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C.M.A. (MD) .Nos. 163 and 164 of 2013

and

C.M.A (MD) Nos.863 and 864 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.12.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD) .Nos. 163 and 164 of 2013

and

C.M.A (MD) Nos.863 and 864 of 2011

M.P. (MD) Nos.1,1,2,2,3 and 3 of 2011

C.M.A (MD) Nos.163 and 164 of 2013

Sathuragiri

...Appellant/ Claimant in C.M.A. (MD) No.163 of 2013

Selva Manikandan

...Appellant / Claimant in C.M.A. (MD) No.164 of 2013

Vs.

1.TVL Karaikudi - Trichy
Roadways (Firm)
through its Proprietor,
No.432, V.O.C., Road,
Karaikudi Nagar,
Sivagangai District.

2.The Oriental Insurance Co.Ltd.,
through its Divisional Manager,
Divisional Office,
Bankur Dharmasala Building 3rd Floor,
No.6A, Melaveli Veethi,
Madurai Town, Madurai District.

...Respondents / Respondents in both C.M.As.

COMMON PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award in M.C.O.P.Nos.53 and 54 of 2009 on the file of the Motor Accident Claims Tribunal cum Sub Court, Paramakudi, dated 30.11.2010 and be pleased to enhance the award amount.

For Appellant : Mr.D.Senthil

For R1 : No appearance

For R2 : Mr.C.Jawahar Ravindran



C.M.A (MD) No. 863 of 2011

The Oriental Insurance Co.Ltd.,
through its Divisional Manager,
Divisional Office,
Bankur Dharmasala Building 3rd Floor,
No.6A, Melaveli Veethi,
Madurai Town, Madurai District.

... Appellant/2nd Respondent

Vs.

1.Selva Manikandan

...1st Respondent/Petitioner

2.TVL Karaikudi - Trichy

Roadways (Firm)

through its Proprietor,

No.432, V.O.C., Road,

Karaikudi Nagar,

Sivagangai District.

... 2nd Respondent/1st Respondent

(2nd Respondent remained exparte
before the Lower Court)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award of Rs.2,68,032/- (Rupees Two Lakhs Sixty Eight Thousand and Thirty Two only) passed in M.C.O.P.Nos.53 of 2009 dated 30.11.2010, on the file of the Motor Accident Claims Tribunal cum Sub Court, Paramakudi.

For Appellant : Mr.C.Jawahar Ravindran

For R1 : Mr.D.Senthil

C.M.A (MD) No. 864 of 2011

The Oriental Insurance Co.Ltd.,
through its Divisional Manager,
Divisional Office,
Bankur Dharmasala Building 3rd Floor,
No.6A, Melaveli Veethi,
Madurai Town, Madurai District.

... Appellant/2nd Respondent

Vs.

1.Sathuragiri

...1st Respondent/Petitioner



2.TVL Karaikudi - Trichy
Roadways (Firm)
through its Proprietor,
No.432, V.O.C., Road,
Karaikudi Nagar,
Sivagangai District.

...2nd Respondent/1st Respondent

(R2 respondent remained exparte
before the Lower Court)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award of Rs.6,15,757/- (Rupees Six Lakhs Fifteen Thousand Seven Hundred and Fifty Seven only) passed in M.C.O.P.No.54 of 2009 dated 30.11.2010, on the file of the Motor Accident Claims Tribunal cum Sub Court, Paramakudi.

For Appellant : Mr.C.Jawahar Ravindran
For R1 : Mr.D.Senthil
R2 : No Appearance

COMMON ORDER

These Civil Miscellaneous Appeals have been filed to set aside the Judgment and Decree, in M.C.O.P.Nos.53 and 54 of 2009 dated 30.11.2010 passed by the learned Motor Accident Claims Tribunal cum Sub Judge, Paramakudi.

2.It is a case of accident, which took place on 26.10.2008, at about 9.30 p.m., one Selva Manikandan, was riding the two wheeler TVS Victor GLX bearing Registration No.TN 65 F 7068 with one Sathuragiri, who is a pillion rider, travelling from west to east in Madurai to Mandapam National Highway, after crossing Kamardeen Mahal, Parthibanur, near the house of Muniyandi, an insured Tourist bus bearing registration No.TN 58 L 4799, came from east to West in a rash and negligent manner, dashed against the two wheeler. Due to the accident, the claimants in both MCOPs, were sustained multiple grievous injuries over their body and fractures. They were taken to the Government Hospital, Paramakudi, then referred to Meenakshi Mission Hospital, Madurai.

3. The driver of the two wheeler, one Selva Manikandan, filed a petition in M.C.O.P.No.53 of 2009 and the pillion rider one Sathuragiri, filed a petition in M.C.O.P.No.54 of 2009 before the learned Motor Accident Claims Tribunal, Paramakudi, seeking compensation.

