



C.M.A.Nos.292 & 3636 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A.Nos.292 & 3636 of 2014

In C.M.A.No.292 of 2014

A.Prabakaran

... Appellant

Vs.

1.Amithkumar Sharma

2. Bharathi AXA General Insurance Company limited
No.28, Ist floor, Doddanakundi Village,
K.R.Puram, Hobli, Bangalore-37.

... Respondents

In C.M.A.No.3636 of 2014

M/s. Bharathi AXA General Insurance Company limited
No.28, Ist floor, Doddanakundi Village,
K.R.Puram, Hobli, Bangalore-37.

...Appellant

Vs.

1.A.Prabakaran

2.Amithkumar Sharma

..Respondents

1/12



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COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 11.07.2013 in M.C.O.P.No.1175 of 2010 on the file of Motor Accident Claims Tribunal(Sub-Ordinate Judge), Poonamallee.

In C.M.A.No.292 of 2014

For Appellant : Mr.K.Varadhakamaraj
For respondent 1 : Exparte
For respondent 2 : M/s.C.Bhuvana Sundari

In C.M.A.No.3636 of 2014

For Appellant : M/S.C.Bhuvana Sundari
For respondent 1 : Mr.K.Varadhakamaraj
For respondent 2 : No appearance.

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been preferred against the judgment and decree in MCOP.No.1175 of 2010 dated 11.07.2013 on the file of the Motor Accident Claims Tribunal, (Sub-Ordinate Judge, Poonamalle).



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C.M.A.No.292 of 2014 has been preferred by the claimant in the said MCOP proceedings and CMA.No.3636 of 2014 has been preferred by the Insurance Company.

2. The claimant has moved the Tribunal seeking compensation of a sum of Rs.12,00,000/- for the injuries sustained in a road accident on 30.10.2010. The MCOP was filed against two respondents, the 1st respondent, being the owner of the car bearing registration No.TN 02 AM 7628 and the 2nd respondent, being the insurer of the said vehicle. The claimant has stated that he was riding his motorcycle when the 1st respondent's car, driven in a rash and negligent manner endangering public safety, hit the claimant's motor cycle, resulting in multiple and grievous injuries to the claimant.

3. The 2nd respondent/Insurance Company filed a counter denying the averments made by the claimant and alleged that it was the claimant, who drove his motorcycle rashly and not viceversa.



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4. Before the Tribunal, the claimant was examined as P.W.1 and Doctor by name V.R.Subramaniam was examined as P.W.2. Exhibits P1 To P10 were marked on the side of the claimant. On the side of the respondents, no oral and documentary evidence was let it.

5. The Tribunal, after assessing the evidence adduced by the claimant and P.W.2/Doctor, awarded a total compensation of Rs.5,77,894/- Aggrieved by the quantum awarded, both the claimant and the Insurance Company are on appeal before this Court.

6. Challenging the award, seeking enhancement, the claimant as appellant in CMA.No.292 of 2014 contended that the Tribunal erred in fixing the income of the deceased and consequently, loss of earning. It is also stated that the Tribunal erred in awarding only Rs.1,30,000/- for 65 % of disability, considering the nature of the injury suffered by the claimant. Compensation awarded under other heads were also contended to be very low.



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7. Per contra, the learned counsel for the Insurance Company, the appellant in CMA.No.3636 of 2014 challenged the award contended that the compensation awarded was on the higher side and that the evidence adduced by P.W.1 and P.W.2 were not warranting an award to the tune of Rs.5,77,894/-(Rupees five lakhs seventy seven thousand eight hundred and ninety four only).

8. Heard the learned counsel for the appellant in CMA.No.292 of 2014 representing the claimant and the learned counsel for the appellant in CMA.No.3636 of 2014 representing the Insurance Company.

9. This Court has given careful consideration to the documents placed before this Court by way of typed sets and also oral arguments adduced by both counsel. It is not disputed that the Insurance Company is liable to pay compensation to the claimant. It is only the quantum which is being disputed, the claimant contending that it should have been higher and the Insurance company contending that it should have been lower.



