

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	18.02.2021
Date of Judgment	19.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A (MD) Nos.469 and 684 of 2016

and

CMP (MD) No.7151 of 2016

(1) .CMA (MD) No.469 of 2016:-

Bibin Varghese : Appellant/Claimant

Vs.

1.Mariappan @ Marimuthu : 1st Respondent/1st Respondent

2.National Insurance Company Limited,
through its Branch Manager,
II Floor, Number 92,
Devarpuram Road,
Tuticorin

: 2nd Respondent/2nd Respondent

(2) CMA (MD) No.684 of 2016:-

National Insurance Company Limited,
through its Branch Manager,
II Floor, Number 92,
Devarpuram Road,
Tuticorin

: Appellant/2nd Respondent

Vs.

1.Bibin Varghese : 1st Respondent/Petitioner

2.Mariappan @ Marimuthu : 2nd Respondent/1st Respondent

COMMON PRAYER: Civil Miscellaneous Appeals have been filed under Section 173 of Motor Vehicles Act against the award, dated 04.07.2014 made in MCOP No.56 of 2011 on the file of Motor Accident Claims Tribunal (Additional Subordinate Court), Tirunelveli.

For Appellant in CMA(MD)
No.684 of 2016

&

For R2 in CMA(MD)
No.469 of 2016

: Mr.J.S.Murali



For 1st Respondent
in CMA(MD)No.684 of 2016
appellant in CMA(MD)No.469 of 2016 : Mr.T.Selvakumaran

For 2nd Respondent in CMA(MD)No.684 of 2016 : No appearance
For 1st Respondent in CMA(MD)No.469 of 2016

COMMON JUDGMENT

CMA(MD)No.469 of 2016 is filed by the claimant for enhancement of compensation, whereas CMA(MD)No.684 of 2016 has been filed by the Insurance Company against the award passed by the Motor Accident Claims Tribunal (Additional Sub Court), Tirunelveli, in MCOP No.56 of 2010, dated 12.09.2013.

2.The brief facts of the case are that on 11.06.2016 at about 2.30 pm, when the claimant was riding the motor cycle TN37-AA-8247, at the time, a Mini Lorry TN-74-A-1000 came in high speed and in a rash and negligent manner and hit against the motor cycle. In that process, the claimant has thrown out of the motor cycle and sustained grievous injuries. The claimant, sought compensation of Rs.20,00,000/- on the ground that the driver of the offending vehicle was responsible for the accident.

3.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the offending vehicle was responsible for the accident and awarded compensation of Rs.6,35,789/- together with interest @ 7.5% p.a. Challenging the award of the tribunal, both the Insurance Company as as well as the claimant are before this court.

4.Heard both sides and perused the materials available on record.

5.The dispute is in respect of quantum. The learned counsel appearing for the appellant/claimant in CMA(MD)No.469 of 2016 argued that the compensation awarded by the tribunal towards permanent disability, loss of study and loss of good job are on the lower side and further, claimed Rs.1 Lakhs towards loss of amenities and Rs.1 Lakhs towards loss of marriage prospects and prays that CMA(MD) No.469 of 2016 has to be allowed.

6.On the other hand, the learned counsel appellant/Insurance Company in CMA(MD)No.684 of 2016, argued that the compensation amount towards permanent disability, loss of study, medical expenses and pain and suffering are all on the higher side and the claimant is entitled to Rs.2,000/- for 1% of disability and the amount awarded towards various heads are not reasonable and prays that CMA



(MD)No.684 of 2016 has to be allowed.

7.In this case, PW2 deposed that the disability of the injured had assessed as 52% and the tribunal took Rs.3,000/- for 1% of disability and paid Rs.1,56,000/- for 52% of disability. It was contested on the side of the appellant in CMA(MD)No.684 of 2016 stating that only the tribunal has to take Rs.2,000/- for 1% of disability and hence, the claimant is entitled to Rs.1,04,000/- towards permanent disability. In this case, the accident took place during the year 2010. The tribunal awarded Rs.3,000/- for 1% permanent disability as per the decision reported in **National Insurance Company Limited, Erode Vs. G.Ramesh and another [2013(2) TN MAC 583]**. Considering the status of economy and cost of living, the tribunal fixed Rs.3,000/- for 1% disability, which is correct and it is not necessary to award Rs.2,000/- for 1% of permanent disability. Hence, the amount awarded by the tribunal towards permanent disability is correct and it is not necessary to interfere with the same.

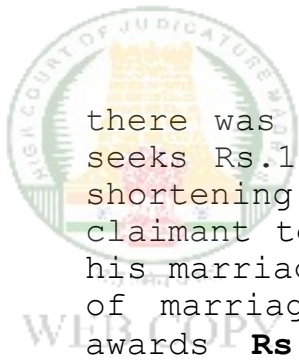
8.The next contention raised on the side of the appellant in CMA(MD)No.484 of 2016 is that the amount awarded towards loss of study and loss of good job by the tribunal is very low and the amount towards loss of study and the loss of good job may be enhanced. But it was opposed by the Insurance Company.

