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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 21.09.2022

ORDER PRONOUNCED ON : 14.10.2022

CORAM

**HON'BLE JUSTICE MR.JUSTICE D.KRISHNAKUMAR
AND
HON'BLE JUSTICE MRS.JUSTICE.N.MALA**

C.M.A.Nos.2014 and 2015 of 2017

V.Anantha Raj
R.Selvam

...Apellant in C.M.A.No.2014 of 2017
...Apellant in C.M.A.No.2015 of 2017

Vs.

1.V.Anbu Raj
(Was set exparte in the Trial Court)

2.Bharti Axa General Insurance Co. Ltd.,
2nd Floor, Metro Plaza,
No.162, Anna Salai,
Chennai-600 002.

....Respondents in both C.M.A.Nos.

Prayer in C.M.A.No.2014 of 2017: Civil Miscellaneous Appeal is filed Under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.02.2017 made in MACT O.P. No.492 of 2014 on the file of the II Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.



Prayer in C.M.A.No.2015 of 2017: Civil Miscellaneous Appeal is filed Under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.02.2017 made in MACT O.P. No.493 of 2014 on the file of the II Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.

For Appellant in both C.M.A.Nos. : Mrs.P.T.Saleem Fathima
for Mr.M.Swamikkannu

For R-2 in both C.M.A.Nos. : Mr.B.Sivakolappan
For R-1 in both C.M.A.Nos. : Exparte before Tribunal

COMMON JUDGMENT

[Common Judgment of the Court was delivered by N.MALA,J.]

Civil Miscellaneous Appeal Nos.2014 and 2015 of 2017 are filed against the Common Judgment and Decree dated 13.02.2017 passed in MACT O.P. Nos.492 and 493 of 2014 on the file of the II Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.5

2. As common judgment and decree was passed by the Tribunal in the claim petitions, the appeals are also disposed of by this common order.

3. The two M.C.O.P's. in M.C.O.P. No.492 and 493 of 2014, on the file of the



II Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai, were

filed by the claimants therein claiming a sum of Rs.3,00,000/- and Rs.1,01,00,000/- as compensation for the injuries sustained by the claimants in a Motor accident which took place on 06.01.2014 at about 04.45 hours.

4. According to the claimants, on 06.01.2014 at about 04.45 hours they were travelling in Mahindra Maxi Van viz.TN-05-AS-4534. The driver of the Van drove the Van in a rash and negligent manner, lost control of the Van and hit against a road side tree. Due to the accident, the claimants sustained multiple fractures and injuries. According to the claimants the accident occurred due to the rash and negligent driving of the driver of the Mahindra Maxi Van and as such the respondents 1 and 2 who are the owner and Insurer of the Van are liable to compensate them for the injuries sustained by them in the accident.

5. The first respondent/ owner of the offending vehicle remained exparte and the second respondent (i.e) the Insurer filed written statement. In the written statement of the second respondent, all the averments of the claimants were denied. The second respondent further took the plea that the claimants were travelling as



unauthorised gratuitous passenger's in the offending Van and as such the second respondent was not liable to pay any compensation and hence prayed that it may be exonerated from the liability. The second respondent's further contended, that the compensation claimed by the claimants was highly exorbitant and the claimants ought to be put to strict proof of the same.

6. The Motor Accident Claims Tribunal by its common order dated 13.02.2017 passed Judgment and Decree for a sum of Rs.25,000/- along with 7.5% interest per annum, in M.C.O.P. No.492 of 2014 with further direction to the second respondent to pay and recover the same from the first respondent. The Court further awarded a sum of Rs.2,91,000/- along with 7.5% interest in M.C.O.P. No.493 of 2014 with similar direction to the second respondent to pay and recover the same from the first respondent. Aggrieved by the common order the claimants have filed the above appeals praying for enhancement of compensation.

CMA.No.2014 of 2017:

7. The learned counsel for the claimant submitted that the learned Tribunal has erred in awarding a meagre compensation of Rs.25,000/- only which is unjust



and disproportionate to the nature of injuries sustained by the claimant. The amount awarded under the various heads are very meagre and this Hon'ble Court should therefore interfere with the Tribunal's Award.

8. We have gone through the records and we find that the claimant had sustained simple injuries and as per Ex.P3. he was treated only as outpatient in the Government Hospital. The claimant has not produced any documentary evidence except Ex.P3 (OP chits) issued by KMC Hospital to prove that he sustained partial or permanent disability in the accident. We find that Ex.P3 does not reflect that the claimant suffered any partial or permanent disability. In the absence of any evidence we find that the claim of the appellant for enhanced compensation is untenable.

