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CMA.Nos.3487 & 3488 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.04.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.Nos.3487 & 3488 of 2017

S. Girija

.. Appellant in
CMA.No.3487 of 2017

B.Vijayalakshmi

...Appellant in
CMA.No.3488 of 2017

Vs.

1. Central Organisation of Tamil Nadu
No.27, Mosque street,
Chepauk,
Chennai – 600 005.

2.The TATA AIG General Insurance Co.,Ltd.,
2nd Floor, Samson Towers,
Pantheon Road,
Chennai – 600 008.

.. Respondents in both the CMAs

Common Prayer: Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act 1988 against the Judgment and Decree dated 11.01.2017 made in M.A.C.T.O.P.Nos.5499 & 5500 & of 2014 on the file of the Motor Accidents Claims Tribunal/(III Small Causes Court) Chennai

For Appellant : Mrs.A.Subadra
in both the CMAs



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For Respondents : Mr.E.Rajadurai for R2
in both the CMAs for Mr.M.B.Gopalan Associates
R1 – Returned with endorsement
'no such person'

COMMON JUDGMENT

These appeals have been filed by the appellants/claimants seeking enhancement of compensation under the impugned award dated 11.01.2017 made in M.A.C.T.O.P.Nos.5499 & 5500 of 2014 on the file of the Motor Accidents Claims Tribunal/(III Small Causes Court) Chennai.

2. Both the appeals arise out of common award passed by the Tribunal in relation to the same accident. The learned counsel for the parties advanced common argument in these appeals and therefore, they are disposed of by this common judgment.

3. The case of the claimants / appellants is that on 06.04.2014 while the appellant in MCOP.No.5500 of 2014 was riding her motor cycle bearing Regn.No.TN19-J-3485 and the appellant in MCOP.No.5499 of 2014 was travelling as a pillion rider, from Uthiramerur to Chengalpattu direction and while nearing the Pachaiaamman Koil in the GST Road, bye-pass road, a



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Bolero car, bearing Regn.No.TN06-E-7041, driven by its driver in a rash and negligent manner in the same direction and dashed on the backside of the motor cycle, and thereby both the appellants fell down and sustained grievous injuries. Claiming that the driver of the Bolero car was solely and directly responsible for the accident, the appellants/claimants have filed a claim petition claiming a sum of Rs.20,00,000/-.

4. The Tribunal, based on the oral and documentary evidences has observed that the driver of the Bolero car is responsible for the accident and fastened the liability on the Insurance Company as insurer of the first respondent and ultimately quantified the total compensation at Rs.2,10,700/- and Rs.3,65,500/- respectively to the appellants with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Aggrieved by which, the claimants / appellants are before this Court.

5. The learned counsel for the claimants / appellants has submitted that the decree and judgment of the Tribunal are against the law, weight of evidence and probabilities of the case. The Tribunal failed to consider the injuries sustained by the injured. She further submitted that the appellant in



CMA.No.3487 of 2017 has sustained injuries like left superior and inferior public rami and fracture over the sacral region, fracture of right transverse process of L5 vertebra and other multiple grievous injuries all over the body. The Doctor who was examined as PW3 assessed the disability of the appellants as 40% whereas the Tribunal fixed the disability as 30% and awarded Rs.75,000/- under the head of permanent disability by applying Rs.3000/- per percentage. It ought to award more compensation under the heads of medical expenses and transport expenses, pain and sufferings, damages and extra nourishment. It ought to award compensation under the head of future medical expenses, attender charges and loss of amenities. It ought to fix the loss of earning capacity as 100% instead of 30% by adopting multiplier method. It ought not to reduce the disability percentage from 40% to 30%. It ought to award reasonable amount under the heads of marital prospectus of the injured and loss of income. She further submitted that it ought to award compensation under the head of loss of income, permanent disability and loss of earning capacity under separate heads. In any event, the Tribunal erred in awarding compensation at Rs.2,10,700/- and Rs.3,65,500/- respectively to the appellants as against the claim of Rs.20,00,000/-. Hence, he prays for enhancement of the Award amount.



6. Before the Tribunal, the Appellants/claimants have examined three witnesses and marked PW1 to PW3 and filed twenty four documents which were marked as Ex.P1 to Ex.P24. On the side of the second respondent/Insurance Company, neither witness was examined nor filed any documents.

7. Per contra, the learned counsel for the Insurance Company has submitted that the Tribunal has granted reasonable compensation under various heads and no modification needs to be granted. Hence, he prays to dismiss these appeals.

8. This Court has considered the said submissions made by the learned counsel for the appellants and the learned counsel for the second respondent and perused the materials available on record.

9. Based on the evidences of P.W.1 to PW3 and perusing the exhibits in Ex.P1/FIR copy; Ex.P2/Accident Register copy and Ex.P10/Charge sheet, the Tribunal has fastened the liability on the rider of the Bolero Car bearing Regn. No.TN06-E-7041.



