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C.M.A.Nos.1703 & 2384 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

CORAM : JUSTICE N.SESHASAYEE

C.M.A.Nos.1703 & 2384 of 2023

1.L.Selvarasu	 Appellant in CMA.No.1703 of 2023
2.S.Jayagandhi	 Appellant in CMA.No.2384 of 2023

Vs

1.Parthiban	
2.HDFC ERGO General Insurance Co. Ltd.	
RR Tower II, 2 nd Floor	
No.94/95, T.V.K. Industrial Estate	
Guindy, Chennai - 600 032.	 Respondents 1 & 2 in both CMAs

Prayer in CMA.No.1703 of 2023 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 praying to allow the appeal and enhance the compensation in M.C.O.P.No.3960 of 2018 dated 15.03.2023 on the file of the Motor Accidents Claims Tribunal / CJM Court, Cuddalore.

Prayer in CMA.No.2384 of 2023 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 praying to allow the appeal and enhance the compensation in M.C.O.P.No.3962 of 2018 dated 15.03.2023 on the file of the Motor Accidents Claims Tribunal / CJM Court, Cuddalore.



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For Appellant : Ms.Ramya V.Rao
(in both CMAs)

For Respondents : Mr.N.Somasundar for R2
(in both CMAs)

R1 - Dispensed with in CMA.No.2384/2023

R1 - Served in CMA.No.1703 of 2023

No appearance

COMMON JUDGMENT

This twin appeals arise out of two separate claim petitions, one preferred by the husband and another by the wife, when both of them suffered grievous injuries in a road accident that took place on 05.07.2018, when the motorcycle in which they were travelling was hit by another motorcycle belonging to the first respondent and insured with the second respondent.

2. For the injuries suffered, as stated above, both the victims of the accident had preferred separate petitions in MCOP.No.3960/2018 (by the husband) and MCOP.No.3962/2018 (by the wife).

CMA.No.1703 of 2023 (filed against MCOP.No.3960 of 2018):

3. The claimant in MCOP.No.3960 of 2018 was a vegetable and fruit vendor, and he had suffered right closed intertrochanteric fracture and shaft of femur



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fracture with right sided closed distal radius fracture with right sided closed 1st MT shaft fracture, and atleast two surgeries were performed on him and he was hospitalised for 12 days. The medical board has assessed his disability at 50%. The Tribunal had determined the compensation payable on the head of disability as functional disability, and reckoned his monthly income at Rs.5,500/-, to which it added another 25% toward future prospects of earning a better income, and applied 14 as multiplier, since the victim was 42 years old, and reduced it to half to arrive at Rs.5,77,500/-. Including compensation paid on other non-pecuniary heads, it arrived at a total compensation of Rs.6,75,500/-. The break-up is as below :

<i>Sl.No.</i>	<i>Heads of Compensation</i>	<i>Amount Awarded by Tribunal (Rs.)</i>
1	Loss of earning power	5,77,500.00
2	Pain and sufferings	40,000.00
3	Medical expenses	10,000.00
4	Nourishment	5,000.00
5	Damages to clothing	2,000.00
6	Transportation	5,000.00
7	Attendant charges	36,000.00
Total :		6,75,500.00

This is now under challenge.



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4. The learned counsel for the appellant submitted that even the appellant's wife (who is the appellant in the other connected CMA.No.2384 of 2023) has suffered major injuries, as a result, neither of them can do any major work. The Tribunal had unrealistically fixed a meager sum of Rs.5,500/- for the one who had suffered injuries in 2018. She also submitted that the compensation paid on other non-pecuniary heads are also on the lower side.

5. The learned counsel for the insurance company submitted that it is not that the petitioner has lost all prospects of earning income which needs to be reckoned. He submitted that the approach of the Tribunal in fixing the notional income of the claimants in the absence of any material is just fair and reasonable. He also added that in both the cases, the Tribunal had directed the insurance company to pay and to recover the same from the owner of the offending vehicle, since the rider of the offending motorcycle did not have a valid and effective driving licence.

CMA.No.2384 of 2023 (filed against MCOP.No.3962 of 2018):

6. In this case, the claimant (the wife of the claimant in MCOP.No.3960 of 2018), has suffered fractures to the shaft of humerus in left hand, resulting in radial nerve palsy, leading to left wrist drop, and she continued to suffer from



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the effect of these injuries for merely near 1^{1/2} years, as could be seen from Ext.P10. The medical board has assessed her disability at 35% vide Ext.C2, and the Tribunal had determined the compensation at the rate of Rs.5,000/- per percentage of an injury. Including other non-pecuniary heads of compensation, it awarded a total sum of Rs.3,13,000/-. The break-up is as below :

<i>Sl.No.</i>	<i>Heads of Compensation</i>	<i>Amount Awarded by Tribunal (Rs.)</i>
1	Disability	1,75,000.00
2	Loss of income	45,000.00
3	Pain and sufferings	40,000.00
4	Medical expenses	5,000.00
5	Nourishment	5,000.00
6	Damages to clothing	2,000.00
7	Transportation	5,000.00
8	Attendant charges	36,000.00
Total :		3,13,000.00

This is also now under challenge.