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10. Considering the oral and documentary evidence adduced by the claimant, this Court proceeds to modify the award of the Tribunal, in the following manner.

i) In so far as injury is concerned, the Tribunal has awarded a sum of Rs.1,30,000/- only. Even though, the Tribunal has taken the disability at 65% as suggested by P.W.2/Doctor, it has taken a sum of Rs.2000/- for 1% disability. Considering that the accident has occurred in the year 2010, it would be appropriate to fix Rs.3000/-for 1% disability. Consequently, a sum of Rs.1,95,000/- is awarded towards the injuries.

ii) Under the head of transportation, the Tribunal has awarded only a sum of Rs.5000/-. There is no discussion with regard to the said amount being awarded and considering that the claimant has suffered multiple and grievous injuries with fracture, it would be fair and equitable to award a sum of Rs.20,000/- under the head of transportation.



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iii) In so far as the medical expenses and future medical expenses is concerned, the Tribunal has awarded a compensation on the basis of the bills and nature of injury suffered. This Court does not find that the said findings are improper or perverse and the award under the heads of medical expenses and future medical expenses are not liable to be interfered with.

iv) Under the head of pain and suffering, the Tribunal has awarded a sum of Rs.25,000/-. However, considering that the claimant had suffered multiple fractures and had to undergo two surgeries and also prolonged treatment, Rs.50,000/- is awarded towards pain and suffering.

v) Under the head of extra nourishment, the Tribunal has awarded only Rs.5000/- and this Court feels that the said amount is inadequate and a sum of Rs.20,000/- would be fair and equitable.

vi) In so far as the head of loss of earning, the Tribunal has awarded Rs.60,000/- taking the income of the claimant as Rs.5000/- per month. The



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claimant has stated that he is an Electrician in Cinema field and earning a sum of Rs.15,000/- per month. However, he has not been demonstrated that he was earning the said amount at the time of trial before the Tribunal. However, this Court, considering that he was employed as an Electrician in cinema field, his income can be fixed at Rs.6,500/- per month. Consequently, a sum of Rs.78,000/- is awarded under the head of loss of earning.

vii)In so far as the attendant's expenses during the period of hospitalization, the Tribunal has awarded only Rs.7,200/- calculating at the rate of Rs.200 per day. This Court feels that the compensation awarded under the said head can be enhanced to Rs.15,000/- considering that the attendant will also need to travel back during the entire period of hospitalization on a day to day basis.

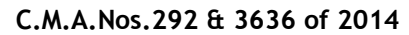
11. In the light of the above modifications, this Court holds that the appellant in C.M.A.No.292 of 2014 is entitled to the following amounts under the various heads noted against them:



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Injury	Rs.1,95,000/-
Transportation	Rs. 20,000/-
Medical Expenses	Rs.1,45,694/-
Future Medical Expenses	Rs.2,00,000/-
Pain and suffering	Rs. 50,000/-
Extra Nourishment	Rs. 20,000/-
Loss of Earning	Rs. 78,000/-
Attendant's Expenses during the hospitalization period	Rs. 15,000/- -----
Total compensation amount	Rs.7,23,694/- -----

12. In view of the above modifications, C.M.A.No.292/2014 is partly allowed and the award amount is enhanced to Rs.7,23,694/-. It shall be payable by the Insurance company/the 2nd respondent together with the interest of 7.5 % per annum from the date of the petition, till the date of the deposit.



14. In view of the above, C.M.A.No.292/2014 stands partly allowed and CMA.No.3636 of 2014 stands dismissed. No costs.

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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To

1. The Judge,
Motor Accident Claims Tribunal
(Sub-Ordinate Judge), Poonamallee.
2. Bharathi AXA General Insurance Company limited
No.28, Ist floor, Doddanakundi Village,
K.R.Puram, Hobli, Bangalore-37.
- 3.The Section Officer
V.R.Section
High Court, Madras.



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P.B.BALAJI, J.,

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16.03.2023