



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.826 of 2014
and C.M.A.Nos.43 & 44 of 2015

A.Rajalakshmi	.. Appellant in C.M.A.No.826/2014
A.Prabakaran	.. Appellant in C.M.A.No.43/2015
P.Vidya	.. Appellant in C.M.A.No.44/2015

Vs.

1.K.Yuvarajan

2.The Divisional Manager,
The Oriental Insurance Co. Ltd.,
No.139, 2nd Floor,
S.V. Complex, Eswaran Koil Street,
Pondicherry.

..Respondents in all C.M.As.

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgments and decrees dated 23.06.2010, made in M.C.O.P. Nos.1510, 1507 & 1508 of 2005, on the file of the Additional Sub Court, (Motor Accident Claims Tribunal), Pondicherry.

For Appellant : Mr.D.Ravichander

For Respondents : No appearance (For R1)

Mr.N.Sampath (For R2)

C O M M O N J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode")

These appeals have been filed for enhancement of compensation granted by separate awards dated 23.06.2010, made in M.C.O.P. Nos.1510, 1507 & 1508 of 2005 respectively, on the file of the Additional Sub Court, (Motor Accident Claims Tribunal), Pondicherry.



2.The appellant-claimant in all the appeals filed M.C.O.P. No.1510, 1507 & 1508 of 2005 respectively, on the file of the Additional Sub Court, (Motor Accident Claims Tribunal), Pondicherry, claiming a sum of Rs.7,80,000/-, Rs.5,10,000/- and Rs.9,85,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 21.11.2004.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by driver of the Maxi Cab owned by the 1st respondent and directed the respondents 1 and 2 as owner and insurer of the offending vehicle, to jointly and severally pay a sum of Rs.1,80,000/-, Rs.98,000/- and Rs.2,19,000/- respectively as compensation to the appellant in all the appeals.

4.Not being satisfied with the amounts awarded by the Tribunal in the awards dated 23.06.2010, made in M.C.O.P. Nos.1510, 1507 & 1508 of 2005, the appellant in all the appeals have come out with the present appeals.

C.M.A.No.826 of 2014

5(i).The learned counsel appearing for the appellant contended that in the accident, the appellant sustained grievous injuries, fracture of right clavicle lateral end, fracture in both bone right leg proximal 1/3rd and fracture femoral head. She has filed Exs.P11 and P26 - discharge summaries to prove the treatment taken for the injuries sustained in the accident. Due to the injuries sustained in the accident, the appellant's hip got dislocated and she is unable to do her daily routine independently. The appellant requires further treatment. The Tribunal failed to consider the judgment of the Hon'ble Apex Court and this Court, while granting compensation, which must be adequate and it should not be illusory. The total compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

C.M.A.No.43 of 2015

5(ii). The learned counsel appearing for the appellant contended that in the accident, the appellant sustained Acromio Clavicular joint dislocation right side, unreduced Acromia Clavication dislocation right shoulder with prominent outer end of clavicle protruding through skin, restriction of movements of right shoulder and rotator cliff muscle wasting right shoulder. He has filed Ex.P21-discharge summary to prove the treatment taken for the injuries sustained in the accident.



P.W.3 Doctor examined the appellant and certified that the appellant suffered 28% disability. The Tribunal has awarded only a meagre sum of Rs.28,000/- towards disability at the rate of Rs.1,000/- per percentage, without considering the year of accident i.e., 2004. Due to the injuries sustained in the accident, the appellant lost his future prospects. The Tribunal ought to have considered the deposition of P.W.3 Doctor that the appellant's movement of right shoulder is restricted and awarded more compensation under different heads. In any event, the total compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

C.M.A.No.44 of 2015

5(iii).The learned counsel appearing for the appellant contended that in the accident, the appellant sustained grievous injuries such as multiple injuries in left eye brow, left upper eyelid, left cheek, upper and lower lips, chin and fracture in right lower limb. He has filed Exs.P11 and P24 - discharge summaries to prove the treatment taken for the injuries sustained in the accident. P.W.3 Doctor examined the appellant and certified that she suffered 34% disability. P.W.3 Doctor also deposed that there is restriction of movements of right knee and fractures are mal united. The appellant requires further treatment. The Tribunal failed to award any amount towards future medical expenses. The Tribunal ought to have awarded more amount towards permanent disfigurement of face of the appellant. Due to the injuries sustained in the accident, the appellant could not do her household work. The Tribunal without considering the nature of injuries, disability suffered by the appellant and evidence of P.W.3 Doctor, awarded meagre amount as compensation under different heads and prayed for enhancement of the compensation.

