



WEB COPY



C.M.A.Nos.3350 & 3351 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2023

CORAM

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

C.M.A.Nos.3350 & 3351 of 2013

K.S.Vijayakumar ...Appellant in CMA.No.3350 of 2013

S.Balachandran ...Appellant in CMA.No.3351 of 2013

Vs.

1. S.Paramaraj

2. The Oriental Insurance Co. Ltd.,
No.251, Arakadu Road, Vadapalani,
Chennai – 26.

...Respondents

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 as against the common Judgment and decree dated 23.03.2010 passed in MCOP.Nos.92 & 97 of 2005 on the file of the MACT/FTC, at Namakkal.

In both CMA's.:

For Appellant : Mr.Ma.P.Thangavel

For Respondents : R1-Exparte
: Mr.K.Vinod, for R2



WEB COPY



C.M.A.Nos.3350 & 3351 of 2013

COMMON JUDGEMENT

Since both the appeals are arising out of the very same accident, they are disposed of by way of this common judgment.

2. Challenging the common Judgment and decree dated 23.03.2010 made in MCOP.Nos.92 & 97 of 2005 on the file of the MACT/FTC, at Namakkal, the respective claimants are before this Court.

3. The case of the appellants is that, on 31.01.2002 at about 2.30 in the early morning hours, when the appellants were standing on the left side of the road, a vehicle bearing Regn.No.TN 07-J-1554 belonging to the 1st respondent insured with the 2nd respondent driven by its driver in rash and negligent manner dashed against the appellants, due to which, they suffered grievous injuries and got admitted in the hospital. Therefore, they filed their respective claim petitions claiming a compensation of Rs.15,00,000/- each. After contest, the Tribunal vide impugned judgment awarded a compensation of Rs.1,72,711/- in favour of the appellant in CMA.No.3350 of 2013 (hereinafter referred to as the 1st appellant) and a sum Rs. 1,87,711/- was awarded in respect of the appellant in



C.M.A.Nos.3350 & 3351 of 2013

CMA No. 3351 of 2013 (hereinafter referred to as 2nd appellant). Aggrieved by the said orders, the appellants have come up with these appeals seeking enhancement of the compensation fixed by the tribunal.

4. Learned counsel for the appellants submitted that the compensation awarded under the head of transportation charges is very meagre and no compensation has been awarded under the head of loss of amenities. Further, the compensation with regard to the medical bills as claimed through the original documents had not been awarded in full. Further, the disability as has been assessed by PW3 in respect of the appellants have been reduced by the Tribunal, without considering the nature and gravity of the injuries and the prolonged treatment and surgeries underwent by the appellants, which warranted multiplier method to be adopted, however, the tribunal has not adopted multiplier method, which cannot be acceded to. Accordingly, he prayed for necessary enhancement in favour of the appellants.

5. Per contra, the learned counsel appearing for the 2nd respondent submitted that, the tribunal has properly considered the gravity and nature of



C.M.A.Nos.3350 & 3351 of 2013

the injuries suffered by the appellants and had reduced the percentage of disability and awarded compensation by following the percentage method which does not warrants interference of this Court. Further the relevant provisions of the Motor vehicles Act, 1988 (in short MV Act) provides only for a maximum payment of Rs.15,000/- in respect of the medical bills, however, the tribunal awarded higher compensation in respect of medical bills, which was not been put in issue by the insurance company by filing any appeal. Therefore, the short fall, if any on the other heads would stand compensated by the excessive compensation awarded by the tribunal under the head Medical bills and therefore the compensation awarded by the tribunal is just and reasonable and the same does not require further enhancement. Accordingly, he prayed for dismissal of these appeals.

6. Heard learned counsel for the appellants as well as the 2nd respondent and perused the material documents placed on record.

7. The factum and the manner of the accident is not disputed by the parties and the injuries sustained by the appellants are also not in dispute. Therefore, this court is not entering into the said aspect. The major grievance of



the appellants is with regard to the fixation of the percentage of disability by the tribunal. In this regard, PW3, Doctor who had issued the disability certificates, had fixed the disability at 45% in respect of the 1st appellant and had fixed disability at 50% in respect of the 2nd appellant. The tribunal has considered the same and fixed the disability at 25% and 30% respectively and the said reduction in percentage is put in issue.

8. This Court has considered Exs.P11 & P13 and also the reasons assigned by the tribunal for the reducing the disability from the percentage fixed by PW3 to the one fixed by the tribunal. The tribunal has taken into consideration the nature of injuries suffered and the extent of disablement that would have been suffered by the appellants, which would result in their reduced earning capacity and ha fixed the disability at 25% and 30% respectively. The said fixation is based on reasoning and does not warrants interference.

9. Insofar as adoption of percentage method to pay compensation is concerned, though it is claimed by the appellants that the multiplier ought to have been adopted, the multiplier method needs to be adopted only where the



C.M.A.Nos.3350 & 3351 of 2013

injuries are to such an extent that it would have a direct impact on the earning capacity of the individual. However in the case on hand, the injuries suffered by the appellants, though is of partial permanent nature, it would not fully result in lowering the earning capacity of the appellants. In view of the same, the tribunal had rightly thought it fit to adopt percentage method instead of multiplier method and had arrived at the compensation towards Disability, which cannot be said as erroneous.

10. Insofar as the submission regrading lower compensation in respect of medical bills is concerned, as rightly pointed out by the learned counsel for the insurance company, the Schedule fixed in the MV Act prescribes a maximum of Rs.15,000/- towards medical expenses, however, the Courts, considering the injuries suffered and the treatment taken, by enlarging the scope, awards higher compensation towards the medical expenses. It is only in this manner that, the tribunal while rejecting certain bills for the reasons mentioned in the impugned order, had awarded compensation by taking the bills which are acceptable to be taken on record and had awarded compensation of Rs.42,711/- and Rs.36,711/- respectively, which is in excess of the mandate under Schedule fixed in the MV



C.M.A.Nos.3350 & 3351 of 2013

act. Therefore, the said compensation also does not deserves any interference.

WEB COPY

11. Insofar as the claim made under the other heads such as loss of amenities and transport expenses are concerned, the tribunal had awarded a sum o Rs.5,000/- and Rs.6,000/- respectively under the head transport expenses, which cannot be said to be meagre. Further the claim of compensation under the head Loss of amenities cannot be considered and has been rightly rejected by the tribunal, as the injury suffered by the appellants do not have any direct nexus with the Loss of Amenities. Therefore no amount can be awarded under the said head.

12. In fine, the tribunal had considered all the materials and arrived at a just and reasonable compensation and awarded the same to the appellants, which does not warrants interference of this Court and the enhancement as sought for by the appellants cannot be granted.

13. Accordingly, these appeals stand dismissed, confirming the impugned



C.M.A.Nos.3350 & 3351 of 2013

award dated 23.03.2010. The 2nd respondent is directed to deposit the compensation awarded by the tribunal to the credit of made in MCOP.Nos.92 & 97 of 2005 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 weeks (6) from the date of receipt of a copy of this judgment, if not deposited already. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the respective appellants/claimants through RTGS within a period of two weeks thereafter. There shall be no order as to costs in the present appeals.

10.10.2023

skt

Index : Yes/No

Speaking order : Yes/No

NCC : Yes/No

To:

1. The Motor Accidents Claims Tribunal/FTC,
Namakkal.
2. The Section Officer, V.R. Section, High Court, Madras.



WEB COPY



C.M.A.Nos.3350 & 3351 of 2013

M.DHANDAPANI, J.

skt

C.M.A.Nos.3350 & 3351 of 2013

10.10.2023