4.Before the Tribunal, on the side of the claimants four witnesses were examined as P.Ws.1 to 6 and marked nine documents as



Exs.P.1 to P.47. On the side of the respondents three witnesses was examined as R.W.1 to 3 and marked exhibit Ex.R.1.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimants and the insurance company and also on appreciating the evidences on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the 1st respondent vehicle and he is liable to compensate to the petitioners in both M.C.O.Ps., and directed the appellant/insurance company to pay a sum of Rs.2,68,032/- as compensation in M.C.O.P.No.53 of 2009 and directed the appellant/ insurance company to pay a sum of Rs.6,15,757/- as compensation in M.C.O.P.No.54 of 2009.

6.The appellant/insurance company has filed C.M.A(MD)Nos.863 and 864 of 2011, challenging the liability of the Driver of the insured Tourist bus, against the award passed by the tribunal and the claimants in both MCOPs, have filed C.M.A(MD)Nos.163 and 164 of 2013 seeking enhancement, against the award passed by the tribunal.

7. Heard on either side. Perused the material documents available on record.

8. A First Information Report was filed against the driver of insured vehicle. But the insurance company contented that in the accident register, it is indicated that there was an accident between a two wheeler and an auto. But the First Information Report is filed against the driver of the bus and the same was also sent to Motor Vehicle Inspector for inspection only on the next day. It is a fact that the Motor Vehicle Inspector has found that there was a damage in the front side of the bus. The driver also pleaded guilty before the Magistrate Court and paid fine. Considering this aspect, the liability is fixed at the insured vehicle which is proved by the claimants.

9.CMA.No.163 of 2013 was filed by the claimant Sathuragiri for the injuries sustained by him in the accident. He was working as a driver in a private concern. His right leg was amputated due to the accident. Since he lost his job, the multiplier applied by the Tribunal, is right. The claimants raised objection for the monthly income fixed by the Tribunal. But no document has been filed by the claimant, to prove that he had been earned Rs.6,000/- per month. The owner of the bus where the said Sathuragiri was working, was examined as PW.5 as to the claimant received Rs.6,000/- as salary per month. But the accident occurred in the year 2008. So the Tribunal has fixed monthly income as Rs.4,500/- which is reasonable. But for pain and sufferings, the tribunal has fixed Rs.25,000/-. The right leg of the said Sathuragiri /claimant was amputated. So that is extended to Rs.50,000/-. For medical bill, which was marked as Ex.P.13 to P19, it comes around Rs.1,54,607/-. But the Tribunal awarded Rs.1,04,607 towards medical bills. The medical bills are



produced by the claimant which was not objected by the insurance company while marking. The reason stated for refusing the medical bills, is also not genuine. So this Court is inclined to grant the total amount of the medical bill. The amount awarded by the Tribunal in M.C.O.P.No.54 of 2009 is enhanced to Rs.1,00,000/- on these two grounds.

10.In C.M.A.No.164 of 2013, the claimant filed this appeal to enhance the award amount. Medical Bills were produced by the claimant for Rs.2,43,657/-. But the Tribunal without any valid reason, reduced the amount to Rs.1,43,657/-. So this Court is inclined to grant the entire amount shown in the medical bill. Likewise, the medical Board had given permanent disability certificate as 39%. The Tribunal erred in reducing 30% without any proper reason. Thus, this Court is inclined to increase the amount towards the medical bills and towards the permanent disabilities, which are as follows:

Increase in Medical Bills	= Rs.1,00,000/-
Increase in Permanent Disability(39%)	= Rs. 18,000/-

	Rs.1,18,000/-

apart from the amount already awarded by the Tribunal.

11. i)Finally, C.M.A.No.163 of 2013 is partly allowed and enhanced to Rs.7,15,757/-(Rupees Seven Lakhs Fifteen Thousand Seven Hundred and Seven only) and in C.M.A.(MD)No.164 of 2013, the amount is enhanced to Rs.3,86,032/-(Rupees Three Lakhs Eighty Six thousand Thirty Two only).

ii)C.M.A(MD)Nos.863 and 864 of 2011 filed by the insurance company, are dismissed. No costs. If any excess amount deposited, the appellant/insurance company is permitted to withdraw the excess award amount. If not, after depositing the award amount by the insurance company, the claimant is entitled to withdraw the award amount. The insurance company is directed to deposit the amount within a period of four weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



C.M.A. (MD) .Nos. 163 and 164 of 2013

and

C.M.A (MD) Nos.863 and 864 of 2011

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Motor Accident Claims Tribunal cum Sub Court, Paramakudi.

Copy to

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+2 CC to M/s.D.SENTHIL, Advocate (SR-37524[F] dated 07/12/2021)

C.M.A. (MD) .Nos. 163 and 164 of 2013

and

C.M.A (MD) Nos.863 and 864 of 2011

06.12.2021

RD(25/01/2022) 6P 6C