



C.M.A.Nos.4066, 4068 & 4070 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

CORAM :

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

C.M.A.Nos.4066, 4068 & 4070 of 2019

Minor Bhavatharini
Minor Rep.by her next friend
and mother Manimegalai,
W/o.Manikanan
No.32A/50, Jangalapuram,
Senthamangalam Post,
Senthamangalam Taluk,
Namakkal District.

... Appellant in C.M.A.No.4066 of 2019

Meenakshi

... Appellant in C.M.A.No.4068 of 2019

Manimegalai

... Appellant in C.M.A.No.4070 of 2019

Vs.

1. S.Natarajan
2. Divisional Manager,
National Insurance Co.Ltd.,
Divisional Office,
No.74-A, Paramathi Salai,
Namakkal, Namakkal District.
all appeals

... Respondents in

Common Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 seeking to allow the appeal and enhance



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the award dated 31.07.2017 in M.C.O.P.Nos.168, 206 and 1175 of 2016 on the file of Motor Accident Claims Tribunal and Chief Judicial Magistrate, Namakkal.

For Appellant in : Mr.S.Sankar for
all appeals M/s.C.Thangaraju

For Respondents : No Appearance for R1
in all appeals Mr.N.B.Suekha for R2

COMMON JUDGMENT

Challenging the award passed by the Motor Accidents Claims Tribunal and Chief Judicial Magistrate, Namakkal, in M.C.O.P.Nos. 168, 206 and 1175 of 2016 dated 31.07.2017, the claimants have preferred the above appeals seeking enhancement.

2. It is the case of the appellants that, on 29.11.2015 while the appellants were travelling in an Omni Van bearing Regn.No.TN 54 C 7493, at that time the driver of the van belonging to the first respondent which was insured with the second respondent has driven the van in a rash and negligent manner and hit against a palm tree, due to which the appellants sustained grievous injuries and were admitted in Hospital. Claiming compensation in a sum of Rs.10,00,000/-, 15,00,000/- and



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15,00,000/-, the appellants in respective appeals have filed the respective claim petitions.

3. Before the Tribunal, the appellants/claimants have examined P.W.1 to P.W.5 and marked Ex.P.1 to Ex.P.35. The respondents have neither marked any documents nor examined any witnesses. After adjudication, the Tribunal has passed a common award in M.C.O.P.Nos.168, 206 and 1175 of 2016 and awarded a sum of Rs.2,24,200/-, Rs.5,61,800/- and Rs.2,39,100/- in respective claim petitions to be payable by the second respondent/insurance company to the respective appellants. Challenging the same, the present appeals have been filed by the appellants/claimants.

4. The learned counsel appearing for the appellants in C.M.A.No.4066 of 2019 submitted that, due to the rash and negligent driving of the driver of the van, the said accident occurred. Hence the second respondent / insurance company is liable to pay the compensation in favour of the appellants. Though the accident is of the year 2015, however, the Tribunal has fixed 20% disability and awarded only a sum



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of Rs.3,000/- per percentage of disability under the head permanent disability, which is *per se* unsustainable. He further submits that the other heads awarded by the Tribunal are also on the lower side.

5. The learned counsel appearing for the appellant in C.M.A.No.4068 of 2019 submitted that though the accident is of the year 2015, however, the Tribunal has fixed 60% disability as per the disability certificate and awarded only a sum of Rs.3,000/- per percentage of disability and awarded a sum of Rs.1,80,000/- under the head permanent disability, which is *per se* unsustainable. Hence, the same requires to be interfered with. The other heads awarded by the Tribunal are also on the lower side.

6. The learned counsel appearing for the appellants in M.C.O.P.No.4070 of 2019 submitted that though the accident is of the year 2015, however, the Tribunal has fixed 20% disability as per the disability certificate and awarded only a sum of Rs.3,000/- per percentage of disability at the relevant point of time and awarded a sum of



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Rs.60,000/- under the head permanent disability, which is *per se* unsustainable. Hence, the same requires to be interfered with. The other head awarded by the Tribunal are also on the lower side.

7. The learned counsel appearing for the second respondent / insurance company submits that upon considering all the oral and documentary evidence, the Tribunal has awarded the compensation in favour of the appellants by considering the nature of the injuries sustained by the appellants and the same does not require interference. Accordingly, he prayed to dismiss these appeals.

8. Though the learned counsel for the first respondent was served, no one appeared on his behalf. Considering the period of pendency of the appeals, the same is disposed of based on the materials available on record.

9. Heard the learned counsel appearing for the appellants and the learned counsel appearing on behalf of the second respondent and perused the materials available on record.



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10. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. Insofar as, the claimant in M.C.O.P.No.168 of 2016 is concerned, the accident is of the year 2015, however, the Tribunal erroneously fixed a sum of Rs.3,000/- at the rate of per percentage of disability which cannot be sustained. Hence, this Court fixes a sum of Rs.4,500/- per percentage of disability by considering the year of the accident and nature of injuries sustained by the appellant in C.M.A.No.4066 of 2019. Therefore, the amount under the head Permanent Disability is modified to a sum of Rs.90,000/- ($20\% * 4500 = 90,000/-$).

