



C.M.A.Nos.3129 & 3130 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.3129 & 3130 of 2017

K.Ganesan

... Appellant/Petitioner
in C.M.A.No.3129 of 2017

K.G.Kaarthick

... Appellant/Petitioner
in C.M.A.No.3130 of 2017

Vs

1.K.Sathiyamoorthy

2.C.Govindasamy

2. United India Insurance Company Limited,
Micro Office, D.No.22-B.Shop,
No.11, Krishnaveni Complex,
Pallipalayam-638 006.

[The respondents-1 & 2 remained Ex-parte
before the Tribunal, hence Notice may be
dispensed with for them in these Appeals]

... Respondents/Respondents



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in both the Appeals

Common Prayer:

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 for enhancement of Compensation amount awarded in the Judgment and Decree dated 29.04.2017 made in M.C.O.P.Nos.423 & 447 of 2001 on the file of MACT/IV-Addtional District Court at Bhavani.

In both the Appeals :

For Appellant ... M/s.MA.P.Thangavel

For Respondents ... [R1] & [R2] remained Ex-parte
[Notice dispensed with]

... M/s.I.Malar for R3

JUDGEMENT

Aggrieved by impugned award dated 29.04.2017 passed by the IV-Addtional District Court, Bhavani in M.C.O.P.Nos.423 & 447 of 2001, the present appeals have been filed by the claimants/appellants seeking enhancement of compensation.



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2. The Petitioners/claimants herein are father and son in respective claim petitions. On 26.12.2009, when the father was riding the motor cycle bearing Reg No.TN-33-AW-4479 along with his son travelling as a pillion rider in the motor cycle on the left side of the Erode to Perundurai road from East to West direction, the Tractor bearing Reg.No.TN.33 E 4329 belonging to the 1st respondent, insured with the 3rd respondent, driven by the 1st respondent in a rash and negligent manner, dashed against the petitioner's motor cycle thereby the claimants suffered grievous injuries. Therefore, the claimants have filed the claim petitions claiming a sum of Rs.30,00,000/- each as compensation for the injuries sustained by them under various heads before the Motor Accidents Claims Tribunal, IV Additional District Judge, Bhavani. After adjudication, the Tribunal awarded the compensation amount of Rs.4,78,151/- and Rs.2,97,263/- under various heads in respect of the claimants in M.C.O.P.Nos.423 & 447 of 2011 respectively. Aggrieved by the quantum of compensation awarded by the Tribunal, the appellants/claimants are before



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this Court seeking enhancement of compensation.

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3. Learned counsel appearing for the claimants submitted that the compensation awarded by the Tribunal under various heads is grossly inadequate which requires enhancement. During the pendency of these appeals, the claimants were referred to the Medical Board of Government Headquarters Hospital, Erode, wherein, the doctor who was examined as P.W.3 before the Tribunal had assessed the disability of the claimants and issued Ex.C1 & Ex.C2 the disability certificates stating that the claimant in M.C.O.P.No.423 of 2011 had sustained only 30% of permanent disability and that the claimant in M.C.O.P.No.447 of 2011 had not suffered any functional disability. Since, the claimants have suffered severe head injuries on account of the accident, for the purpose of assessing the disability, the claimants ought to have been referred to a neuro surgeon. If the claimants were referred to a neuro surgeon, the disability suffered by them would have come to 60 to 70%. Since P.W.3 is not a neuro surgeon, he has erred in assessing the disability of the claimants based on which, the compensation has been awarded towards disability in respective claim petitions. Further, the amount awarded under the



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other heads is also minimal. Hence he prays for enhancement of the compensation awarded by the Tribunal under various heads.

4. Per contra, learned counsel appearing for the 3rd respondent/insurance company submitted that insofar as the claim of compensation towards disability, the Tribunal after examining the disability certificates issued by the Doctor P.W.3, has rightly awarded the compensation under the said head based on the quantum of disability assessed by the Medical Board which is fairly adequate and so also the compensation awarded under the other heads, which does not require any enhancement. Accordingly, he prayed for dismissal of these appeals.

5. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

6. The factum of the accident is not disputed by the parties and so also



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the liability. Therefore, this Court is not entering into the said aspect. The only grievance of the claimant is with regard to the quantum of compensation awarded. It is the claim of the petitioner that the compensation awarded by the Tribunal under various heads is grossly inadequate which requires enhancement. Insofar as the claim of the petitioner with regard to the compensation towards disability, this Court had perused the disability certificates viz., Ex.P.12 & Ex.P.13 issued by the Doctor P.W.3 who had assessed the disability suffered by the claimants. However, no proof has been produced by the claimants to substantiate their claim for enhancement of compensation towards disability. After perusing the crucial evidences relating to the compensation awarded by the Tribunal, this Court is of the considered view that when the doctor has arrived at the quantum of disability suffered by the claimants by rendering an expert opinion, this Court cannot interfere with same by rendering its substituted view with regard to quantum of compensation. Therefore, the compensation awarded by the Tribunal to the respective claimants does not require any enhancement. Further, this Court finds that the compensation awarded under heads in respective claim petitions



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is also just and reasonable and these appeals are liable to be dismissed.
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7. Accordingly, these Civil Miscellaneous Appeals are dismissed and the Judgment and Decree dated 29.04.2017 made in M.C.O.P.Nos.423 & 447 of 2001 on the file of Motor Accidents Claims Tribunal, IV-Addtional District Court at Bhavani is confirmed. There shall be no order as to costs.

18.10.2023

Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No

NHS

To

1. Motor Accidents claims Tribunal
(IV-Additional District Court), Chennai.
2. The Section Officer,
V.R. Section,
High Court, Madras.



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M.DHANDAPANI, J

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