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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12.03.2021

Pronounced on : 27.04.2021

CORAM

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.Nos.894 and 950 of 2014

Maheswari

W/o.Sivaraman

..Appellant in C.M.A.No.894 of 2014/
Petitioner

R.Sivaraman

S/o.Ramakrishnan

..Appellant in C.M.A.No.950 of 2014/
Petitioner

Vs.

1.K.Palanisamy

S/o.K.P.Kaliappan

2.The Oriental Insurance Company Limited,
No.281, Cross Cut Road,
Gandhipuram,
Coimbatore-641 012.

..Respondents in both Appeals/
Respondents

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order made in M.C.O.P.Nos.397 and 303 of 2010 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Sankari dated 03.08.2013 and for enhancement of compensation.

For Appellants :: Mr.C.Kulanthaivel
(In both C.M.As)

For R2 :: Mr.Elveera Ravindran
in both appeals

For R1 :: Ex-parte before Tribunal
in both appeals



COMMON JUDGMENT

(The case has been heard through video conference)

C.M.A.Nos.894 and 950 of 2014 are filed by the appellants/claimants against the award dated 03.08.2013 in M.C.O.P.Nos.397 and 303 of 2010 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Sankari.

2.Since both the appeals arise out of the same accident and award, they are taken up together and disposed of by this common judgment.

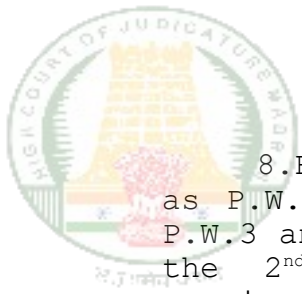
3.The parties are referred to as per their ranks in the claim petition for the sake of convenience.

4.The appellants are the claimants in M.C.O.P.Nos.397 and 303 of 2010 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Sankari. They filed the above said claim petition, claiming a sum of Rs.7,00,000/- and Rs.15,00,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 15.03.2010.

5.According to the claimants, on 15.03.2010, at about 8.00 a.m., the claimant in M.C.O.P.No.397 of 2010 travelled as a pillion rider and the claimant in M.C.O.P.No.303 of 2010 as rider of the Hero Honda Motorcycle bearing Registration No.TN-37-C-7700 proceeding from Sulthanipuram towards Kalveerampalayam Bus Stop, on Maruthamalai Main Road, near Kalveerampalayam, opposite to Kinoro Ice Cream Shop, on the extreme left side in West to East direction. At that time, a TATA 407 vehicle bearing Registration No.TAR-7445 came from the opposite direction which was driven by the 1st respondent in a rash and negligent manner without observing traffic rules hit against the above said motorcycle. In the impact of the collision the claimants in both the claim petition were thrown away and sustained grievous injuries. Hence, they filed the claim petition before the Tribunal.

6.The 1st respondent remained ex-parte before the Tribunal.

7.On behalf of the 2nd respondent/Insurance Company, a counter affidavit was filed, inter alia denying the averments made in the claim petition and it is stated that the driver of the TATA 407 vehicle involved in the accident had not possessed valid driving licence. It was also stated that the claim made by the claimants is excessive and exorbitant and there is no liability on the part of the Insurance Company to pay the compensation.



8. Before the Tribunal, the injured claimants were examined as P.W.1 and P.W.2 and Doctor Mr.R.Krishnasamy was examined as P.W.3 and marked 22 documents as Exs.P-1 to P-22. On the side of the 2nd respondent/Insurance Company, Mr.Chandra Sekar was examined as R.W.1 and Mr.Paneer Selvam was examined as R.W.2 and marked Exs.R-1 and R-2.

9. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the TATA 407, belonging to the 1st respondent which was insured with the 2nd respondent/Insurance company and directed the 2nd respondent/Insurance Company to pay a sum of Rs.1,04,000/- and Rs.2,23,000/- respectively as compensation to the appellants/claimants.

10. Against both the said awards dated 03.08.2013 in M.C.O.P.Nos.397 and 303 of 2010, the claimants have come out with the present appeals.

11. The learned counsel appearing for the claimants would contend that the Tribunal had not considered the evidence particularly with regard to disability sustained by the claimants in proper perspective and drastically reduced the same and awarded very meagre amount towards disability by fixing at Rs.2,000/- per percentage instead of Rs.3,000/-. He would also contend that the claimants were not awarded the compensation under the various other heads properly and the same are liable to be modified and enhanced.

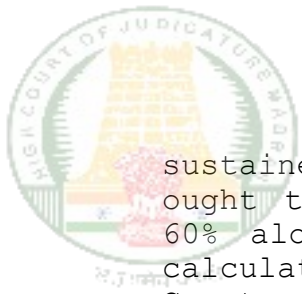
12. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company made submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

13. Heard the learned counsel appearing for the appellants/claimants as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the materials available on record.

