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C.M.A.Nos.891 and 764 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.06.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.Nos.891 and 764 of 2022

C.M.A.No.891 of 2022

P.Palaniyandi

...Appellant

Vs.

1.K.K.Palanisamy

2.M/s. National Insurance Company Ltd.,
Div.No.10, Flot No. 101-106, N-1,
BMC House, Connaught Place,
New Delhi- 100 001.
Business doing at No.74-A,
Paramathy Road,
Namakkal Town.

...Respondents

Prayer in C.M.A.No.891 of 2022:

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 praying for enhancement of the compensation in the Judgment and Decree dated 23.07.2019 made in M.C.O.P.No. 1321 of 2016, on the file of MACT/ Chief Judicial Magistrate Court at Namakkal.

and



C.M.A.Nos.891 and 104 of 2022

C.M.A.No.764 of 2022

P.Palanisamy

...Appellant

Vs.

1.K.K.Palanisamy

2.M/s. National Insurance Company Ltd.,
Div.No.10, Flot No. 101-106, N-1,
BMC House, Connaught Place,
New Delhi- 100 001.
Business doing at No.74-A,
Paramathy Road,
Namakkal Town.

...Respondents

Prayer in C.M.A.No.764 of 2022:

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 praying for enhancement of the compensation in the Judgment and Decree dated 23.07.2019 made in M.C.O.P.No. 837 of 2016, on the file of MACT/ Chief Judicial Magistrate Court at Namakkal.

For Appellant in both C.M.A.Nos.: Mr.M.Lokesh

For R-1 in both C.M.A.Nos : Ex parte

For R-2 in both C.M.A.Nos : Mrs.N.B.Surekha

COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed challenging the common Award and Decree passed in M.C.O.P.Nos.1321 and 837 of 2016 dated 23.07.2019 on the file of MACT/ Chief Judicial Magistrate Court at Namakkal.



C.M.A.Nos.891 and 764 of 2022

2. The claimants before the Tribunal have filed the above appeals for enhancement of compensation.

As the claims arose out of one and the same accident, the Claims Tribunal passed common award in both the claim petitions and therefore a common Judgment is passed in these appeals.

3. On 11.06.2016, while the claimant in C.M.A.No.764 of 2022 was pillion riding in the motor cycle driven by the claimant in C.M.A.No.891 of 2022, the Maruti Suzuki car belonging to the first respondent driven by its driver in a rash and negligent manner dashed against the claimants' motor cycle, thus causing them grievous injuries. The claimant in C.M.A.No.764 of 2022 was aged 46 years at the time of the accident and the claimant in C.M.A.No.891 of 2022 was aged 65 years at the time of the accident.

4. According to the claimants, they were agricultural coolies and earning a sum of Rs.12,000/- per month. Due to the injuries, the claimants claim to have lost their earning capacity and therefore they filed claim petitions seeking a sum of Rs.10,00,000/- and Rs.15,00,000/- as compensation in C.M.A.No.764



C.M.A.Nos.891 and / 07 07 2022

of 2022 and C.M.A.No.821 of 2022 respectively.

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5. The first respondent/owner of the Maruti Suzuki car remained ex-parte and the claim petitions were contested by the second respondent/Insurance company. The second respondent Insurance company filed detailed counter denying the negligence, quantum and liability.

6. Before the Claims Tribunal, the claimants examined themselves as P.W.1, P.W.2 and examined the Doctor who treated them and issued disability certificates as P.W.3. The claimants marked Ex.P.1 to Ex.P.17 in support of their claim. On the side of the respondents, neither oral nor documentary evidence was adduced.

7. The Claims Tribunal on an assessment of the entire evidence on record rendered a finding of negligence against the driver of the Maruti Suzuki car and awarded a compensation at Rs.3,47,590/- to the claimant in C.M.A.No.764 of 2022 and Rs.7,31,970/- to the claimant in C.M.A.No.891 of 2022 along with 7.5% interest respectively and mulcted the liability on the second



C.M.A.Nos.891 and 104 of 2022

respondent/Insurance company. Not satisfied with the compensation awarded by the Claims Tribunal, the claimants have filed the above appeals for enhancement of compensation.

