IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

CMA NOS.3178 OF 2017 & 2420 OF 2018
AND
CMP NO.18452 OF 2018

A.Vairavan ...Appellant in CMA No.3178 of 2017 & 1st Respondent in CMA No.2420 of 2018 / Petitioner

Vs.

1.G.Elakkuvan ...1st Respondent in CMA No.3178 of 2017 & 2nd Respondent in CMA No.2420 of 2018 / 1st Respondent

2.Reliance General Insurance Company Ltd.,
6th floor, 6, Haddows Road,
Nungambakkam,
Chennai 600 035. ...Appellant in CMA No.2420 of 2018 & 2st Respondent in CMA No.3178 of 2017 / 2nd Respondent

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment dated 18.04.2017 in MCOP No.4852 of 2012 on the file of the Motor Accidents Claims Tribunal, II Judge, Small Causes Court, Chennai.

For Appellant in CMA No.3178 of 2017 & 1st Respondent in CMA No.2420 of 2018 : Mr.A.N.Viswanatha Rao

For 2st Respondent in CMA No.3178 of 2017 & Appellant in CMA No.2420 of 2018 : Mr.N.Vijayaraghavan for M/s.M.B.Gopalan Associates

COMMON JUDGMENT

These two appeals are filed as against the Judgment and Decree dated 18.04.2017 passed by the Motor Accident Claims Tribunal, Chennai in MCOP No.4852 of 2012. While CMA No.2420 of 2018 is filed by the Insurance Company questioning the quantum of compensation awarded in favour of the injured claimant, CMA No.3178 of 2017 has been filed by the injured claimant for enhancement of compensation awarded by the Tribunal.

2. As both the appeals arise out of the same award, dated 18.04.2017, passed in MCOP No.4852 of 2012, these appeals are taken up for hearing together and disposed of by this Court.

3. At the outset, the Insurance Company has filed the appeal in CMA No.2420 of 2018 questioning only the quantum of compensation awarded by the Tribunal and not the liability fastened on them. In other words, both the appeals are filed as against the quantum of compensation awarded by the Tribunal.

4. The injured claimant has filed the claim petition in MCOP No.4852 of 2012 contending that when he was travelling in a Tata Ace Van bearing Reg. No.TN 49 AX 8325, on the intervening night of 14.09.2009 and 15.09.2009 at about 01.30 hours, the driver of the van driven it in a rash and negligent manner hit against the stationary private bus bearing Reg.No.TN 23 AD 6028. In that collusion, the injured suffered the following grievous injuries:

> "Severe Head injury / Diffuse Axonal injury / Hemorrhage in the right superomedial cerebellum with mild mass effect on the IV ventricle, pons and midbrain on the right side and on the ambient cistern/Minimal subarachnoid bleed along few right parietal and posterior parietal sucal spaces / Few small focal cortial contusions in the right posterior parietal cortex / Fracture of the Left Zygomatic arch, lateral wall of the left orbit and postero superolateral wall of the left maxillary sinus with hemosinus / mild bleed in the spheniod sinus / minimal fluid is seen in right middle ear cavity with pucity or right mastoid aircells and multiple injuries all over the bodies."

5. According to the injured claimant, immediately after the accident, he was taken to Kamatchi Hospital, Pallikaranai, Chennai 600 100 on 15.09.2009 for taking first aid and thereafter he was admitted at Billroth hospital, Shenoy Nagar, Chennai 30 on the same day as inpatient and discharged on 04.11.2009 and even thereafter he continued treatment in different hospitals. It is claimed that the claimant was aged 38 years at the time of accident and was working as a Cleaner, thereby earning a sum of Rs.7,500/- per month. However, due to the injuries he sustained, he could not take up his employment as before, therefore, he has filed the claim petition claiming totally a sum of Rs.50,00,000/- as compensation.

6. The claim petition was opposed by the Insurance Company stating that the injuries said to have been suffered by the claimant has been exaggerated and the claimant is put to strict proof of the injuries suffered by him, the medical treatment taken and the medical expenses incurred. The Insurance Company also denied the avocation and income of the injured and prayed for dismissal of the claim petition.

7. Before the Tribunal, the claimant has examined himself as P.W.1 and two other witnesses were examined as P.Ws.2 and 3 on the side of the claimant. Exs.P1 to P18 were marked. Neither any witness was examined nor any document was produced on the side of Insurance Company.

8. The Tribunal, on analysing the oral and documentary evidence held that the accident occurred as a result of the rash and negligent driving of the Tata Ace Van and proceeded to determine the compensation payable to the injured. Based on Exs.P3 and P4, medical bills produced by the injured claimant, the Tribunal awarded a sum of Rs.7,05,705/- towards medical expenses. A sum of Rs.4,36,800/- has been arrived at by the Tribunal towards loss of earning capacity by applying multiplier 14 for 40 % disability suffered by him. The Tribunal also awarded various other amounts under non pecuniary compensation. The following table shows the amounts awarded under various heads to grant a total compensation of Rs.13,33,505/-:

S. No.	Heads	Amounts awarded Rs.
1	Transportation, nourish food and Miscellaneous Expenditure	50,000
2	Medical Expenses	7,05,705
3	Future Medical expenses	20,000
4	Attender Charges	20,000
5	Loss of Earning Capacity / Power	4,36,800
6	Loss of earning during the period of treatment	26,000
7	Damages for Pain, sufferings and Trauma	50,000
8	Loss of Amenities	25,000
	Total	13,33,505 Rounded off to 13,34,000

9. The learned counsel appearing for the Insurance Company would vehemently contend that the injuries said to have been suffered by the injured are not such which would result in his functional disability. The nature of injuries and the disability suffered by the claimant have been exaggerated, which the Tribunal had totally lost sight of. The injured was admittedly working as a cleaner and he has not filed any documentary proof to show his income. However, the Tribunal proceeded to fix a sum of Rs.7,500/- as notional income and resorted to adopt the multiplier method to award compensation

which warrant interference. This, according to the counsel for the Insurance Company, had resulted in awarding very huge amount as compensation by the Tribunal. Further, under non pecuniary compensation, the Tribunal awarded a sum of Rs.50,000/- towards pain and sufferings and Rs.25,000/- towards loss of amenities which are required to be scaled down.

