



C.M.A.Nos.2907 of 2021 and 858 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.Nos.2907 of 2021 and 858 of 2022
& C.M.P.No.6361 of 2022

C.M.A.No.2907 of 2021

Sathish Kumar
Represented by his next friend/father
R.Thangaraj

... Appellant

Vs.

1.P.N.Thangavel

(R1 remained exparte before the Tribunal
and hence, notice to 1st respondent is
dispensed with)

2.Manager, Reliance General Insurance Company Ltd.
Sri Lakshmi Complex, 1st floor
Bharathi street, Omalur Main Road
Swarnapuri, Salem District.

... Respondents

C.M.A.No.858 of 2022

Manager, Reliance General Insurance Company Ltd.
Sri Lakshmi Complex, 1st floor



C.M.A.Nos.2907 of 2021 and 858 of 2022

Bharathi street, Omalur Main Road
Swarnapuri, Salem District.

... Appellant

vs.

1.Sathish Kumar
Represented by his next friend/father
R.Thangaraj

2.P.N.Thangavel

... Respondents

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.06.2018 made in M.C.O.P.No.69 of 2017 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Namakkal.

In C.M.A.No.2907 of 2021

For Appellant : Mr.MA.P.Thangavel

For R2 : Mrs.C.Bhuvanasundari

In C.M.A.No.858 of 2022

For Appellant : Mrs.C.Buvasundari

For R1 : Mr.MA.P.Thangavel



C.M.A.Nos.2907 of 2021 and 858 of 2022

COMMON JUDGMENT

WEB COPY (Judgment of the Court was delivered by V.M.VELUMANI,J.)

C.M.A.No.2907 of 2021 is filed by the claimant for enhancement of compensation granted by the Tribunal in the award dated 04.06.2018 made in M.C.O.P.No.69 of 2017 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Namakkal.

C.M.A.No.858 of 2022 is filed by the Insurance Company against the award dated 04.06.2018 made in M.C.O.P.No.69 of 2017 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Namakkal.

2.Both the appeals are arising out of the same accident and same award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to as per their respective ranks in the claim petition for the sake of convenience.

3.The claimant represented by his father Thangaraj filed the claim



C.M.A.Nos.2907 of 2021 and 858 of 2022

petition in M.C.O.P.No.69 of 2017 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Namakkal (earlier M.C.O.P.No.1388 of 2015 on the file of the MACT, Principal District Court, Namakkal), claiming a sum of Rs.40,00,000/- as compensation for the injuries sustained by him in the accident that took place on 04.06.2014.

4. According to the claimant, on the date of accident, i.e., on 04.06.2014 at about 11.30 P.M., while the claimant was riding Hero Honda two wheeler in a careful manner from West to East direction, near Elurpatti Jayadev Kalyana Mandapam on Trichy to Salem Main Road, the driver of the lorry bearing Registration No.TN-28-AK-6906 belonging to 1st respondent, who was coming behind the motorcycle, drove the same in a rash and negligent manner, hit the two wheeler driven by the claimant and caused the accident. In the accident, the claimant sustained grievous injuries all over the body. Therefore, he filed the above claim petition claiming compensation for his injuries against the respondents, owner and insurer of the lorry.

5. The 1st respondent, owner of the lorry remained exparte before the



C.M.A.Nos.2907 of 2021 and 858 of 2022

Tribunal.

WEB COPY

6.The 2nd respondent/Insurance Company filed counter statement denying the averments made in the claim petition and stated that on the date of accident, the driver of the lorry drove the same with all due care and caution at slow speed. The claimant alone rode the unregistered two wheeler in a rash and negligent manner, hit the lorry, without observing the Motor Vehicles Rules, without possessing driving license and invited the accident. The owner and insurer of the two wheeler driven by the deceased were not made as parties and hence, the claim petition is bad for non-joinder of necessary parties. At the time of accident, the driver of the lorry did not possess driving license. Therefore, the Insurance Company is not liable to pay any compensation to the claimant. In any event, the compensation claimed by the claimant is excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the father of the claimant was examined as P.W.1, Dr.Shyam Sundar was examined as P.W.2 and 20 documents were marked as Exs.P1 to P20. The respondents did not let in any oral and



C.M.A.Nos.2907 of 2021 and 858 of 2022

documentary evidence.

