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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2022

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.M.A.NO.4386 OF 2019

AND

C.M.A.NO.4387 OF 2019

AND

C.M.P.NOS.23934 AND 23941 OF 2019

C.M.A.No.4386 of 2019

M.Vasudevan

... Appellant/Petitioner

vs.

1. P.Sathish

2. M/s.National Insurance Co. Ltd.,
81-D, North Car Street,
Tiruchengode-637 211.

... Respondents/Respondents

C.M.A.No.4387 of 2019

N.Marappan

... Appellant/Petitioner

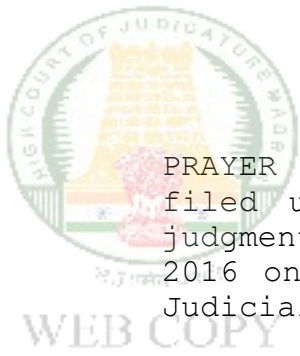
vs.

1. P.Sathish

2. M/s.National Insurance Co. Ltd.,
81-D, North Car Street,
Tiruchengode-637 211.

... Respondents/Respondents

PRAYER in C.M.A.No.4386 of 2019: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 15.07.2019 passed in M.C.O.P.No.776 of 2016 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Namakkal.



PRAYER in C.M.A.No.4387 of 2019: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 the judgment and decree dated 15.07.2019 passed in M.C.O.P.No.777 of 2016 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Namakkal.

For Appellant
in both C.M.As. : Mr.C.Thangaraju
For Respondents
in both C.M.As. : Mr.K.Padmanabhan [R2]
R1 - Served No Appearance

COMMON JUDGMENT

The claimants in the two claim petitions have preferred these two appeals seeking enhancement of the award passed by the Tribunal below.

2. Since the appeals arises out of the single accident, a common order is being pronounced.

3. The claimants shall be referred to by their names and the respondent as per their ranking before the Tribunal.

4. C.M.A.No.4386 of 2019 has been filed by the claimant Mr.M.Vasudevan in M.C.O.P.No.776 of 2016 and C.M.A.No.4387 of 2019 has been filed by the claimant Mr.N.Marappan in M.C.O.P.No.777 of 2016.

5. The circumstances in which these M.C.O.Ps., have filed on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Namakkal is herein below narrated:

On 01.05.2016, when the claimant in M.C.O.P.No.776 of 2016, Mr.M.Vasudevan was driving the Alto Car bearing Reg.No.TN-28-AF-7814 on the Kumarapalayam Kovai to Salem National Highway Road, as the car neared Murugan Kovil, a Tarus Lorry bearing Reg.No.TN-34-H-3894 owned by the 1st respondent, insured with the 2nd respondent / Insurance Company driven by its driver in a rash and negligent manner without observing basic traffic rules and without any prior signal had suddenly applied the brakes. By reason of the sudden stopping of the lorry, Mr.Vasudevan hit the rear side of the lorry which resulted in the accident. By reason of the impact, the said Vasudevan had sustained grievous injuries all over his body which included injuries to the head and multiple facial bones fracture with facial lacerations and partial permanent disability. Mr.Vasudevan is aged about 38



years and he is stated to own an electrical shop and earning Rs.20,000/-, he is the only bread-winner of his family.

6. Mr.N.Marappan, the claimant in other M.C.O.P.No.777 of 2016 who was travelling in the Alto car with Vasudevan would submit that he had sustained grievous injuries all over his body including Bilateral Intertrochanteric left Acetabulum, left proximal Humerus-Treated Conservatively, Chest Injury-2nd-8th Ribs Fracture with multiple lacerations, over Scalp, Left Arm, Left Forearm, Head injury-Scalp laceration, Urinary Tract Infection and has been permanently, partially disabled. The claimant Mr.N.Marappan, who is aged about 66 years is described as an agricultural coolie and earning Rs.10,000/- p.m.

7. The 1st respondent/owner of the lorry had remained exparte. The 2nd respondent / Insurance Company had primarily taken the defence that Vasudevan was equally negligent and that Vasudevan had tried to over take the lorry which resulted in the accident. They had denied the compensation that had been claimed.

8. The Tribunal below after perusing the materials and on considering the evidence had held both the vehicles negligent and had apportioned the liability 75% on the driver of the lorry and 25% on the driver of the alto car, namely Mr.M.Vasudevan. As regards the claim of Vasudevan, since he had produced Ex.P7 showing the registration of his concern and has Income Tax Returns the Tribunal fixed his income at Rs.20,000/-. However, taking note of the discharge summary Ex.P4, the Tribunal had come to the conclusion that Vasudevan had not sustained a disability of such an extent which had prevented him from carrying on his daily avocation, no amount was awarded under the head of permanent disability, though Ex.C1 had been produced. The Tribunal has held that at best he would have remained without work for five months and therefore, Rs.1,00,000/- was awarded towards partial loss of earning. A sum of Rs.50,000/- as claimed was awarded under the head of pain and suffering. Towards medical expenses no amounts were awarded since the same has been reimbursed by the Insurance Company. A sum of Rs.4,000/- each has been awarded under the head of transportation and extra nourishment. In all a sum of Rs.1,58,000/- was awarded and taking into account the apportionment for liability, the Insurance Company was directed to pay a sum of Rs.1,18,500/-. This has been challenged in C.M.A.No.4386 of 2019 by the said Vasudevan.

