



C.M.A.Nos.4218 and 4217 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.4218 and 4217 of 2019

N.Dhatchanamoorthy
G.Santhakumar

... Appellant in C.M.A.No.4218 of 2019
... Appellant in C.M.A.No.4217 of 2019

Vs.

1. G.Balasubramanian
2. National Insurance Company Limited,
No.II, Jerome Building,
1st Floor, Fort Station Road,
Trichy – 620 002.

... Respondents in both appeals

Common Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 23.01.2019 made in M.C.O.P.No.880 of 2016 and 30 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Dharmapuri.

For Appellant in : Mr.D.Rameshkumar
both appeals

For Respondents : Mr.G.Anandan for R2
in both appeals No Appearance for R1



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COMMON JUDGMENT

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The above appeals are filed by the appellants/claimants seeking enhancement of the compensation awarded by the Motor Accident Claims Tribunal, Special District Court, Dharmapuri in M.C.O.P.No.880 of 2016 and 30 of 2017 dated 23.01.2019.

2. It is the case of the appellants that, on 04.04.2016, when the claimant in M.C.O.P.No.880 of 2016 was driving his two wheeler along with the claimant in M.C.O.P.No.30 of 2017 as pillion rider, at that time an Eicher vehicle bearing Regn.No.TN 81 3171 came in a rash and negligent manner and hit against the two wheeler, due to which both the rider and the pillion rider sustained grievous injuries and were admitted in a Government Hospital. Claiming compensation in a sum of Rs.30,00,000/- and 20,00,000/- the claim petitions in M.C.O.P.Nos.880 of 2016 and 30 of 2017 have been filed by the respective claimants.

3. Before the Tribunal, the appellants/claimants examined P.W.1 to P.W.3 and marked Ex.P.1 to Ex.P.25, the respondents neither



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examined any witness nor marked any documents. After adjudication, the Tribunal awarded a sum of Rs.17,78,800/- and Rs.8,52,500/- to be payable by the second respondent/insurance company to the respective appellants herein. Challenging the same, the present appeals have been filed by the appellants/claimants.

4. The learned counsel appearing for the appellants submitted that, as regards the claimant in M.C.O.P.No.880 of 2016 is concerned, he is employed as driver in heavy goods lorry, who was earning a sum of Rs.15,000/- per month and Rs.200/- as daily batta for which he has also marked the driving licence before the Tribunal. He further submitted that the accident is of the year 2016 and as per the decision of the Hon'ble Apex Court in the case of *Syed Sadiq Vs. United India Insurance Company* reported in **2014 (1) TANMAC 459**, the notional income of the vegetable vendor has to be fixed at Rs.6,500/-, however the Tribunal has fixed only a sum of Rs.8,000/- as notional income which is per se unsustainable. Moreso, the compensation awarded under other heads are also on the lower side.



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5. The learned counsel for the appellant submits that as regards the claimant in M.C.O.P.No.30 of 2017 is concerned, he was working as Manager in Mangammal coconut coir factory, Vellichandai who was earning a sum of Rs.15,000/- per month, however, the Tribunal has fixed only a sum of Rs.7,500/- as notional income, which is on the lower side and the other heads awarded by the Tribunal are also very meagre. Accordingly, he prayed for appropriate orders.

6. The learned counsel appearing for the second respondent/Insurance Company submitted that, upon perusing all the oral and documentary evidence, the Tribunal has rightly directed the second respondent/insurance company to pay a sum of Rs.17,78,800/- and Rs.8,52,500/- to the appellants in respective appeals which does not require interference of this Court. Accordingly, he prays for dismissal of the appeals.

7. Though the learned counsel for the first respondent was served, no one appeared on his behalf. Considering the period of pendency of the



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appeal, the same is disposed of based on the materials available on record.

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

9. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. It is the grievance of the appellants in respective appeals that though they earned a sum of Rs.15,000/- per month, the Tribunal has fixed only a sum of Rs.8,000/- and Rs.7,500/- as notional income in respective claim petitions.

10. Insofar as the appellant in C.M.A.No.4217 of 2019 is concerned, upon perusing all the oral and documentary evidence has passed the award and the compensation awarded by the Tribunal in M.C.O.P.No.30 of 2017 is just and reasonable and the same does not warrant any interference. Accordingly, the appeal in C.M.A.No.4217 of



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2019 is dismissed by confirming the award passed by the Tribunal in M.C.O.P.No.30 of 2017 dated 23.01.2019.

11. Insofar as the appellant in C.M.A.No.4218 of 2019 is concerned, as per the decision of the Hon'ble Apex Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in **2014 (1) TANMAC 459**, the notional income of the vegetable vendor has to be fixed at Rs.6,500/-. Though the accident happened during the year 2016, the Tribunal has fixed only a sum of Rs.8,000/- as notional income for the claimant in M.C.O.P.No.880 of 2016 which is on the lower side. Hence, this Court is inclined to fix a sum of Rs.10,000/- as notional income for the appellant in C.M.A.No.4218 of 2019 by adopting the multiplier at 16 as he could not continue his avocation after the said accident and by fixing the disability at 80% as evidenced from the records, the future loss of income is arrived at Rs.15,36,000/- (10,000 x 12 x 16 x 80%). Further the compensation awarded under the other head are just and reasonable.



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12. In view of the above, this Court is inclined to pass the following award in C.M.A.No.4218 of 2019 arising out of M.C.O.P.No.880 of 2016:-

<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Future loss of income	12,28,800/-	15,36,000/- (enhanced)
2	Pain and suffering	75,000/-	75,000/-
3	Extra nourishment expenses	30,000/-	30,000/-
4	Attender charges	10,000/-	10,000/-
5	Transport charges	65,000/-	65,000/-
6	Loss of amenities	75,000/-	75,000/-
7	Medical expenses	2,95,000/-	2,95,000/-
	Total	17,78,800/-	20,86,000/-

13. Accordingly, the appeal in C.M.A.No.4218 of 2019 is partly allowed and the compensation amount is enhanced from **Rs.17,78,800/-** to **Rs.20,86,000/-** and the second respondent/Insurance Company is directed to deposit the compensation amount, awarded by this Court above, to the credit of M.C.O.P.No.880 of 2016 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of



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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 common judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant/claimant in C.M.A.No.4218 of 2019 through RTGS within a period of two weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation. The appellant/claimant in C.M.A.No.4218 of 2019 is directed to pay necessary additional Court fee on the enhanced compensation amount. There shall be no order as to costs in the present appeals.

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Index : Yes / No
Speaking order / Non-speaking order
Netrual Citation Case : Yes / No
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To

1. Motor Accident Claims Tribunal, Special District Court, Dharmapuri.
2. The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.

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