WEB COPY

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the 1st respondent and directed the respondents to pay a sum of Rs.25,18,014/- as compensation to the claimant.

9.Not being satisfied with the amounts awarded by the Tribunal, the claimant has come out with C.M.A.No.2907 of 2021 for enhancement of compensation. Against the said award dated 04.06.2018 made in M.C.O.P.No.69 of 2017, the 2nd respondent/Insurance Company has come out with C.M.A.No.858 of 2022.

10.The learned counsel appearing for the claimant contended that at the time of accident, claimant was working as Supervisor/Service Boy in Trichy Saradhas Textiles and was earning a sum of Rs.12,000/- per month. To prove the same, he marked the salary certificate as Ex.P9 wherein his income was shown as Rs.9,931/-. The Tribunal without considering the same, fixed a sum



C.M.A.Nos.2907 of 2021 and 858 of 2022

of Rs.8,548/- as monthly income. The injured claimant was aged 24 years at the time of accident. The correct multiplier applicable is '18'. The Tribunal erroneously applied multiplier '17'. In the accident, the claimant sustained injuries on his head and due to which, he lost his memory and suffered insomnia. Though P.W.2 Doctor assessed the disability at 80%, the claimant has suffered functional disability and lost his 100% earning capacity. The claimant was taking treatment as in-patient in the hospital for more than 50 days and the Tribunal did not grant any amount towards attendant charges. The amounts granted by the Tribunal under different heads are meagre and prayed for enhancement of compensation and dismissal of the appeal filed by the 2nd respondent/Insurance Company.

11.The learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal failed to conduct an impartial inquiry. The claimant rode the unregistered two wheeler without possessing driving license. At the time of accident, the claimant was not wearing helmet and the Tribunal failed to fix contributory negligence on the part of the claimant for not wearing helmet. She further contended that claimant did not examine any



C.M.A.Nos.2907 of 2021 and 858 of 2022

employer from the Company where he was working and file any document to prove his avocation and income. In any event, the total compensation awarded by the Tribunal is excessive and prayed for allowing the appeal filed by the Insurance Company and dismissing the appeal filed by the claimant.

12.Heard the learned counsel appearing for the claimant as well as 2nd respondent/Insurance Company and perused the entire materials on record.

13.From the materials on record, it is seen that it is the case of the claimant that on the date of accident, while he was riding two wheeler in a careful manner on Trichy to Salem Main Road, the driver of the lorry belonging to 1st respondent, who was coming behind the motorcycle, drove the same in a rash and negligent manner, hit the two wheeler driven by the claimant and caused the accident. In the accident, the claimant sustained grievous injuries on his skull and multiple injuries all over the body. He is in coma stage. To substantiate this, the claimant examined his father as P.W.1 through whom, he filed claim petition and marked F.I.R as Ex.P1. F.I.R. is registered against the driver of the lorry belonging to the 1st respondent. On



C.M.A.Nos.2907 of 2021 and 858 of 2022

the other hand, it is the case of the 2nd respondent/Insurance Company that accident has occurred due to negligence on the part of the claimant. The contention of the learned counsel appearing for the 2nd respondent/Insurance Company is that the claimant did not possess driving license and did not wear helmet at the time of accident. Though the 2nd respondent filed counter statement stating that the claimant did not possess driving license, failed to plead that the claimant did not wear helmet at the time of accident. Further, the 2nd respondent did not let in any oral and documentary evidence to disprove the evidence of P.W.1 and documents filed. The Tribunal considering the materials placed before it, F.I.R. and in the absence of any evidence by the 2nd respondent, held that the accident has occurred due to rash and negligent driving by the driver of the lorry belonging to the 1st respondent and directed both the respondents to pay compensation to the claimant. There is no error in the said finding of the Tribunal warranting interference by this Court.

