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C.M.A. Nos.1120 of 2012 and 146 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. Nos.1120 of 2012 and 146 of 2013

J.Rajesh .. Appellant in C.M.A. No.1120 of 2012 and
1st respondent in C.M.A. No.146 of 2013

Vs.

1.M/s.Parveen Travels (Pvt.) Ltd.,
Shop No.6, UMA Complex,
No.39, Medavakkam
Tank Road,
Kellys, .. 1st respondent in C.M.A. No.1120 of 2012
Chennai - 600 010. & 2nd respondent in C.M.A. No.146 of 2013

2.The New India Assurance Co. Ltd.,
C.D.U. IX Garden Apartments,
No.68, Purasawalkam, .. 2nd respondent in C.M.A.No.1120 of 2012
Chennai - 600 006. & appellant in C.M.A. No.146 of 2013

Prayer in both cases: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 29.08.2011 made in M.A.C.T.O.P. No.3331 of 2009 on the file of the V Small Causes Court (Motor Accidents Claims Tribunal), Chennai.



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For appellant in C.M.A. No.1120 of 2012 &
1st respondent in C.M.A. No.146 of 2013

: Mr.M.Mahendran

For 1st respondent in C.M.A. No.1120 of 2012 &
2nd respondent in C.M.A. No.146 of 2013

: Exparte

For 2nd respondent in C.M.A.No.1120 of 2012 &
appellant in C.M.A. No.146 of 2013

: Mr.K.Vinod

COMMON JUDGMENT

C.M.A. No.1120 of 2012 has been filed by the claimant seeking enhancement of compensation.

C.M.A. No.146 of 2013 has been filed by the Insurance Company, questioning the quantum of compensation awarded by the Tribunal under the impugned award.

2.Since both the C.M.As arise out of the very same award, they are disposed of by a common judgment.

3.The claimant has filed C.M.A. No.1120 of 2012 seeking enhancement of compensation as according to him, the quantum of compensation awarded by the Tribunal is not a just compensation.



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4.The Insurance Company has filed C.M.A. No.146 of 2013, questioning the quantum of compensation awarded by the Tribunal as they claim that the compensation awarded by the Tribunal is excessive.

5.The Tribunal, under the impugned award, had directed the appellant in C.M.A. No.146 of 2013 to pay the appellant in C.M.A. No.1120 of 2012 a total compensation of Rs.3,88,000/- for the injuries sustained by the appellant in C.M.A. No.1120 of 2012 as a result of an accident, caused by a vehicle, insured with the appellant in C.M.A. No.146 of 2013 as detailed hereunder:

S.Nos.	Head	Amount awarded by the Tribunal
1.	Loss of earning	Rs. 60,000.00
2.	Transport to Hospital	Rs. 6,000.00
3.	Extra Nourishment	Rs. 25,000.00
4.	Damages to clothes	Rs. 2,000.00
5.	Medical expenses	Rs. 20,000.00
6.	Attender charges	Rs. 25,000.00
7.	Disfiguration	Rs. 25,000.00
8.	Pain and suffering	Rs. 50,000.00
9.	Permanent disability	Rs.1,20,000.00
10.	Loss of amenities	Rs. 30,000.00
11.	Loss of marital prospects	Rs. 25,000.00
	Total	Rs.3,88,000.00



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6.The appellant in C.M.A. No.1120 of 2012 is the claimant and he sustained the following injuries as a result of an accident caused by a vehicle insured with the appellant in C.M.A. No.146 of 2013:

'Fracture of upper third right humerus, compound fracture TPX right middle finger, comminuted fracture of MPx right ring finger, fracture of right zygomatic complex, fracture of anterior and posterior wall of maxillary sinus right and fracture of lateral wall of right orbit.'

7.The nature of injuries sustained by the appellant in C.M.A. No.1120 of 2012 has not been disputed by the Insurance Company as seen from the evidence available on record. The only question that arises for consideration in these appeals is whether the compensation awarded by the Tribunal has to be reduced or it has to be enhanced.

8.The Tribunal, under the impugned Award, had assessed the disability of the appellant in C.M.A. No.1120 of 2012 at 60%. The Private Doctor, who has said to have medically examined the appellant in C.M.A. No.1120 of 2012, had assessed the disability of the claimant at 70%. But, the Tribunal, after giving due consideration to the nature of injuries sustained by the claimant, has rightly reduced the disability of the claimant to 60%.