7. Insofar as this CMA is concerned, the learned counsel for the appellant submitted that due to wrist drop of the left hand, the claimant can hardly use her left hand, and ought to have been treated as a functional disability. She



added that the Tribunal has been insensitive to the nature of injury which this claimant in this case has suffered. Here is a victim who literally cannot use her left hand beyond her wrist. In other words, she hardly can lift anything with her fingers, and prayed her disability be treated as functional disability.

8. The jurisprudence of awarding compensation for injuries is played with considerable vagaries. The one he who had suffered the injuries knows the amount of discomfort it may give. Sitting comfortably in our respective positions, it is much easier to quantify the compensation or fix the percentage of disability. It has almost become far too mechanical without really getting into the life of one who suffered injuries. The ideal position is to get into the arm-chair of the victim of the accident and possibly to visualise the kind of difficulties that he may undergo. After all, neither the Court nor the insurance company is going find him an alternate job. These are all just observations, but the Court still may have to provide something fair and reasonable. What is fair and reasonable is always have to be decided by case to case. But strangely in this branch of law, the injury or death to the rich is always valued higher and that which the poor suffers is always valued less. For the rich, the marginal utility of money is less, but for the poor, it is



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essential to provide him a dignified life, which Article 21 expresses each citizens to have.

9.1 The fact that the claimant in CMA.No.1703 of 2023 was owning a Hero Honda Splendour motorcycle in 2018, itself is an indication that he could not afford maintaining a lifestyle without atleast Rs.10,000/- a month. Accordingly, this Court re-assessed the compensation payable. Reckoning the monthly income of the victim notionally at Rs.10,000/-, and adding 25% towards future prospects of increase income, and applying 14 as a multiplier, and reducing the sum arrived by half, the total value of compensation payable on the head of loss of earning power would be Rs.10,50,000/-. So far as the other non-pecuniary heads of compensation viz., pain and sufferings, nourishment are also adjusted accordingly, however the compensation awarded by the Tribunal other than the above remains unaltered. The table below provides the details of the revised award now granted by this Court :

<i>Sl.No.</i>	<i>Heads of Compensation</i>	<i>Revised Award Amount (Rs.)</i>
1.	Loss of earning power	10,50,000.00
2.	Pain and sufferings	50,000.00
3.	Medical expenses	10,000.00
4.	Nourishment	15,000.00



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<i>Sl.No.</i>	<i>Heads of Compensation</i>	<i>Revised Award Amount (Rs.)</i>
5.	Damages to clothing	2,000.00
6.	Transportation	5,000.00
7	Attendant charges	36,000.00
Total :		11,68,000.00

9.2 Insofar as CMA.No.2384 of 2023 is concerned (preferred by the wife of the claimant/appellant in CMA.No.1703 of 2023), the claimant is a vegetable vendor. The Tribunal had fixed her income notionally at Rs.5,000/-, but then at 2018 rate, this is too far unrealistic. After all in determining the compensation for functional disability, the contribution of the claimant who owns a family, needs to be taken into account. Accordingly, this Court reckons the monthly income of the appellant notionally at Rs.9,000/-. After adding 40% towards future prospects, applying 16 as multiplier, and reducing the sum arrived by 30%, the total compensation payable on the head of loss of earning capacity (for a functional disability) would be Rs.7,25,760/-. This Court also revisits the award of the Tribunal on the heads of pain and sufferings, nourishment, loss of income etc., whereas the compensation awarded by the Tribunal on the other heads remains unaltered. The details of the revised award is as provided below :



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<i>Sl.No.</i>	<i>Heads of Compensation</i>	<i>Revised Award Amount (Rs.)</i>
1.	Loss of earning power	7,25,760.00
2	Loss of income (for 9 months)	81,000.00
3	Pain and sufferings	75,000.00
4	Medical expenses	5,000.00
5	Nourishment	25,000.00
6	Damages to clothing	2,000.00
7	Transportation	5,000.00
8	Attendant charges	36,000.00
Total :		9,54,760.00

10. In fine, this Court allows both the appeals as below :

(1) So far as C.M.A.No.1703 is concerned, the compensation is enhanced from **Rs.6,75,500/-** to **Rs.11,68,000/** and insofar as C.M.A.No.2384 of 2023 is concerned, the compensation is enhanced from **Rs.3,13,000/-** to **Rs.9,54,760/-**.

(2) The second respondent-insurance company is directed to deposit the entire compensation with interest at the rate of 7.5% per annum less (a) any amount which has been already deposited if otherwise, (b) less any amount for the interest payable for 27 days delay in filing the appeal in CMA.No.2384 of 2023 alone, within a period of six weeks from the date of receipt of a copy of this order.



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(3) The insurance company is entitled to pay the aforesaid sum and to recover the same from the owner of the offending two wheeler.

(4) The claimants are required to pay the necessary court fee for the enhanced revised award amount. No costs.

28.11.2023

Index : Yes / No
Speaking order / Non-speaking order
ds

To:

1. The Chief Judicial Magistrate
Chief Judicial Magistrate Court
Motor Accident Claims Tribunal
Cuddalore.

2. The Section Officer
VR Section
High Court, Madras.



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N.SESHASAYEE.J.,

ds

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