9.It is an admitted fact that due to the accident, it is not possible for the claimant to continue his study for the period of 2009-2010. To prove it, on the side of the claimant, Ex.P26 was filed. The tribunal awarded Rs.75,000/- towards loss of study is not reasonable and hence, it is enhanced to **Rs.1,50,000/-**.

10.In the above appeal CMA(MD)No.484 of 2016, the claimant claimed Rs.5,00,000/- towards loss of good job. To prove it, no document was filed. Even though, there is no document available on record, considering the facts and circumstances of the case, the claimant is entitled to **Rs.50,000/-** towards loss of good job.

11.Further, in this case, the claimant in CMA(MD)No.469 of 2016 claimed Rs.1 Lakhs towards loss of amenities. It was opposed by the Insurance company. In this case, the tribunal awarded Rs.60,000/- towards pain and suffering. But it was opposed on the side of the Insurance Company stating that it is on the higher side. Considering the injury sustained by the claimant, this court is of the opinion that the the award of Rs.60,000/- towards pain and suffering granted by the tribunal is reasonable. Therefore, he is not entitled to any amount towards loss of amenities.

12.In this appeal, the claimant seeks Rs.1 Lakhs towards loss of marriage purpose. PW2 deposed that due to the accident, the claimant had sustained fracture on his right leg bone and due to it,



there was shortening of 3 cm in his right leg. Hence, the claimant seeks Rs.1 lakhs towards loss of marriage prospects and due to the shortening of 3 cm in the right leg, it is not possible for the claimant to walk as usual like and hence, it will definitely affect his marriage prospects. The amount claimed by the claimant for loss of marriage prospects is higher on the side. Hence, this court awards **Rs.25,000/-** towards loss of marriage prospects.

13.The learned counsel for the appellant in CMA(MD)No.684 of 2016 argued that the tribunal awarded Rs.3,11,739/- towards compensation for medical expenses without proper verification of the medical documents and the same appears to be higher on the side. But on the other hand, the appellant/claimant in CMA(MD) No.469 of 2016 argued that the amount of Rs.3,11,739/- was awarded by the tribunal, after proper verification of medical documents and it is not on the higher side and the award of the tribunal towards compensation for medical bill is reasonable. In this case, to prove the medical expenses incurred, the claimant in CMA(MD)No.469 of 2016 filed Exs.P8, P12, P16, P17, P21, P23, P24 and P27. But Ex.P23 was not accepted by the tribunal. Hence, on the basis of Exs.P8, P12, P16, P17, P21, P24 and P27, the tribunal awarded Rs.3,11,739/-. The tribunal after verifying the medical bills has granted Rs.3,11,739/- towards medical expenses. Hence, the award under the head of medical expenses does not warrant any interference.

14.Inso far the compensation awarded under the other heads are concerned, the amounts so awarded are just and reasonable and therefore, no interference is warranted with the compensation awarded in respect of those heads. Accordingly, the award of the tribunal is re-calculated as under:-

S.No	Head	Award of the tribunal	Award of this court
01.	Transport to Hospital	23,050	23,050
02.	Extra nourishment	5,000	5,000
03.	Medical Expenses	3,11,739	3,11,739
04.	Compensation for loss of study period	75,000	1,50,000
05.	Compensation for patient attenders	5,000	5,000
06.	Compensation for pain and sufferings	60,000	60,000
07.	Compensation for partial permanent disability (Rs.3,000/- x 52%)	1,56,000	1,56,000
08.	Loss of marriage prospectus	--	25,000
09.	Loss of good job	--	50,000
	Total	6,35,789/-	7,85,789/-



15. In the result, the **CMA(MD)No.684 of 2016 filed by the Insurance Company is dismissed** and the **CMA(MD)No.469 of 2016 preferred by the claimant is partly allowed** on the above terms. The award of Rs.6,35,789/- is enhanced to **Rs.7,85,789/-**. The interest at the rate of 7.5% per annum awarded by the tribunal is maintained. The Insurance Company is directed to deposit the modified award amount together with accrued interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such compliance, the claimant is permitted to withdraw the entire amount, less the amount already withdrawn. The claimant shall pay the additional court fees for the enhanced amount. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

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To,

1.The Motor Accident Claims Tribunal/
Additional Subordinate Court,
Tirunelveli.

Copy to
The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+2 CC to M/s.J.S.MURALI, Advocate (SR-6381 & 6382[F] dated 22/02/2021)

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-6500[F] dated 22/02/2021)

C.M.A(MD)Nos.469 and 684 of 2016
19.02.2021

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