9. Even though the claimant may contend before this Court that the

Tribunal has erroneously reduced disability from 70% to 60%, the said contention has to be rejected by this Court in view of the fact that the disability certificate was issued by a private doctor and not by the Medical Board. The accident happened in the year 2009. The nature of injuries sustained by the claimant also does not entitle the claimant's disability to be assessed at 70%. The disability compensation of Rs.1,20,000/- has been awarded to the claimant, calculated at Rs.2,000/- per percentage of disability for the 60% disability assessed by the Tribunal. Therefore, there is no infirmity in the said findings since a correct assessment has been made by the Tribunal.

10. Insofar as the compensation awarded under various heads, namely, Rs.60,000/- towards loss of earning, Rs.6,000/- towards Transportation, Rs.25,000/- towards Extra nourishment, Rs.2,000/- towards Damages to clothing, Rs.20,000/- towards Medical expenses, Rs.25,000/- towards Attender charges, Rs.50,000/- towards Pain and suffering, Rs.1,20,000/- towards permanent disability, Rs.30,000/- towards loss of amenities and Rs.25,000/- towards loss of marital prospects by the Tribunal is concerned, the same is a just compensation,



which does not call for any interference by this Court and the same is confirmed.

11.However, insofar as the compensation awarded by the Tribunal towards disfiguration at Rs.25,000/- is concerned, the same ought not to have been granted by the Tribunal since it would amount to duplication as the Tribunal has awarded compensation towards pain and suffering and permanent disability at Rs.50,000/- and Rs.1,20,000/- respectively. Hence, the compensation of Rs.25,000/- awarded to the claimant towards disfiguration is set aside by this Court.

12.Insofar as the compensation awarded by the Tribunal towards Extra Nourishment at Rs.25,000/- is concerned, the same is excessive as the Tribunal has not awarded the said compensation based on the year of the accident. Since the accident happened as early as in the year 2009, the compensation of Rs.25,000/- awarded by the Tribunal towards Extra nourishment is very high and it has to be reduced to Rs.10,000/-. Accordingly, this Court reduces the compensation payable to the claimant towards Extra Nourishment from Rs.25,000/- as fixed by the Tribunal to Rs.10,000/-.



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13.For the foregoing reasons, the compensation awarded by the

Tribunal under the impugned award is reduced from Rs.3,88,000/- to

Rs.3,48,000/- as detailed hereunder:

S.Nos.	Head	Amount awarded by this Court
1.	Loss of earning	Rs. 60,000.00
2.	Transport to Hospital	Rs. 6,000.00
3.	Extra Nourishment	Rs. 10,000.00
4.	Damages to clothes	Rs. 2,000.00
5.	Medical expenses	Rs. 20,000.00
6.	Attender charges	Rs. 25,000.00
7.	Pain and suffering	Rs. 50,000.00
8.	Permanent disability	Rs. 1,20,000.00
9.	Loss of amenities	Rs. 30,000.00
10.	Loss of marital prospects	Rs. 25,000.00
	Total	Rs.3,48,000.00

14.Therefore, there is no merit in the appeal filed by the claimant in C.M.A. No.1120 of 2012 as there is no scope for enhancement of the compensation awarded by the Tribunal and the appeal filed by the Insurance Company has to be partly allowed by reducing the compensation awarded by the Tribunal.

15.In the result, C.M.A. No.1120 of 2012 is dismissed and C.M.A.



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No.146 of 2013 is partly allowed as indicated supra.

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16. Accordingly, the Insurance company is directed to deposit the reduced award amount of Rs.3,48,000/-, after deducting the amount already deposited, if any, together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit and cost to the credit of M.C.O.P. No.3331 of 2009 on the file of the Motor Accidents Claims Tribunal, II Judge, V Court of Small Causes, Chennai, within a period of four weeks from the date of receipt of a copy of this judgment.

17. The excess amount deposited with the Tribunal in accordance with the impugned award is permitted to be withdrawn by the appellant Insurance Company by filing an appropriate application before the Tribunal.

18. The claimant is permitted to withdraw the said amount, once it is deposited by the Insurance Company, by filing an appropriate application. On such application being made, the Tribunal shall transfer



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the amount lying to the credit of M.C.O.P. No.3331 of 2009 to the bank account of the claimant directly through RTGS, within a period of one week thereafter. No costs.

05.07.2024

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Internet: Yes/No

Speaking Order/Non-Speaking Order

To

1.The Motor Accident Claims Tribunal,
V Small Causes Court, Chennai.

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



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ABDUL QUDDHOSE, J.

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