



WEB COPY

C.M.A.(MD).Nos.967 of 2014 & 872 and 873 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.02.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD).No.967 of 2014

and

C.M.A. (MD).Nos.872 and 873 of 2021

C.M.A(MD)No.967 of 2014

Cholamandalam M.S.General Insurance Co.Ltd.,

"Dare House",

2nd Floor, NSC Bose Road,

Chennai 600 001.

Rep. by its Branch Manager.

...Appellant/2nd Respondent

Vs.

1.Manthiram

...1st Respondent/Petitioner

2.Saravana Perumal

...2nd Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 20.01.2014 made in MCOP.No.519 of 2013 on the file of the Motor Accidents Claims Tribunal/Special Sub Court, Tirunelveli and allow this Civil Miscellaneous Appeal.

For Appellant :Mr.S.Srinivasa Raghavan

For R1 :No Appearance

For R2 :Mr.T.Selvakumaran

CMA(MD)No.872 of 2021

Manthiram

...Appellant/Petitioner

Vs.

1.Saravana Perumal

2.Cholamandalam M.S.General Insurance Co.Ltd.

Through its Branch Manager,

Second Floor "'Dare House",

No.2, NSC Bose Road,

Chennai - 600 001.

...Respondents/Respondents

PRAYER in CMA(MD)No.872 of 2021: Civil Miscellaneous Appeal filed to enhance the award amount in M.C.O.P.No.519 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub Court), Tirunelveli, dated 20.01.2014.

CMA(MD)No.873 of 2021

Ganesan

...Appellant/Petitioner



Vs.

1.Saravana Perumal
2.Cholamandalam M.S.General Insurance Co.Ltd.
Through its Branch Manager,
Second Floor 'Dare House',
No.2, NSC Bose Road,
Chennai - 600 001.

...Respondents/Respondents

PRAYER in CMA(MD)No.873 of 2021: Civil Miscellaneous Appeal filed to enhance the award amount in M.C.O.P.No.520 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub Court), Tirunelveli, dated 20.01.2014.

For Appellants : Mr.T.Selvakumaran in both CMAs
For Respondents : Mr.S.Srinivasa Ragavan for R2
No appearance for R1 in both CMAs

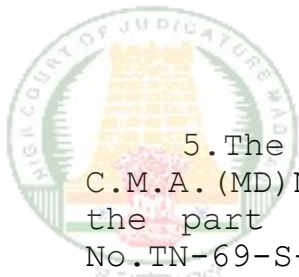
COMMON JUDGMENT

C.M.A.(MD)No.967 has been filed by the appellant Insurance Company to set aside the fair and decreetal order dated 20.01.2014 made in M.C.O.P.No.519 of 2013, on the file of the Motor Accident Claims Tribunal/Special Sub Court, Tirunelveli. C.M.A.(MD)Nos.872 and 873 of 2021 have been filed by the claimants to enhance the award amount in MCOP.Nos.519 and 520 of 2013 granted by the Motor Accident Claims Tribunal/Special Sub Court, Tirunelveli.

2.It is a case of accident, which took place on 30.04.2013 at about 6.30 a.m., while the petitioners were travelling in a TVS-XL-Super bearing Registration No.TN-69-S-5470 from Alwarthirunagari to Udangudi and when they reaching near Thirukaloor Perumal Temple from east to west, at that time, a Tipper Lorry bearing Registration No.TN-69-AE-1200, belonging to the first respondent, insured with the second respondent, came from behind of the Temple in a rash and negligent manner suddenly entered into the main road and hit the motorcycle. As a result of which, the petitioners were thrown out of the motorcycle and sustained injuries and fractures all over their body. Immediately they were taken to TVMC Hospitals at Palayamkottai and admitted as inpatient from 30.04.2013 to 15 days.

3.The claimants have filed a petition in M.C.O.P.Nos.519 and 520 of 2013 on the file of the Motor Accident Claims Tribunal/Special Sub Court, Tirunelveli, seeking compensation.

4.The Motor Accidents Claims Tribunal/Special Sub Court, Tirunelveli, after perusing the materials on record, awarded a sum of Rs.6,78,330/-, together with interest at the rate of 9% per annum, as compensation to the claimant in MCOP.No.519 of 2013. In respect of MCOP.No.520/2013, the Tribunal, after analyzing the evidence on record, awarded a sum of Rs.2,13,500/- to the claimant.