WEB C

10. As far as the quantum of compensation arrived at by the Tribunal is concerned, to prove the avocation and income of the appellants P.W.1 and P.W.2 have been examined, who deposed that the appellants in CMA.No.3487 of 2014 was self-employed and was earning Rs.15,000/- per month and the appellant in CMA.No.3488 of 2014 was an office assistant and was earning Rs.10,000/- per month. The disability of the claimants have been wrongly assessed as 30% and based on cross-examination of PW3/Doctor and Ex.P22 and Ex.P24, only Rs.3000/- for each percentage was awarded. From the records, it is seen that the claimant/S.Girija has sustained head injury, right sacral fracture, fracture and multiple injuries all over the body; the claimant/B.Vijayalakshmi has sustained head injury, right face eye injury, left hand injury, left shoulder, injury, both hand finger injury, back injury, both knee injury, right foot injury, left leg fracture and multiple injuries all over the body. This court is of the considered opinion that Rs.4000/- is the correct assessment for each percentage and the disability has to be taken at 40% and thus fixed Rs.1,60,000/- (4000 x 40%) towards disability in both the appeals. During the said treatment period, they had incurred transport expenses and the same may be fixed at Rs.10,000/ and Rs.20,000/- respectively in CMA.No.3487 of 2017 and CMA.No.3488 of 2017 respectively instead of Rs.5,000/- as assessed by



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the Tribunal in both the appeals. In CMA.No.3488 of 2017, considering the grievous injuries sustained by the appellant, the award under the head of Nourishment is enhanced from Rs.10,000/- to Rs.20,000/-.

11. With regard to loss of amenities, the Tribunal has awarded a meagre amount of Rs.15,000/- in both the appeals and hence the same is fixed at Rs.20,000/- and Rs.30,000/- by this court in CMA.No.3487 of 2017 and CMA.No.3488 of 2017 respectively. This Court is of the considered view that due to the nature of injuries sustained by the appellants and period of treatment given in the hospital as in-patient, this court is inclined to fix Rs.45,000/- (6x7500) and Rs.60,000/- (8 x 7500) respectively under the head of loss of income in CMA.No.3487 of 2017 and CMA.No.3488 of 2017. Further, on perusal of records, it is seen that the Tribunal has granted a meagre compensation under the head of attender charges at Rs.2750/- and Rs.2500/- in CMA.No.3487 of 2017 and CMA.No.3488 of 2017 respectively. Due to the grievous injuries sustained by the appellants/claimants, they had taken the help of attender for atleast for few months and hence the award granted under the attender charges are fixed at Rs.10,000/- and Rs.20,000/- respectively in both the appeals.



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12. Since the amount awarded under the head of Extra nourishment in CMA.No.3487 of 2017 is a correct assessment, it does not need re-visit and the same is confirmed as such. However, considering the health condition of the appellant, the amount awarded under the head of Extra Nourishment in CMA.No.3488 of 2017 is enhanced to Rs.20,000/-. The award granted under the head of disfigurement seems to be on lower side. Considering the nature of injuries, the same is enhanced to Rs.20,000/- in CMA.No.3488 of 2017. On perusal of records, it is seen that no amount is granted under the head of future medical bills. Hence, it would be appropriate to grant a sum of Rs.20,000/- under the same head in CMA.No.3488 of 2017.

13. In both the appeals, insofar as the other heads such as damages, medical bills, pain and sufferings, mental shock are concerned, the assessment of the compensation awarded by the Tribunal are just compensation and they do not call for any interference by this Court.

14. In fine, in CMA.No.3487 of 2017, the re-structured compensation, item-wise, would be thus:



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of Income	32,750/-	45,000/- (6x7500)
Attender Charges	2,750/-	10,000/-
Transport	5,000/-	10,000/-
Nourishment	10,000/-	10,000/-
Damages	1,000/-	1,000/-
Medical Bills	4,141.50/	4,141.50/-
Pain & sufferings	40,000/-	40,000/-
Mental Shock	10,000/-	10,000/-
Amenities	15,000/-	20,000/-
Disability	90,000/- (30x3000)	1,60,000/- (40 x4000)
Total	2,10,641.50/-	3,10,141.50/-

Rounded off to Rs.3,10,150/-

15. In fine, in CMA.No.3488 of 2017, the re-structured compensation, item-wise, would be thus:



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of Income	32,500/-	60,000/- (8x7500)
Attender Charges	2,500/-	20,000/-
Transport	5,000/-	20,000/-
Nourishment	10,000/-	20,000/-
Damages	1,000/-	1,000/-
Medical Bills	1,39,489.47/-	1,39,489.47/-
Pain & sufferings	40,000/-	40,000/-
Mental Shock	10,000/-	10,000/-
Amenities	15,000/-	30,000/-
Disfigurement	15,000/-	20,000/-
Disability	90,000/- (30x3000)	1,60,000/- (40 x4000)
Future Bills	-----	20,000/-
Total	3,65,489.47/-	5,40,489.47/-

Rounded off to Rs.5,40,500/-

16. In the result,

a) these Civil Miscellaneous Appeals filed by the claimants / appellants are **partly allowed**, by enhancing the total amount of compensation from Rs.3,10,150/- and Rs.5,40,500/- respectively along with interest at the rate of 7.5% p.a. from the date of filing of the petition till the



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date of deposit.

WEB COPY (b) The second respondent/Insurance Company is directed to deposit the abovesaid enhanced award amounts of Rs.3,10,150/- and Rs.5,40,500/- together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal, to the credit of M.C.O.P.No.3487 of 2017 and M.C.O.P.No.3488 of 2017 respectively within a period of six weeks from the date of receipt of a copy of this Judgment. Needless to state that the appellants shall pay necessary court fees for the enhanced compensation amount before receiving the copy of these judgments.

(c) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the appellants/claimants through RTGS within a period of two weeks thereafter.

No costs.

24.04.2023

Index : Yes/No

Internet : Yes/No

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A.A.NAKKIRAN, J

gv

To

1. The Motor Accidents Claims Tribunal,
(III Small Causes Court) Chennai.

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

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24.04.2023