	25,000
3	Lose of Income	5,000	10,000
4	Medical expenses, Transportation, attender charges etc.,	70,000	85,000
	Total	1,25,000	1,90,000

C.M.A.No.1010 of 2016 :-

14. The claimant in MCOP.No.54 of 2010 was two years old at the time of accident. She sustained fracture on her left shoulder. She was also admitted in the Government Hospital, Thiruvannamalai and thereafter she was shifted to Sri Ramachandra Medical College Hospital, Chennai. Till 14.03.2007, she had taken treatment as inpatient. She had also undergone surgery on her left shoulder and incurred medical expenses at Rs.18,958/-. Therefore, the Tribunal awarded a sum of Rs.50,000/- towards the Medical expenses, Transportation expenses, attender charges etc., and this Court is inclined to grant a sum of Rs.60,000/- under the said head. The Tribunal awarded a sum of Rs.15,000/- towards pain and suffering and it has to be enhanced at Rs.25,000/-. Her disability was assessed at 25% and it is a partial disablement. As stated supra, since the accident took place in the year 2007, the disability has to be calculated at Rs.2,000/- per percentage.

15. Accordingly the compensation awarded by the Tribunal in MCOP.No.54 of 2010 stands modified as under :-

Sl.No	Heads	Awarded by the Tribunal	Awarded by this Court
1	Permanent disability	25,000	50,000
2	Pain and suffering	15,000	25,000
3	Medical expenses, Transportation, attender charges etc.,	50,000	60,000
	Total	90,000	1,35,000



16. In the result all the Civil Miscellaneous Appeals are allowed as follows:-

(i) The award passed by the Tribunal is enhanced from Rs.7,10,000/-, Rs.1,25,000/- and Rs.90,000/- to Rs.8,95,000/-, Rs.1,90,000 and Rs.1,35,000/- 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 the present 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(CCC)

//True Copy//

Sub Assistant Registrar

rts

To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Tiruvannamalai.

Copy to:

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

+3ccs to M/s.M.Malar , Advocate SR.No. 24247,24246,24245

+3ccs to Mrs.R.Sreevidhya, Advocate SR.No. 24076,24077,24078

C.M.A.Nos.2739 & 2950 of 2013
and C.M.A.No.1010 of 2016

RK (CO)

A.SK(28.09.2021)