11. Insofar as the claimant in M.C.O.P.No.206 of 2016 is concerned, the accident is of the year 2015, however, the Tribunal erroneously fixed a sum of Rs.3,000/- at the rate of per percentage of disability which cannot be sustained. Hence, this Court fixes a sum of Rs.4,500/- per percentage of disability by considering the year of the accident and nature of injuries sustained by the appellant in C.M.A.No.4068 of 2019. Though the Doctor assessed the disability of the



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claimant in M.C.O.P.No.206 of 2016, as the percentage of disability varies from Doctor to Doctor, this Court is inclined to fix the disability at 55%. Therefore, the amount under the head Permanent Disability is modified to a sum of Rs.2,47,500/- ($55\% * 4500 = 2,47,500/-$).

12. Insofar as, the claimant in M.C.O.P.No.1175 of 2016 is concerned, the accident is of the year 2015, however, the Tribunal erroneously fixed a sum of Rs.3,000/- at the rate of per percentage of disability which cannot be sustained. Hence, this Court fixes a sum of Rs.4,500/- per percentage of disability by considering the year of the accident and nature of injuries sustained by the appellant in C.M.A.No.4070 of 2019. Therefore, the amount under the head Permanent Disability is modified to a sum of Rs.90,000/- ($20\% * 4500 = 90,000/-$).

13. The compensation awarded under the other heads are just and reasonable and no interference is warranted with the award of compensation under the said heads.



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14. In view the above circumstances, the compensation awarded by the Tribunal in C.M.A.No.4066 of 2019 arising out of M.C.O.P.No.168 of 2016 is modified as under :-

<i>S.No.</i>	<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Transportation	5,000/-	5,000/-
2	Extra Nourishment	10,000/-	10,000/-
3	Medical Bills	1,02,200/-	1,02,200/-
4	Permanent disability (20% * Rs.3,000/- = Rs.60,000/-)	60,000/-	90,000/- (enhanced)
5	Pain and Sufferings	35,000/-	35,000/-
6	Attender charges	12,000/-	12,000/-
	Total	2,24,200/-	2,54,200/-

15. The compensation awarded by the Tribunal in C.M.A.No.4068 of 2019 arising out of M.C.O.P.No.206 of 2016 is modified as under :-

<i>S.No.</i>	<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Loss of income during treatment period (3 * 3000) = 9000	9,000/-	9,000/-
2	Transportation	5,000/-	5,000/-
2	Extra Nourishment	10,000/-	10,000/-
3	Medical Bills	2,62,800/-	2,62,800/-
4	Permanent disability (60% * Rs.3,000/- = Rs.1,80,000/-)	1,80,000/-	2,47,500/-



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<i>S.No.</i>	<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
	Rs.3,000/- = Rs.1,80,000/-)		(enhanced)
5	Pain and Sufferings	45,000/-	45,000/-
6	Future medical expenses	50,000/-	50,000/-
	Total	5,61,800/-	6,29,300/-

16. The compensation awarded by the Tribunal in C.M.A.No.4070 of 2019 arising out of M.C.O.P.No.1175 of 2016 is modified as under :-

<i>S.No.</i>	<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Loss of income during treatment period (3 * 8000) = 9000	24,000/-	24,000/-
2	Transportation	5,000/-	5,000/-
2	Extra Nourishment	10,000/-	10,000/-
3	Medical Bills	1,00,100/-	1,00,100/-
4	Permanent disability (20% * Rs.3,000/- = Rs.60,000/-)	60,000/-	90,000/- (enhanced)
5	Pain and Sufferings	40,000/-	40,000/-
	Total	2,39,100/-	2,69,100/-

17. In view of the above, the compensation awarded by the Tribunal in all the appeals is modified as follows :-



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<i>S.No.</i>	<i>C.M.A.No./ M.C.O.P.No.</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	4066 of 2019/ 168 of 2016	2,24,200/-	2,54,200/-
2	4068 of 2019/ 206 of 2016	5,61,800/-	6,29,300/-
3	4070 of 2019/ 1175 of 2016	2,39,100/-	2,69,100/-

18.The second respondent/insurance company is directed to deposit the above said compensation amount awarded by this Court to the credit of M.C.O.P.Nos.168, 206 and 1175 of 2016 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 common judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the claimants M.C.O.P.Nos.206 and 1175 of 2016 through RTGS within a period of two (2) weeks thereafter, upon production of necessary proof for payment of court fee for the enhanced compensation by the appellants in C.M.A.Nos.4068 and 4070 of 2019.



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19. Further the Tribunal is directed to deposit the modified award amount in respect of the appellant in C.M.A.No.4066 of 2019 in an interest heeding fixed deposit with anyone of the nationalized banks until she attains majority and the interest derived from out of the said deposit shall be paid to the mother of the minor claimant / Manimegalai every quarter to be utilized for the welfare of the said minor claimant after attaining majority. It is open to the minor claimant to file necessary application to establish the majority, at which point of time the Tribunal is directed to transfer the amount in the fixed deposit directly to the bank account of the minor claimant through RTGS within a period of two weeks thereafter.

20. Accordingly, these appeals are allowed in part. No costs.

22.11.2023

Index : Yes / No
Speaking order / Non-speaking order
Netrual Citation Case : Yes / No
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M.DHANDAPANI, J.

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To

1.Motor Accident Claims Tribunal and Chief Judicial Magistrate,
Namakkal.

2.The Section Officer, V.R.Section, High Court, Madras.

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