6.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the nature of injuries and period of treatment taken by the appellant as in-patient in all the appeals, awarded compensation under different heads, which are not meagre. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of all the appeals.



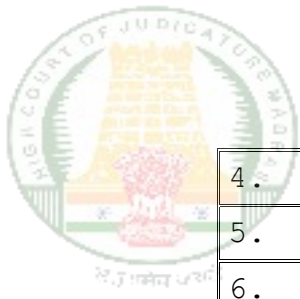
8. Heard the learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused the entire materials available on record.

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C.M.A.No.826 of 2014 -

9. From the materials on record, it is seen that it is the case of the appellant that in the accident, she sustained grievous injuries and has taken in-patient treatment at PIMS Hospital, Pondicherry and Apollo Hospital, Chennai. She has filed Exs.P11 and P26 - discharge summaries to prove the same. It is seen that the appellant has not produced any disability certificate or examined Doctor to prove the nature of injuries and that due to injuries, she cannot do any work as she was doing earlier. On the failure of the appellant to prove the disability suffered and injuries sustained, the Tribunal has granted only a sum of Rs.20,000/- towards pain and sufferings, Rs.10,000/- towards extra nourishment and Rs.1,50,000/- together towards medical expenses and transportation charges. The appellant has produced two discharge summaries for having taken treatment at PIMS Hospital, Pondicherry from 22.11.2004 to 23.11.2004 and at Apollo Hospital, Chennai, from 23.11.2004 to 05.12.2004. The Tribunal has not awarded any amount towards attendant charges. The accident is of the year 2004. Considering the age of the appellant as 67 years, nature of injuries and period of treatment taken, a sum of Rs.20,000/- is granted towards attendant charges, a sum of Rs.20,000/- is granted towards loss of income during treatment period and a sum of Rs.500/- towards loss of clothes. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same 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.	Pain and sufferings	20,000/-	20,000/-	Confirmed
2.	Extra nourishment	10,000/-	10,000/-	Confirmed
3.	Medical expenses & transportation	1,50,000/-	1,50,000/-	Confirmed



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4.	Loss of income	-	20,000/-	Granted
5.	Loss of clothes	-	500/-	Granted
6.	Attendant charges	-	20,000/-	Granted
	Total	1,80,000/-	2,20,500/-	Enhanced by Rs.40,500 /-

C.M.A.No.43 of 2015 -

10.From the materials on record, it is seen that it is the case of the appellant that in the accident, he sustained grievous injuries such as severe fractures in the right shoulder and in the right forehead and has taken treatment as in-patient at PIMS Hospital, Pondicherry and Apollo Hospital, Chennai. He has filed Exs.P12 and P21 - discharge summaries to prove the same. The appellant examined P.W.3 Doctor who clinically examined and certified that the appellant suffered 28% disability. P.W.3 Doctor further deposed that the movements of right shoulder of the appellant is restricted. The Tribunal has awarded a meagre sum of Rs.28,000/- towards disability, at the rate of Rs.1,000/- per percentage. The accident is of the year 2004. Considering the date of accident, a sum of Rs.1,500/- is granted per percentage of disability to the appellant. Hence, the amount awarded by the Tribunal towards disability is modified to Rs.42,000/- [Rs.1,500/- x 28%]. Considering the nature of injuries and evidence of P.W.3 Doctor, a sum of Rs.10,000/- is granted to the appellant towards attendant charges.