C.M.A.No.764 of 2022

8. The learned counsel for the appellant submitted that Tribunal without any justification reduced the disability from 35% to 22% assessed by P.W.3 under Ex.P.17, disability certificate. The learned counsel further submitted that Claims Tribunal erred in awarding Rs.3,000/- per percentage of disability for an accident which took place in the year 2016. The learned counsel relied on Judgment of this Court in the case of *M.Chinnathambi Vs. S.Deepa* reported in 2020(1) TN MAC 617, and submitted that the Tribunal ought to have awarded Rs.5,000/- per percentage of disability. The learned counsel further submitted that considering the age, nature of injuries and the hospitalisation period underwent by the claimant, the award under various heads needed to be enhanced.



9. The learned counsel for the respondent on the other hand submitted that the award of the Claims Tribunal was just, fair and reasonable and did not call for any interference by this Court.

10. It is seen that the Claims Tribunal on the ground that the disability certificate was not issued by the Medical Board reduced the disability assessed by P.W.3 under Ex.P.17 at 35% to 22%. I have gone through evidence of P.W.3, the Doctor who treated the claimant as also disability certificate Ex.P.17. P.W.3 in his evidence clearly stated that he assessed the disability as per the guidelines issued by the Central Government. P.W.3, further stated that the claimant suffered 2 grievous injuries i.e. i) Fracture in both bones left forearm and ii) Compound fracture of left ulna. The discharge summary marked as Ex.P.10, shows that the claimant was hospitalised for a period of 24 days between 11.06.2016 and 05.07.2016 and underwent surgery for the injuries sustained by him in the accident. In my view, the Claims Tribunal in the absence of any justifiable reasons, ought not to have reduced the percentage of disability assessed by P.W.3 from 35% to 22%. Therefore, on the basis of Ex.P.10, the discharge summary, Ex.P.17 disability certificate and the evidence



of P.W.3., I am of the view that the disability assessed at 35% is to be accepted and therefore the disability is assessed at 35%. This Court in the case of *M.Chinnathambi Vs. S.Deepa* reported in 2020(1) TN MAC 617 held that for accidents after the year 2015 an amount of Rs.5,000/- per percentage of disability could be awarded. Therefore the claimant is entitled to Rs.5,000/- per percentage of disability and hence Rs.1,75,000/- ($\text{Rs.5,000} \times 35\% = 1,75,000/-$) for 35% disability is awarded by this Court.

11. The learned counsel for the appellant is justified in his submission that the award of the Claims Tribunal towards the other heads is very meagre. Considering the long period of hospitalisation and the nature of injuries sustained by the claimant, the award towards other heads is modified. Therefore the award of the Tribunal is modified as follows:

<i>S.No</i>	<i>Various Heads</i>	<i>Award by Tribunal (amount in Rs.)</i>	<i>Award by this Court (amount in Rs.)</i>
1.	Permanent Disability	66,000/-	1,75,000/-
2.	Medical Expenses	2,06,590/-	2,06,590/-
3.	Pain and Suffering	40,000/-	40,000/-
4.	Extra nourishment	4,000/-	15,000/-
5.	Transport expenses	4,000/-	15,000/-



C.M.A.Nos.891 and / 04 of 2022

S.No	Various Heads	Award by Tribunal (amount in Rs.)	Award by this Court (amount in Rs.)
6.	Loss of earnings	27,000/-	36,000/-
7.	Loss of Amenities	Nil	15,000/-
8.	Attender charges		
Total		3,47,590/-	5,02,590/-

12. In the result, the claimant shall be entitled to Rs.5,02,590/- along with 7.5% interest as compensation. The second respondent/Insurance company is directed to deposit the enhanced compensation of Rs.5,02,590/- along with 7.5% interest, less the amount, if any, already deposited, within a period of eight (8) weeks from the date of receipt of copy of this Judgment. On such deposit being made, the claimant is entitled to withdraw the same by filing proper application before the Claims Tribunal.

13. It is submitted by the learned counsel for the second respondent that C.M.P.No.18267 of 2021 in C.M.A.Sr.No.89132 of 2021 dated 21.03.2022 was filed for condoning the delay of 146 days in filing the appeal and that the delay was condoned on condition of forfeiture of interest for the delay period of 146 days. It is therefore made clear that the claimant will not be entitled to interest



C.M.A.Nos.891 and 107 of 2022

for the delay period of 146 days.

