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C.M.A.Nos.1469 & 1470 of 2017

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.Nos.1469 & 1470 of 2017

1.K.Karam Hussain @ Sonu

... Appellant/Petitioner
in C.M.A.No.1469 of 2017

2.V.Moovendran

... Appellant/Petitioner
in C.M.A.No.1470 of 2017

Vs.

1.M/s.Ahluwalia Contracts India Ltd.,
No.125, OMR Road,
Navalur, Chennai – 603 103.

2.Royal Sundaram Alliance Insurance Co. Ltd.,
Subramaniam Buildings, No.1,
Club House Road, 2nd Floor,
Anna Salai, Chennai – 600 002.

... Respondents/Respondents in
both CMAs

Prayer in both CMAs: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree dated 25.07.2016 made in MACT.O.P.Nos.937 and 938 of 2013 on the file of the III Judge Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.



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C.M.A.Nos.1469 & 1470 of 2017

For Appellant : Ms.P.T.Saleem Fathima
(in both CMAs)

For Respondents : *Ex-parte* [R1]
(in both CMAs) Mr.G.Vasudevan [R2]

COMMON JUDGMENT

Aggrieved by the compensation granted by the III Judge Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai in MACT.O.P.Nos.937 and 938 of 2013, the claimants are before this Court.

2. On 13.08.2012 at about 12.40 hours, the appellants were travelling in the Toyota Innova Car bearing Reg.No.TN 05 AE 0002 on the southern side of the Periyapalayam – Uthukottai Main Road from East to West direction. The said vehicle was driven by the appellant in C.M.A.No.1470 of 2017 and the appellant in C.M.A.No.1469 of 2017 and one Shahul Hameed were travelled as passengers. When the vehicle was proceeding near Perandoor Village, the first respondent's Bolero Car bearing Reg.No.TN 22 CY 7176 came from the opposite direction in a rash and negligent manner, endangering to the public safety and over



C.M.A.Nos.1469 & 1470 of 2017

taken the ongoing truck in the very same speed, unmindful of the oncoming Toyota Innova Car and dashed against it, thereby, all of them sustained multifarious fractures and injuries. Thereafter, the appellants have filed claim petitions under Section 166 of the Motor Vehicles Act claiming compensation before the Tribunal.

3. Before the Tribunal, the appellants examined one Shahul Hameed as P.W.1 and examined themselves as P.W.2 and P.W.3 and examined the doctor as P.W.4. and marked Ex.P.1 to Ex.P.22. No witnesses were examined nor any documents were marked on the side of the respondents. The Tribunal, after considering the oral and documentary evidence, awarded Rs.1,85,300/- and Rs.1,19,400/- respectively. Aggrieved by the same, the claimants are before this Court.

4. The learned counsel appearing for the appellants submitted that, the Tribunal has fixed a sum of Rs.3,000/- per percentage of disability, which is on the lower side and the same has to be enhanced. Further, she submitted that the appellants have sustained multiple fractures, for which, treatment for atleast three months period will take for recovery. However,



C.M.A.Nos.1469 & 1470 of 2017

the Tribunal has awarded a months salary towards loss of income, which is inadequate. On these grounds, the appellants are entitled for enhancement of compensation. Accordingly, she prays for allowing these appeals.

5. Per contra, the learned counsel appearing for the second respondent/Insurance Company submitted that, the Tribunal has awarded compensation by adopting a sum of Rs.3,000/- per percentage of disability, which is perfectly in order and the same does not require any interference. Further, the appellants have not established before the Tribunal that, they have taken treatment in the hospital for more than one month, thereby, the said compensation awarded by the Tribunal also does not require any interference. He also submitted that the fact finding rendered by the Tribunal cannot be interfered with in the appellate jurisdiction. Accordingly, he prays for dismissal of these appeals.

6. Heard the learned counsel appearing for the appellants/claimants as well as the second respondent/Insurance Company and perused the materials available on record.