9. On the other hand, Mr.N.Marappan, the claimant in M.C.O.P.No.777 of 2016 has been awarded a sum of Rs.45,000/- under the head of permanent disability. The Tribunal has taken



into account the Report of the Medical Board issued to Marappan marked as Ex.C2 where his disability had been assessed at 20%. Taking into account the age and injuries of the claimant, the Tribunal has assessed the disability at 15%. Since the disability was not a permanent one, compensation was awarded on a percentage basis by taking Rs.3,000/- as notional income. A sum of Rs.3,54,500/- was awarded towards medical expenses and Rs.36,000/- was awarded under the head of loss of income by adopting a notional income of Rs.9,000/- and held that Marappan would not have worked for four months. Towards Transportation and Extra Nourishment, a sum of Rs.4,000/- each has been awarded. In all the compensation of Rs.4,93,500/- was awarded and taking into account the negligence on the part of the claimant in M.C.O.P.No.777 of 2016, the compensation was reduced by 25% to a sum of Rs.3,70,125/- which is also the subject matter of challenge in C.M.A.No.4387 of 2019.

10. As regards the appeal in C.M.A.No.4386 of 2019, relating to Vasudevan, the Tribunal has taken note of the discharge summary and the medical certificate issued by the Medical Board which is marked as Ex.C1 to come to a conclusion that the said Vasudevan has not sustained a permanent disability. The amounts under the head of medical expenses has been rejected since the Tribunal had held that he would have got the amounts reimbursed since no original receipts has been produced. The Tribunal had awarded Rs.4,000/- under the head of transportation and extra nourishment once again since no documents were produced. The Tribunal has taken note of the loss of income for a period of five months, by taking the income at Rs.20,000/- as pleaded by the claimant and awarded Rs.1,00,000/- under the head of loss of earnings. Therefore, I do not see any reason to interfere with the award of the Tribunal in M.C.O.P.No.776 of 2019.

11. As regards, C.M.A.No.4387 of 2019, it is seen that the claimant Mr.N.Marappan, had been in-patient for over 18 days. Though the disability had been assessed at 20%, the Tribunal has without assigning any reasons reduced the same to 5%. That apart, the notional income has been fixed at Rs.3,000/-, the accident is of the year 2016, therefore, a sum of Rs.4,000/- can be fixed as notional income and taking into account Ex.C2, disability can be assessed at 20%. Therefore, the amount under this head has to be increased to Rs.80,000/- (Rs.4000/- X 20). In all other aspects, the award of the Tribunal remains unaltered.

12. The Compensation awarded by the Tribunal is reworked as below in C.M.A.No.4387 of 2019, relating to Mr.Marappan:



S.No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1	Pain & Suffering	50,000/-	50,000/-	Confirmed
2	Permanent Disability	45,000/-	80,000/-	Enhanced
3	Medical Expenses	3,54,500/-	3,54,500/-	Confirmed
4	Partial Loss of Earnings	36,000/-	36,000/-	Confirmed
5	Transport Charges	4,000/-	4,000/-	Confirmed
6	Extra Nourishment	4,000/-	4,000/-	Confirmed
	TOTAL	4,93,500/- Compensation awarded (75%) =3,70,125/-	5,28,500/- Compensation awarded (75%) =3,96,375/-	Enhanced

13. In the result, C.M.A.No.4386 of 2019 is dismissed. C.M.A.No.4387 of 2019 is allowed and the compensation is enhanced to a sum of Rs.5,28,500/- and considering the contributory negligence, the 2nd respondent is directed to pay only a sum of Rs.3,96,375/-. The 2nd respondent/Insurance Company is directed to deposit the above amount, to the credit of M.C.O.P.No.777 of 2016 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Namakkal, together with interest @ 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 Judgement. On such deposit being made, the claimant Mr.N.Marappan, is permitted to withdraw the amount now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn. The claimant is directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time as the certified copy showing



proof of payment of Court fee has been produced by the claimant. Consequently, connected Civil Miscellaneous Petitions are closed. No costs.

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Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

ssn

To

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Namakkal.

Copy To

The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

+3ccs to Mr.C.Thangaraju, Advocate, S.R.No.19273 & 19268
respectively

C.M.A.No.4386 of 2019
and

C.M.A.No.4387 of 2019
and

C.M.P.Nos.23934 and 23941 of 2019

SPD(CO)
RLP(09/05/2022)