14. Now the point for consideration is whether the claimants are entitled for enhancement of the compensation as prayed for by them?

POINT:

15. On consideration of the medical evidence available on record, the Tribunal fixed the partial permanent disability at 60% as regards the claimant, namely Sivakumar in C.M.A.No.950 of 2014. The learned counsel appearing for the appellant would contend that P.W.3/Doctor had clearly deposed that the claimant



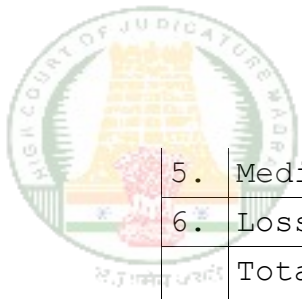
sustained 72% of partial permanent disability and the Tribunal ought to have considered the same. But it has been reduced to 60% alone and awarded only a meagre sum of Rs.1,20,000/- by calculating each percentage of disability at Rs.2,000/-. This Court considering the present day cost of living, fixed Rs.3,000/- per percentage on disability. Therefore, in this case also this Court feels it appropriate to fix the percentage of disability at Rs.3,000/- per percentage and accordingly, the compensation awarded under the head of partial permanent disability is enhanced at Rs.1,80,000/- (60% X Rs.3,000/-). Due to the injuries and disability, the appellant would not have attended his work atleast for a period of six months. The Tribunal has awarded a sum of Rs.30,000/- towards loss of earning and the same is enhanced to Rs.36,000/- (Rs.6,000/- X 6 months).

16.As regards the claimant, namely Maheswari in C.M.A.No.894 of 2014 is concerned, the P.W.3/Doctor has clearly deposed that the claimant sustained 33% of partial permanent disability and the Tribunal ought to have considered the same. But it has been reduced to 25% alone and awarded only a meagre sum of Rs.50,000/- (25% X Rs.2,000/-) by calculating each percentage of disability at Rs.2,000/-. This Court considering the present day cost of living, fixed Rs.3,000/- per percentage on disability. Therefore, in this case also this Court feels it appropriate to fix the percentage of disability at Rs.3,000/- per percentage and accordingly, the compensation awarded under the head of partial permanent disability is enhanced at Rs.75,000/- (25% X Rs.3,000/-). Due to the injuries and disability, the appellant would not have attended her work atleast for a period of six months. The Tribunal has awarded a sum of Rs.9,000/- towards loss of earning and the same is enhanced to Rs.18,000/- (Rs.3,000/- X 6 months).

17.The amounts awarded by the Tribunal under other heads are just and reasonable and the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

In C.M.A.No.894 of 2014:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Disability	50,000/-	75,000/-	Enhanced
2.	Pain & Sufferings	15,000/-	15,000/-	Confirmed
3.	Extra Nourishment	5,000/-	5,000/-	Confirmed
4.	Transportation	5,000/-	5,000/-	Confirmed



5.	Medical expenses	20,000/-	20,000/-	Confirmed
6.	Loss of income	9,000/-	18,000/-	Enhanced
	Total	Rs.1,04,000/-	Rs.1,38,000/-	Enhanced by Rs.34,000/-

In C.M.A.No.950 of 2014:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Disability	1,20,000/-	1,80,000/-	Enhanced
2.	Pain & Sufferings	15,000/-	15,000/-	Confirmed
3.	Extra Nourishment	5,000/-	5,000/-	Confirmed
4.	Transportation	5,000/-	5,000/-	Confirmed
5.	Medical expenses	48,000/-	48,000/-	Confirmed
6.	Loss of income	30,000/-	36,000/-	Enhanced
	Total	Rs.2,23,000/-	Rs.2,89,000/-	Enhanced by Rs.66,000/-

18. Accordingly, these Civil Miscellaneous Appeals are partly allowed. The second respondent/Insurance Company is directed to deposit the amount, which this Court determined in these appeals, to the credit of M.C.O.P.Nos.397 and 303 of 2010 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Sankari, with accrued interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit along with costs, through RTGS or NEFT method as held by this Court in (The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others) 2016 (1) TN MAC 433, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants shall be entitled to withdraw the award amount with accrued interest. The appellants are directed to pay appropriate Court fees within a period of two months, failing which, they are not entitled to claim interest on the award amount. No costs.

Sd/-

Deputy Registrar(TNMCC)

//True Copy//

Sub Assistant Registrar

gbi



To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Sankari.

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

+2cc to Mr.C.Kulanthaivel, Advocate, S.R.No.26084, 26086

C.M.A.Nos.894 and 950 of 2014

PA (CO)
CB(28/10/2021)