



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.NOS.1454 AND 1455 OF 2020

Vidhya

... Appellant in
C.M.A.No.1454 of 2020

Vignesh

... Appellant in
C.M.A.No.1455 of 2020

Versus

1. Devaraj

2. The HDFC ERGO General Insurance Co. Ltd.,
Rep. by its Branch Manager,
No.528, Anna Salai, 2nd Floor,
Chennai - 600 002.

... Respondents in
both C.M.As

PRAYER:-

These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 31/07/2019 made in M.C.O.P.Nos.149 and 148 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Chengalpattu.

For Appellants : Mr.S.S.Swaminathan

For R1 : No appearance

For R2 : Mrs.R.Sree Vidhya

JUDGMENT

The matter is heard through "Video Conferencing/Hybrid mode".

These Civil Miscellaneous Appeals have been filed for enhancement of compensation granted by the award dated 31.07.2019 made in M.C.O.P.Nos.149 and 148 of 2016 on the file



of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Chengalpattu.

2. The appellants are the claimants in M.C.O.P.Nos.149 and 148 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Chengalpattu. They filed the above said claim petitions, claiming a sum of Rs.35,00,000/- and Rs.20,00,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 25.01.2016.

3. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry owned by the first respondent and directed the second respondent-Insurance Company to pay a sum of Rs.16,37,631/- and Rs.3,32,940/- respectively as compensation to the appellants.

4. Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5. The appellants are the claimants who sustained injuries in a road accident that had occurred on 25.01.2016 at 2.40 p.m., while they were travelling in a motorcycle bearing Registration No.TN-21-AU-7008 from Mamandur to Sriperumbudur on the S.P.Koil to Oragadam Road, opposite to Welder Vasu house at Sendhamangalam, a lorry bearing Registration No.TN-21-BZ-1750 which was driven by its driver in a rash and negligent manner, dashed behind the said motorcycle and thereby the appellants sustained grievous injuries. The accident was caused only due to the rash and negligent driving of the drivers of lorry.

6. Therefore, the appellants/claimants moved the Motor Accident Claims Tribunal by filing M.C.O.P.Nos.149 and 148 of 2016 claiming compensation for the injuries sustained by them.

7. Resisting the above petitions, the second respondent/Insurance Company filed counter affidavits inter alia denying the manner of the alleged accident and injuries sustained by the petitioners. The second respondent further denied the age, occupation and income of the appellants. It is further the case of the second respondent that the amount of compensation claimed is excessive and has no basis. Consequently, the second respondent prayed for dismissal of the petitions.

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8. Before the Tribunal, on the side of the appellant/claimant, the claimant was examined as P.W.1 and Ex.P1 to Ex.P9 were marked. The 2nd respondent/Insurance Company did not let in



any oral and documentary evidence. In addition to that, Ex.C1 was marked as Court documents.

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9. Before the Tribunal, on the side of the appellant/claimant, the claimant was examined as P.W.1 and Ex.P1 to Ex.P12 were marked. The 2nd respondent/Insurance Company did not let in any oral and documentary evidence. In addition to that, Ex.C1 was marked as Court documents.

10. Upon consideration of facts and circumstances and the evidence both oral and documentary evidence available on record, the Tribunal has held that the accident was occurred due to rash and negligent riding of the driver of the lorry which was insured with the second respondent/Insurance Company and as such the Tribunal fastened the liability both on the owner of the vehicle and also on the second respondent/Insurance Company. For the injuries sustained by the appellant in C.M.A.No.1454 of 2020, the Tribunal awarded a sum of Rs.16,37,631/- and for the injuries sustained by the appellant in C.M.A.No.1455 of 2020, the Tribunal has awarded a sum of Rs.3,32,940/- towards compensation.

11. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellants/claimants have come forward with the present appeals.

12. A perusal of the award passed by the Tribunal in respect of appellant/claimant in C.M.A.No.1454 of 2020 is concerned, the Tribunal has awarded a sum of Rs.11,79,511/- towards the expenses relating to treatment, hospitalization and medicines. On consideration of Exs.P2 and P8/medical bills which shows that the appellant incurred total a sum of Rs.11,79,511/-. Therefore, the Tribunal has rightly awarded the compensation towards medical expenses which requires no interference.

13. As regards the compensation for disability is concerned, the Tribunal taking note of the Exs.P1/discharge summary which would establish that the appellant was given treatment for head injury, left pneumothrax, C5-C7 cervical spine fracture and pelvic fracture and came to the conclusion that due to the injuries, the earning capacity of the claimant has been affected and therefore the Tribunal fixed the functional disability at 20%. However, since there was no documentary evidence produced by the appellant regarding his avocation and income though he claimed Rs.20,000/- per month, the Tribunal following the decision of the Hon'ble Supreme Court reported in Royal Sundaram Alliance Insurance Company Vs. Vasanthapurani and Others, wherein in the absence of documentary evidence, the Hon'ble Supreme Court fixed the notional income of a vegetable vendor at Rs.6,000/- per