14.As far as quantum of compensation is concerned, it is the case of the claimant that at the time of accident, the injured claimant was aged 24



C.M.A.Nos.2907 of 2021 and 858 of 2022

years, working as Supervisor/Service Boy in Trichy Saradhas Textiles and was earning a sum of Rs.12,000/- per month. The salary certificate of the claimant has been marked as Ex.P9 series. A perusal of Ex.P9 series reveal that the claimant has received a sum of Rs.9,931/- as salary for the month of May 2014 and Rs.8,548/- as per the pay certificate. Hence, the Tribunal, taking into consideration the variation in the salary of the claimant, fixed a sum of Rs.8,548/- as monthly income of the claimant. According to the claimant, he suffered severe head injuries and underwent surgery. Due to the injuries, he is suffering from giddiness, headache, nausea, vomiting and insomnia. He could not sit and stand, do his work as he was doing earlier. He examined the Doctor as P.W.2, who assessed the disability at 80% and issued Ex.P18/disability certificate. The Tribunal considering the nature of injuries and evidence of P.W.2, fixed the disability at 80%, adopted multiplier method and awarded compensation for future loss of earning capacity. According to the claimant, the date of birth of the claimant is 24.12.1989. From the perusal of Ex.P15/Aadhar card, it is seen that the claimant was born in the year 1989. The accident occurred on 04.06.2014. On the date of accident, the claimant has completed 24 years. The Tribunal having fixed the age of the claimant at



C.M.A.Nos.2907 of 2021 and 858 of 2022

24 years, erred in applying multiplier '17' instead of '18'. The Tribunal has rightly granted 40% enhancement towards future prospects by following the judgment of the Hon'ble Apex Court reported in **2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others]**. Thus by applying multiplier '18', future loss of earning capacity is modified to Rs.20,67,898/- (Rs.8,548 + 3419 (Rs.8,548/- X 40%) X 12 X 18 X 80/100).

14(i) The claimant has taken treatment as in-patient in Akshaya Hospital, Namakkal, from 04.06.2014 to 13.07.2014, then in Salem Neuro Foundation Hospital, from 14.10.2015 to 21.10.2015, again from 09.12.2015 to 11.12.2015, for more than 50 days. He filed and marked three discharge summaries as Exs.P6 to P8. The Tribunal did not grant any amount towards attendant charges. Considering the nature of injuries and period of treatment, a sum of Rs.1,00,000/- is granted towards attendant charges. The amounts awarded by the Tribunal under other heads are just and reasonable and the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or
------	-------------	----------------------------	------------------------------	--------------------------------



C.M.A.Nos.2907 of 2021 and 858 of 2022

		(Rs)	(Rs)	granted or reduced
1.	Transportation	10,000	10,000	Confirmed
2.	Extra nourishment	10,000	10,000	Confirmed
3.	Medical Bills	4,95,000	4,95,000	Confirmed
4.	Pain and suffering	50,000	50,000	Confirmed
5.	Future loss of earning capacity	19,53,014	20,67,898	Enhanced
6.	Attendant charges	-	1,00,000	Granted
	Total	25,18,014	27,32,898	Enhanced by Rs.2,14,884/-

15. In the result, C.M.A.No.2907 of 2021 filed by the claimant is partly allowed. C.M.A.No.858 of 2022 filed by the Insurance Company is dismissed. The compensation of Rs.25,18,014/- awarded by the Tribunal is hereby enhanced to Rs.27,32,898/- together with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit a sum of Rs.27,32,898/-, the award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this



C.M.A.Nos.2907 of 2021 and 858 of 2022

judgment. On such deposit, on behalf of the claimant, the father of the claimant viz., Thangaraj, is permitted to withdraw the award amount now determined by this Court, along with interest and costs, after adjusting the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. The claimant is directed to pay necessary Court fee on the enhanced award amount, if any. No costs.

(V.M.V., J) (S.M., J)
29.11.2022

Index : Yes / No

kj

To

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

2.The Section Officer
VR Section
High Court
Madras.



WEB COPY



C.M.A.Nos.2907 of 2021 and 858 of 2022

**V.M.VELUMANI,J.
and
SUNDER MOHAN,J.**

kj

C.M.A.Nos.2907 of 2021 and 858 of 2022
& C.M.P.No.6361 of 2022

29.11.2022