9. We are therefore of the view that the compensation awarded by the Tribunal is just and reasonable and we find no grounds to interfere with the same.

CMA.No. 2015 of 2017

10. The learned counsel for the petitioner has submitted that the petitioner sustained "fractures of C6 Vertebral body with cord compression and the procedure being done for Corpectomy of C5 to C7 for Spinal Fixation with metal plate".



According to the counsel, the doctor who was examined as P.W.3 has issued disability certificate by assessing the disability at 50% for both partial and permanent disability. The learned counsel further submitted that P.W.3/doctor adduced evidence and placed on record, Ex.P11 and Ex.P12 and further testified that there was restriction of neck movement by left 0 to 40 deg. (Normal 0 to 90 deg.) and (Left) handgrip weakness 3/5, which means that the claimant had difficulty in holding objects. The counsel submitted that the Tribunal erred in awarding compensation on the basis of percentage of disability instead of adopting multiplier method. The counsel further submitted that the amount awarded under the various heads needs to be enhanced under the facts and circumstance of the case.

11. We have considered the submissions made by the learned counsel. We have also heard the learned counsel for the Insurance Company and we have perused the records.

12. The Tribunal assessed the disability at 45%, even though under Ex.P11 the percentage of the disability for both partial and permanent disability was assessed at



50% by the Doctor. The Tribunal has reasoned that the assessment of disability differs from doctor to doctor and an extent of 5% can be taken as variation. The Tribunal further awarded a sum of Rs.3,000/ per percentage of disability after considering the nature of disability, age, occupation and income of the petitioner.

13. Though the learned counsel for the claimant has urged that this is a fit case for adopting the multiplier method, we are not inclined to accept the said contention. It is clear from the evidence of the doctor that there is restriction of neck movement and weakness of handgrip. In our view the disability is not such as would necessitate the adoption of multiplier method.

14. In the light of the evidence, we do not think that this is a fit case for adopting the multiplier method. In any event, considering the nature of injuries sustained by the claimant and the disability suffered by him, we enhance the compensation towards disability by awarding Rs.4,000/- per percentage of disability as against Rs.3,000/- per percentage assessed by the Tribunal. We find that the claimant was admitted in a Private Hospital as inpatient from 10.01.2014 to 15.01.2014. Considering the fact that the claimant was admitted as inpatient for 6



days, we consider it reasonable to enhance the Attender Charges from Rs.3,000/- to Rs.15,000/-. We find the compensation awarded towards other heads to be just and reasonable and therefore the same are not interfered with.

15. We therefore award the following compensation under various heads.

S. No	Heads	Sum awarded by the Tribunal	Sum modified by this Court
1.	Transportation, nourishing food and miscellaneous expenditure	Rs.50,000/-	Rs.50,000/-
2.	Medical Expenses	Rs.14,800/-	Rs.14,800/-
3.	Attender Charges	Rs.3,000/-	Rs.15,000/-
4.	Disability	Rs.1,35,000/-	Rs.1,80,000/-
5.	Loss of earning during the period of treatment	Rs.13,000/-	Rs.13,000/-
6.	Damages for pain, suffering and trauma	Rs.50,000/-	Rs.50,000/-
7.	Loss of amenities	Rs.25,000/-	Rs.25,000/-
	Total	Rs.2,90,800/- rounded to Rs.2,91,000/-	Rs.3,47,800/-

16. We are therefore of the view that the appellant is entitled to a further sum of Rs.57,000/- @ 7.5% interest from the date of the claim petition till the date of realisation. The enhanced amount of Rs.57,000/- @ 7.5% interest is to be paid by



the second respondent within a period of 12 weeks from the date of receipt of a copy of this order. The second respondent is permitted to pay and recover the said enhanced compensation with interest from the first respondent. The Award of the Tribunal is modified in terms of the above.

In the result CMA No.2014 of 2017 is dismissed and CMA No.2015 of 2017 is partly allowed. There shall be no order as to costs.

[D.K.K.,J.]

[N.M.,J.]

Index : Yes/No
Internet : Yes/No
dsn

14.10.2022

D.KRISHNAKUMAR ,J.

and



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N.MALA ,J.

dsn

To

Bharti Axa General Insurance Co. Ltd.,
2nd Floor, Metro Plaza,
No.162, Anna Salai,
Chennai-600 002.

PRE-DELIVERY JUDGMENT IN
C.M.A. Nos. 2014 and 2015 of 2017

14.10.2022