11.The appellant claimed that at the time of accident, he was aged 40 years and was doing Jewellery business. The Tribunal has awarded only a meagre sum of Rs.15,000/- towards loss of income. Considering the nature of work done by the appellant, the amount of Rs.15,000/- granted by the Tribunal towards loss of income is meagre and the same is enhanced to Rs.25,000/-. The Tribunal failed to award any amount towards damage to clothes and attendant charges. Considering the nature of injuries and period of treatment taken, the appellant is entitled to a sum of Rs.500/- towards loss of clothes and Rs.10,000/- towards attendant charges. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and sufferings	20,000/-	20,000/-	Confirmed
2.	Disability	28,000/-	42,000/-	Enhanced
3.	Medical expenses	20,000/-	20,000/-	Confirmed
4.	Transportation	5,000/-	5,000/-	Confirmed
5.	Extra nourishment	10,000/-	10,000/-	Confirmed
6.	Attendant charges	-	10,000/-	Granted
7.	Loss of clothes	-	500/-	Granted
8.	Loss of income	15,000/-	25,000/-	Enhanced
	Total	98,000/-	1,32,500/-	Enhanced by Rs.34,500/-

C.M.A.No.44 of 2015 -

12.From the materials on record, it is seen that it is the case of the appellant that in the accident, she sustained grievous injuries and multiple fractures all over the body and has taken treatment as in-patient at PIMS Hospital, Pondicherry and Apollo Hospital, Chennai. She has filed Exs.P11 and P24 - discharge summaries to prove the same. The appellant examined P.W.4 - Plastic Surgeon Doctor and P.W.3 Orthopaedics Doctor, who clinically examined and certified that the appellant suffered 34% disability. P.W.3 Doctor further deposed that the movements of right knee of the appellant is restricted and the fractures are malunited. The Tribunal awarded a meagre sum of Rs.34,000/- towards disability, at the rate of Rs.1,000/- per percentage. The accident is of the year 2004. Considering the date of accident, a sum of Rs.1,500/- is granted per percentage of disability to the appellant. Hence, the amount awarded by the Tribunal towards disability is modified to Rs.51,000/- [Rs.1,500/- x 34%]. Considering the nature of injuries and evidence of P.W.3 Doctor, a sum of Rs.10,000/- is granted to the



appellant towards attendant charges. The Tribunal failed to award any amount towards damage to clothes. The appellant is entitled to a sum of Rs.500/- towards loss of clothes.

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13.The appellant claimed that at the time of accident, she was aged 28 years and was a House Wife. Due to the injuries sustained in the accident, the appellant is entitled to a sum of Rs.10,500/- [Rs.3,500/- x 3 months] towards loss of income at the rate of Rs.3,500/- per month for a period of three months. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same 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.	Pain and sufferings	20,000/-	20,000/-	Confirmed
2.	Disability	34,000/-	51,000/-	Enhanced
3.	Medical expenses	1,20,000/-	1,20,000/-	Confirmed
4.	Transportation	10,000/-	10,000/-	Confirmed
5.	Extra nourishment	10,000/-	10,000/-	Confirmed
6.	Attendant charges	-	10,000/-	Granted
7.	Loss of clothes	-	500/-	Granted
8.	Loss of income	-	10,500/-	Granted
9.	Disfigurement of face	25,000/-	25,000/-	Confirmed
	Total	2,19,000/-	2,57,000/-	Enhanced by Rs.38,000/-

14.In the result, all the appeals are partly allowed and the amount awarded by the Tribunal at Rs.1,80,000/-, Rs.98,000/- and Rs.2,19,000/- are enhanced to Rs.2,20,500/-, Rs.1,32,500/-



and Rs.2,57,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are jointly and severally directed to deposit the award amount, now determined by this Court, along with interest and costs, 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.1510, 1507 and 1508 of 2005 respectively. On such deposit, the appellant in all the appeals are permitted to withdraw their respective award amounts, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

gsa
To

1.The Additional Subordinate Judge,
(Motor Accident Claims Tribunal), Pondicherry.

Copy to
The Section Officer,
V.R Section, High Court, Madras.

C.M.A.Nos.826 of 2014
and 43 & 44 of 2015

KV(CO)
SP(19/01/2022)