5.The learned counsel for the appellant/Insurance Company in C.M.A.(MD)No.967 of 2014 contended that the negligence is only on the part of the rider of the two wheeler, bearing Registration No.TN-69-S-5470 and the evidence of RW.1 would clear that there was no negligence on the part of the driver of the lorry. He further contended that the Tribunal awarded Rs.4,15,800/- towards partial disability of 55% is excessive and also the interest awarded at the rate of 9% is also high.

6.The contention of the appellant Insurance Company in C.M.A.No.967 of 2014 that the negligence is only on the part of the claimants. But, a common judgment has passed in the M.C.O.P.Nos.519 and 520 of 2013 arising out of same accident and in that, the appellant/Insurance Company have not agitated the negligence in one MCOP viz., M.C.O.P..No.520 of 2013.

7.As far as the quantum of compensation is concerned, the appellant contended that in MCOP.No.519 of 2013, the functional disability was not proved by the claimant. So, the multiplier method cannot be adopted. But the claimant was working as a 'Melakarar' and proof has also been filed by the claimant. Dr.Ramaguru (PW3) had assessed the partial permanent disability as 63% and in his evidence, he stated that the claimant could not sit or stand due to the fracture in the right leg. The Tribunal fixed the same as 55% and awarded Rs.4,15,800/- towards disability. But the claimant sustained only fracture no amputation. Even in case of amputation only 55% disability is given. Hence, this Court reduced the same as 40%. Eventhough no income proved by the claimant, the Tribunal fixed Rs.4,500/- as notional income, which is reasonable. Therefore, loss of income arrived at Rs.4,500/- x 12 x 40/100 x14 = Rs.3,02,400/-. But the Tribunal granted another loss of income for 6 months as Rs.27,000/- is deducted from the compensation award and the interest awarded by the Tribunal is reduced from 9% to 7.5% p.a. from the date of claim petition till the date of realization.

8.Accordingly, the claimant is entitled for compensation as follows:

S. No.	Head	Amount granted by this Court
1.	Partial Permanent disability	Rs. 3,02,400/-
2.	Transportation	Rs. 5,000/-
3.	Extra nourishment	Rs. 10,000/-
4.	Attendant Charges	Rs. 5,000/-
5.	Medical Bills	Rs. 1,15,530/-
6.	Pain and sufferings	Rs. 50,000/-
7.	Loss of amenities	Rs. 50,000/-



S. No.	Head	Amount granted by this Court
	Total	Rs. 5,37,930/-

Thus, the compensation awarded by the Tribunal is reduced from Rs.6,78,330/- to Rs.5,37,930/- which would carry interest at the rate of 7.5% per annum.

9.In C.M.A(MD)No.873 of 2021, the learned counsel for the appellant has contended that at the time of accident, the appellant was working as a musician and earning Rs.10,000/- per month. But the appellant did not produce any document to prove his income. The Tribunal fixed 30% of disability and awarded Rs.90,000/- towards disability and without any document to prove his income, the Tribunal fixed Rs.4,500/- as monthly income and awarded Rs.13,500/- (Rs.4,500/- x 3), which are reasonable. Hence, the tribunal has rightly fixed the monthly income of the appellant and the same needs no interference. Therefore, C.M.A(MD)No.873 of 2021 is liable to be dismissed and accordingly, dismissed.

10.The Civil Miscellaneous Appeal in C.M.A(MD)No.967 of 2014 is partly allowed. The quantum of compensation awarded by the Tribunal is reduced from Rs.6,78,330/- to Rs.5,37,930/- which would carry interest at the rate of 7.5% per annum. It is submitted that the appellant/ Insurance Company had already deposited the entire award amount with accrued interest and therefore, the appellant is permitted to withdraw the excess amount with proportionate interest. The claimant is also permitted to withdraw the entire award amount with proportionate interests and costs, by filing necessary application.

11. In sofar as the Civil Miscellaneous Appeal in C.M.A(MD) No.872 of 2021 is concerned, this Court finds no justification to interfere with the award of the Tribunal in all respects. Hence, this Civil Miscellaneous Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsd

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

The Motor Accidents Claims Tribunal/Special Sub Court,
Tirunelveli

Copy to

The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-3796[F] dated
02/02/2022)

+2 CC to M/s.T.SELVAKUMARAN, Advocate (SR-4078[F],4077 dated
03/02/2022)

C.M.A. (MD) .Nos.967 of 2014 & 872 and 873 of 2021
02.02.2022

SS (CO)

KB (29.03.2022) 5P 7C