



C.M.A.Nos.3465 and 3466 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.Nos.3465 and 3466 of 2014

CMA.No.3465of 2014

Senthil Kumar @ Swaminathan

...Appellant

Vs

1. D.Venkatesan

**2. The Branch Manager,
The Oriental Insurance Company Ltd.,
Lodge President Complex,
Tiruvarur Town and District.**

... Respondent

CMA.No.3466 of 2014

Latha

... Appellant

Vs



C.M.A.Nos.3465 and 3466 of 2022

WEB COPY

1. D.Venkatesan

2. The Branch Manager,
The Oriental Insurance Company Ltd.,
Lodge President Complex,
Tiruvarur Town and District.

... Respondent

COMMON Prayer in CMA.Nos.3465 and 3466 of 2022:

Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree dated 18.04.2012 passed in respective MCOP.Nos.3 and 4 of 2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruvarur and prayed to modify the same.

CMA.Nos.3465 and 3466 of 2022

For Appellants : M/s.M.Thamizhavel

For Respondents : No Appearance (R1-Served)

: Mr.Arun Kumar for R2



WEB COPY



C.M.A.Nos.3465 and 3466 of 2022

COMMON JUDGEMENT

These two appeals arise in respect of a single accident in which the appellant in CMA.No.3465 of 2014 and the appellant in CMA.No.3466 of 2014 have sustained injuries.

2. The facts briefly narrated are as follows and the parties are being referred in the same rank as before the Tribunal with the petitioners in each of the claim petitions being collectively referred to as petitioner.

(i) The petitioner in MCOP.No.3 of 2012 as against which, CMA.No.3465 of 2014 has been filed and the petitioner in MCOP.No.4 of 2012 as against which CMA.No.3466 of 2014 has been filed were injured in the said accident.

(ii) The petitioner in MCOP.No.3 of 2012 was proceeding to his house after the election duty in his HERO HONDA bearing Reg.No.TN-50-



C.M.A.Nos.3465 and 3466 of 2022

WEB COPY

H-9579 with his wife riding pillion (she is the petitioner in MCOP.No.4 of 2012) on the Thiruvarur to Mailaduthurai Main road at around 9.30 p.m. At that juncture, the first respondent's vehicle TVS Star City which was yet to be registered was being driven by its driver in a rash and negligent manner dashed against the vehicle, in which, the respective petitioners were travelling.

(iii) By reason of the collision, the petitioners fell down from the vehicle and sustained injuries, for which, they have filed the respective claim petitions. The first respondent is the owner of the vehicle and he did not contest the case and it was only the Insurance Company who has filed its counter, questioning the manner of accident and contending that the accident had occurred only on account of the rash and negligent driving of the petitioner in MCOP.No.3 of 2012. The Insurance Company had also challenged the age, income and occupation of the petitioners, they had also raised a plea that the offending vehicle was not insured with them.



C.M.A.Nos.3465 and 3466 of 2022

WEB COPY

3. The Tribunal after considering the evidence on record held that the accident had occurred only on account of the negligence on the part of the driver of the TVS Star City. In MCOP.No.3 of 2012, the Tribunal had granted a total compensation of Rs.1,73,383/- together with interest at the rate of 7.5% and with regard to MCOP.No.4 of 2012, the Tribunal had awarded a sum of Rs.1,67,023/- with 7.5% interest. The petitioners were aggrieved by the compensation granted on the ground that it is inadequate. With reference to the petitioner in MCOP.No.4 of 2012 it is stated that on account of this accident, she had lost her vision in one eye and no amount have been granted in this head. That apart, the amount granted under other heads are also on the lower side.

4. Per contra, the learned counsel for the Insurance Company would submit that the amount awarded is on the higher side and has to be necessarily be reduced.

5. Heard the submissions made by both the counsels and perused the



C.M.A.Nos.3465 and 3466 of 2022

materials available on record.

WEB COPY

6. As regards the petitioner in MCOP.No.3 of 2012 he has only suffered a fracture on his thigh and leg and there is nothing to show that he is suffering from any restriction in his day to day activities or suffered of loss of his earning capacity. The amount granted under various heads appears fair and there is no necessity to modify the same. Therefore, CMA.No.3465 of 2014 stand dismissed.

7. As regards the petitioner in MCOP.No.4 of 2012, admittedly the petitioner has lost her vision in one eye and now she has to depend on others. Even for this case, the Tribunal has not adopted the multiplier method, but has only proceeded to award a very miniscule amount as compensation.

8. Considering the loss of depreciation of an eye, the amount under the various head has to be definitely enhanced and granted, thus the



C.M.A.Nos.3465 and 3466 of 2022

compensation awarded by the Tribunal is modified as follows:

WEB COPY

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Pain and suffering	60,000	80,000	Enhanced
2.	Permanent disability	-	4,50,000	Granted
3.	Loss of amenities	20,000	50,000	Enhanced
4.	Transportation	2,000	10,000	Enhanced
5.	Attender charges		10,000	Granted
6.	Loss of dresses	1,000	1,000	Confirmed
7.	Medical expenses	54,023	54,023	Confirmed
9.	Future Medical Expenses	50,000		Set aside
	Total	Rs.1,67,023/-	Rs.6,55,023/-	

The same is rounded to Rs.6,55,100/-

9. In the result, the appeal filed by the petitioner/appellant in CMA.No.3465 of 2014 stands dismissed. As regards the appeal filed by the petitioner/appellant in CMA.No.3466 of 2014 is allowed and the compensation of **Rs.1,67,023/-** awarded by the Tribunal in MCOP.No.4 of 2012 is hereby enhanced to a sum of **Rs.6,55,100/-** together with interest @



C.M.A.Nos.3465 and 3466 of 2022

7.5 % per annum from the date of petition till the date of deposit. The second respondent/Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.4 of 2012 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the petitioner/claimant is permitted to withdraw the entire award amount with proportionate accrued interest and costs, by making necessary applications. The claimant is directed to pay the Court fee for the compensation amount. The Tribunal below shall not disburse the amount till such time as proof of payment of Court Fee has been produced by the claimant. Consequently, connected miscellaneous petition is closed. No costs.

24.11.2022

Vv/dpq

Index : Yes/No

Speaking order/non-speaking order

8/10



C.M.A.Nos.3465 and 3466 of 2022

WEB COPY

To

1. The Motor Accident Claims Tribunal,
Sub Court, Tiruvarur
2. The Branch Manager,
The Oriental Insurance Company Ltd.,
Lodge President Complex,
Tiruvarur Town and District.
3. The Section Officer,
V.R.Section,
Madras High Court,
Chennai-104.



WEB COPY



C.M.A.Nos.3465 and 3466 of 2022

P.T.ASHA, J.,

Vv/dpq

C.M.A.Nos.3465 and 3466 of 2014

24.11.2022