month, the Tribunal has also fixed a sum of Rs.6,000/- per month towards notional income of the appellant. It is pertinent to note that the fixation of notional income of a vegetable vendor by the Hon'ble Supreme Court pertains to the year 2010 whereas in the present case, the accident had taken place in the year 2016. In such circumstances, this Court feels it appropriate to fix the monthly income as Rs.10,000/- per month. It is not in dispute that at the time of the accident the appellant was 25 years old and as per the dictum of Sarla Verma case, the appropriate multiplier is '18' and thereby the total compensation towards disability would arrive at Rs.4,32,000/- [Rs.10,000/- X 12 X 18 X 20/100]. The compensation awarded under the head disability is modified accordingly. The Tribunal awarded a meagre sum of Rs.5,000/-, Rs.4,000/- and Rs.5,000/- towards conveyance, Extra nourishment and attendant charges and the same are hereby enhanced to Rs.15,000/-, Rs.15,000/- and Rs.25,000/- respectively. The Tribunal has awarded a sum of Rs.25,000/- together for pain and sufferings and for loss of future amenities and the same is not correct. The appellant is entitled to a sum of Rs.35,000/- towards pain and sufferings and Rs.30,000/- towards loss of future amenities separately. In respect of the compensation awarded under various heads, this Court does not find any infirmity and the same are confirmed by this Court.

14. In the light of the above, the compensation awarded under the various heads by the Tribunal is hereby modified as under:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Expenses relating to treatment, hospitalization and medicines	11,79,511/-	11,79,511/-	Confirmed
2.	Expenses towards conveyance	5,000/-	15,000/-	Enhanced
3.	Extra nourishment cost	4,000/-	15,000/-	Enhanced
4.	Attender Charges	5,000/-	25,000/-	Enhanced
5.	Damages to clothing and articles	1,000/-	1,000/-	Confirmed
6.	Compensation for disability	3,93,120/-	4,32,000/-	Enhanced

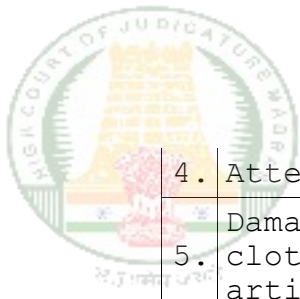


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7.	Compensation for pain and sufferings	25,000/-	35,000/-	Enhanced
8.	Compensation for loss of future amenities	25,000/-	30,000/-	Enhanced
	Total	Rs.16,37,631/-	Rs.17,32,511/-	Enhanced by Rs.94,880/-

15. A perusal of the awards passed by the Tribunal in respect of the appellant/claimant in C.M.A.No.1455 of 2020, it appears that the Tribunal has awarded a sum of Rs.1,78,440/- towards expenses incurred for medical treatment, hospitalization and medicines. In fact, the appellant/claimant claimed a sum of Rs.5,00,000/- towards medical expenses. But, he produced Ex.P3 and Exs.P5 to P7 medical bills for Rs.1,10,000/- Rs.45,600/- and Rs.12,510/- respectively and accordingly, the Tribunal has rightly awarded the said amounts. As regards the compensation awarded under the heads viz., expenses towards conveyance at Rs.5,000/-, extra nourishment at Rs.1,000/- and attendant charges at Rs.3,000/- awarded by the Tribunal are concerned, though there is no cogent evidence on record, the Tribunal has awarded as such. However, in the opinion of this Court, those award amounts are very meagre since the accident had taken place in the year 2016 and therefore they are required to be enhanced. Accordingly, this Court feels it appropriate to enhance the same at Rs.10,000 each. As regards the compensation awarded under various other heads are concerned this Court is of the view that the Tribunal has rightly and sufficiently awarded and are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Expenses relating to treatment, hospitalization and medicines	Rs.1,78,440/-	Rs.1,78,440/-	Confirmed
2.	Expenses towards conveyance	5,000/-	10,000/-	Enhanced
3.	Extra nourishment cost	1,000/-	10,000/-	Enhanced



4.	Attender charges	3,000/-	10,000/-	Enhanced
5.	Damages to clothing and articles	1,000/-	1,000/-	Confirmed
6.	Compensation for disability	94,500/-	94,500/-	Confirmed
7.	Compensation for pain and suffering	25,000/-	25,000/-	Confirmed
8.	Compensation for loss of future amenities	25,000/-	25,000/-	Confirmed
	Total	Rs.3,32,940/-	Rs.3,53,940/-	Enhanced by Rs.21,000/-

16. In the result, these Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal at Rs.16,37,631/- and Rs.3,32,940/- are hereby enhanced to Rs.17,32,511/- and Rs.3,53,940/- respectively together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent-Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.Nos.149 and 148 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Chengalpattu. On such deposit, the appellants are permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar

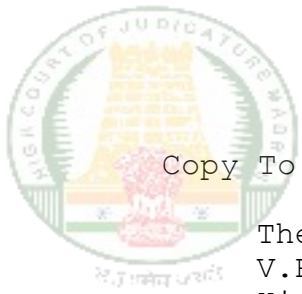
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Sub Assistant Registrar

gbi

To

The Chief Judicial Magistrate,
The Motor Accident Claims Tribunal,
Chengalpattu.



Copy To:-

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

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+2ccs to Mr.S.S.Swaminathan, Advocate, S.R.Nos.36465 & 36466

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RP (CO)
PBS/02/12/2021