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7. It is claimed by the appellants that the Tribunal has not awarded compensation towards disability in terms of the decision of the Apex Court. The appellants have been assessed disability at 30% and 20% by the doctor, however, the Tribunal has taken 20% and 15% as disability and adopting a sum of Rs.3,000/- per percentage granted compensation of Rs.60,000/- and Rs.45,000/-, which is on the lower side. Therefore, the amount per percentage can be enhanced to a sum of Rs.4,000/- and the amounts under this head would be Rs.80,000/- (20 x Rs.4,000/-) and Rs.60,000/- (15 x Rs.4,000/-).

8. Further, this Court finds that the compensation awarded under the heads attender charges, transport to hospital, extra nourishment, damage to clothing, medical bills, pain and suffering, damages for mental and physical shock are just and reasonable and does not require any interference. However, insofar as the compensation awarded towards loss of income is concerned, this Court feels that a sum of Rs.20,736/- and Rs.30,000/- would be just and reasonable compensation, since the appellants have taken treatment for more than one month in the hospital.



C.M.A.Nos.1469 & 1470 of 2017

WEB COPY

9. In view of the above, the compensation awarded by the Tribunal is modified as under :-

C.M.A.No.1469 of 2017 :

<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
	Pecuniary Loss :		
1	Loss of income	6,912.00/-	20,736.00/- (enhanced)
2	Attender charges	1,000.00/-	1,000.00/-
3	Transport to Hospital	2,000.00/-	2,000.00/-
4	Extra nourishment	10,000.00/-	10,000.00/-
5.	Medical bills	69,348.65/-	69,348.65/-
	Non Pecuniary Loss :		
6.	Pain and suffering	25,000.00/-	25,000.00/-
7.	Damages for Mental and physical shock	10,000.00/-	10,000.00/-
8.	Disability 20% @ Rs.4,000/-	60,000.00/-	80,000.00/- (enhanced)
	Total	1,85,260.65/-	2,18,084.65/-



C.M.A.Nos.1469 & 1470 of 2017

C.M.A.No.1470 of 2017 :

WEB COPY

<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
	Pecuniary Loss :		
1	Loss of income	10,000.00/-	30,000.00/- (enhanced)
2	Transport to Hospital	1,000.00/-	1,000.00/-
3	Extra nourishment	10,000.00/-	10,000.00/-
4	Damage to clothing	1,000.00/-	1,000.00/-
5	Medical bills	17,346.45/-	17,346.45/-
	Non Pecuniary Loss :		
6	Pain and suffering	25,000.00/-	25,000.00/-
7	Damages for Mental and physical shock	10,000.00/-	10,000.00/-
8	Disability 15% @ Rs.4,000/-	45,000.00/-	60,000.00/- (enhanced)
	Total	1,19,346.45/-	1,54,346.45/-

10. In the result, both the appeals are partly allowed and the impugned award of the Tribunal is modified enhancing the compensation amount from **Rs.1,85,300/-** to **Rs.2,18,100/- (rounded off)** and **Rs.1,19,400/-** to **Rs.1,54,400/- (rounded off)**. The second respondent/Insurance Company is directed to deposit the said amounts to



C.M.A.Nos.1469 & 1470 of 2017

WEB COPY

the credit of MACT.O.P.Nos.937 and 938 of 2013 respectively along with interest at the rate of 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 (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants/claimants are permitted to withdraw the award amount, less, the amount, if any already withdrawn. The appellants/claimants are directed to pay the necessary Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee is produced by the claimants. In other respects, the Award of the Tribunal is hereby confirmed. There shall be no order as to costs in the present appeal.

09.10.2023

Index : Yes / No
Speaking order / Nonspeaking order
Netrual Citation Case : Yes / No
sp



C.M.A.Nos.1469 & 1470 of 2017

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- 1.The III Judge Motor Accidents Claims Tribunal,
(Court of Small Causes), Chennai.
- 2.The Section Officer,
V.R.Section,
High Court, Madras.



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C.M.A.Nos.1469 & 1470 of 2017

M.DHANDAPANI, J.,

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C.M.A.Nos.1469 & 1470 of 2017

09.10.2023