10. On the other hand, the learned counsel appearing for the injured claimant would submit that the compensation awarded by the Tribunal is measly and it is not in consonance with the nature of the injuries suffered by the injured, period of hospitalisation or the treatment taken by him in multiple hospitals. In fact, the Tribunal could have atleast awarded a sum of Rs.2,00,000/- towards future medical expenses but what was awarded is only a sum of Rs.20,000/- and it requires to be enhanced by this Court. The injured was in hospital for a period of six months and incurred huge expenses. In such circumstances, the Tribunal could have awarded atleast a sum of Rs.50,000/- towards Attender Charges and another sum of Rs.50,000/- towards loss of amenities but what was awarded by the tribunal is very meagre. The learned counsel further submitted that the Tribunal erred in fixing the functional disability as 40 % instead of 50 % and the injured requires continued further treatment in future and by taking note of the same he prayed this Court to enhance the compensation.

11. Heard the learned counsel appearing for the parties and perused the materials placed on record.

12. This is a case of injury in which the injured, who was aged about 38 years at the time of accident, suffered various injuries. He was admitted in Kamatchi Hospital initially and on the same day admitted in Billroth hospital for a period between 15.09.2009 and 04.11.2009 for about 49 days. It is stated that even thereafter he had taken treatment in various other hospitals. The medical bills produced by the injured under Exs.P3 and P4 would show the nature of accident and various injuries suffered by him for which the Tribunal has awarded Rs.7,05,705/- towards medical expenses which are borne by medical records and it is also not seriously disputed by the Insurance Company.

13. The Tribunal awarded Rs.4,36,800/- towards loss of earning capacityby taking a sum of Rs.6,500/- per month as notional income of the injured. By applying multiplier method, the Tribunal awarded the said amount for loss of earning capacity. At the same time, the Tribunal did not award any amount for future prospects. The injured was aged 38 years at the time of accident and therefore fixing 25 % towards future prospects would be justifiable. If so, a sum of Rs.8,125/- will

be the monthly loss of income of the injured (6,500 + 1625). The disability of the injured was assessed at 50%. Taking note of the above, a sum of Rs.6,82,500/- is hereby awarded towards loss of earning capacity in favour of the injured (8125 X 12 X 14 X 50%). This, in the opinion of this Court is fair and reasonable taking note of the injuries suffered by the injured.

14. Under the non pecuniary compensation, the Tribunal awarded various amounts over which, interference by this Court is not warranted in most of the heads. However, this Court feels it justifiable to enhance the compensation awarded under future medical expenses and Attender charges. The Tribunal awarded a sum of Rs.20,000/- towards future medical expenses. Taking note of the disability suffered and the period of hospitalisation, a sum of Rs.50,000/- is reasonable and accordingly, a sum of Rs.50,000/- is granted for future medical expenses. Similarly, for Attender charges, a sum of Rs.40,000/- shall be awarded instead of Rs.20,000/- as it is very low. Thus, the compensation awarded by the Tribunal is modified and re-calculated as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Transportation, nourish food and Miscellaneous expenditure	50,000	50,000	Confirmed
2.	Medical Expenses	7,05,705	7,05,705	Confirmed
3	Future Medical Expenses	20,000	50,000	Enhanced
3.	Attender Charges	20,000	40,000	Enhanced
4.	Loss of Earning Capacity / Power	4,36,800	6,82,500	Enhanced
5.	Loss of earning during the period of treatment	26,000	26,000	Confirmed
6	Damages for Pain, suffering and Trauma	50,000	50,000	Confirmed
7	Loss of Amenities	25,000	25,000	Confirmed
	Total	Rs.13,33,505 rounded off to 13,34,000	Rs.16,29,205 rounded off 16,30,000	Enhanced by Rs.2,96,000/-

15. In the result, the judgment and decree, dated 18.04.2017 made in M.C.O.P.No.4852 of 2012 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai is modified. The Civil Miscellaneous Appeal filed by the Insurance Company in CMA No.2420 of 2018 stands dismissed and the Civil Miscellaneous Appeal filed by the claimant in CMA No.3178 of 2017 is partly allowed. The compensation awarded by the Tribunal at Rs.13,34,000/- is hereby enhanced to Rs.16,30,000/- (Rupees Sixteen Lakhs Thirty Thousand only) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The claimant is directed to pay the Court fee, if any on the enhanced amount of compensation. The Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the amount deposited on filing proper application. No costs. Consequently, connected miscellaneous petiton is closed.

Sd/-
Assistant Registrar(CS-V)

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Sub Assistant Registrar

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To

The II Judge,
The Motor Accidents Claims Tribunal,
Small Causes Court, Chennai.

+1cc to M/s.Ramya V. Rao, Advocate Sr.No.6532

CMA Nos.3178 of 2017 & 2420 of 2018
and CMP No.18452 of 2018

SSD(CO)
RVM(13/05/2022)