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14. It is submitted by the learned counsel for the appellant that minimal Court fee of Rs.100/- was paid. In view of the enhancement made by this Court, there shall be a direction to the claimant to pay the deficit Court fee on the enhanced compensation. Registry is directed not to draft the decree till the deficit Court fee on enhanced compensation is paid.

15. In the result, this Civil Miscellaneous Appeal No.764 of 2022 is allowed.

C.M.A.No.891 of 2022

16. It is seen that the claimant suffered fracture of parietal bone, compound commuted fracture of both bones of right legs, compound fracture of both bones of left leg and two simple injuries. The Doctor who treated the claimant was examined as P.W.3 and he stated that the injuries sustained by the claimant were grievous in nature and therefore he issued disability certificate Ex.P.15 assessing the disability at 55%. The Claims Tribunal without



any discussion on the functional disability reduced the disability to 30% and awarded a sum of Rs.90,000/- towards permanent disability. It is seen that the claimant was aged 65 years at the time of the accident and was an agricultural labourer. There is no doubt that the injuries would impact the claimant's earning capacity. Considering the nature of injuries, the long period of hospitalisation from 11.06.2016 to 08.08.2016, the nature of work of the claimant and also the advanced age, I am inclined to fix the functional disability at 30%. The notional income of the claimant assessed by the Claims Tribunal at Rs.9,000/- per month is confirmed. The functional disability is fixed at 30% and multiplier '7' is appropriate to the age of the claimant is adopted. Therefore, the loss towards permanent disability is assessed at Rs.2,26,800/- viz., $(9,000 \times 12 \times 30/100 \times 7 = 2,26,800/-)$

17. I find justification in the submission of the learned counsel for the appellant that the award towards other heads is very meagre. It is seen from Ex.P.5 that the claimant was hospitalised between 11.06.2016 and 08.08.2016 for treatment of the injuries sustained by him in the accident i.e, period of 58 days. The claimant was aged 65 years at the time of accident and was an agricultural



labourer. Considering the said facts and the grievous injuries sustained by the claimant, I am of the view that the award towards other heads needs to be enhanced. Hence the award of the Tribunal is modified as follows:

<i>S.No.</i>	<i>Various Heads</i>	<i>Award by Tribunal (amount in Rs.)</i>	<i>Award by this Court (amount in Rs.)</i>
1.	Permanent disability	90,000/-	2,26,800/-
2.	Medical Bills	5,29,470/-	5,29,470/-
3.	Pain and Suffering	60,000/-	60,000/-
4.	Extra nourishment	4,000/-	15,000/-
5.	Transport Expenses	3,500/-	15,000/-
6.	Loss of earnings	45,000/-	45,000/-
7.	Loss of Amenities	Nil	15,000/-
8.	Attender Charges		15,000/-
Total		7,31,970/-	9,21,270/-

18. In the result, the claimant shall be entitled to Rs.9,21,270/- along with 7.5% interest as compensation. The second respondent/Insurance company is directed to deposit the enhanced compensation of Rs.9,21,270/- along with 7.5% interest, less the amount, if any already deposited, within a period of eight (8) weeks from the date of receipt of copy of this Judgment. On such deposit being made, the claimant is entitled to withdraw the same by filing proper application before the Claims Tribunal.



C.M.A.Nos.891 and 104 of 2022

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19. It is submitted by the learned counsel for the second respondent that C.M.P.No.18241 of 2021 in C.M.A.Sr.No.89125 of 2021 dated 31.03.2022 was filed for condoning the delay of 146 days in filing the appeal and that the delay was condoned on condition of forfeiture of interest for the delay period of 146 days. It is therefore made clear that the claimant will not be entitled to interest for the delay period of 146 days.

In the result, this Civil Miscellaneous Appeal No.891 of 2022 is allowed. There shall be no order as to costs in both appeals.

26.06.2023

dsn

Index: Yes/no

Speaking Order: Yes/No

Neutral Citation: Yes/No



C.M.A.Nos.891 and / 04 of 2022

To
The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Namakkal.

Copy to
The Section Officer,
V.R.Section,
High Court, Madras.



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C.M.A.Nos.891 and 764 of 2022

N.MALA.J.,

dsn

C.M.A.Nos.891 and 764 of 2022

26.06.2023