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C.M.A.Nos.2543 & 2553 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

C.M.A.Nos.2543 and 2553 of 2021

and

M.C.O.P.Nos.20 and 21 of 2015

A. Rajeshkumar

... Appellant in
CMA.No. 2543 of 2021

S. Dhinakaran

...Appellant in
CMA.No. 2553 of 2021

Vs.

1. K.Sermaraj

2. The Oriental Insurance Company Limited,
Subagovindham Building,
Imperial Road,
Cuddalore - 2

... Respondents in
both C.M.As.

PRAYER in C.M.A.No.2543 of 2021: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, to allow Civil Miscellaneous Appeal and enhance the award in Judgment and Decree dated 14.02.2019 made in M.C.O.P.No. 21 of 2015 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.



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PRAYER in CMA.No.2553 of 2021: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, to allow Civil Miscellaneous Appeal and enhance the award in Judgment and Decree dated 14.02.2019 made in M.C.O.P.No. 20 of 2015 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.

For Appellant : Mr. M.Sivakumar
in both appeals for S.Thirumavalavan

For R1 : No appearance
in both appeals

For R2 : Mr.D.Bhaskaran
in both appeals

COMMON JUDGMENT

This Civil Miscellaneous Appeal has been filed by the respective claimants for enhancement of compensation awarded in M.C.O.P.No.20 and 21 of 2015, dated 14.02.2019 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.

2. For better appreciation, the parties are referred according to their litigative status before the Tribunal below.



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3. The facts leading to filing of the claim petition are as follows :

3.1 On 22.10.2014 at about 4.45 p.m, while the petitioner in M.C.O.P.No.21 of 2015 was riding his motorcycle with the petitioner in M.C.O.P.No. 20 of 2015 as pillion rider near Adhi Narayanapuram Cemetery, Perumal Earikarai Road, the car belongs to the first respondent driven by its driver in rash and negligent manner dashed against the two wheeler which resulted in causing serious injuries to the both claimants.

3.2 After treatment, they have come forward with these claim petitions seeking compensation for a sum of Rs. 25,00,000/- each by invoking under Section 166 of Motor Vehicle Act. The owner of the car has not contested the claim and remained exparte. The second respondent is the insurer and contested the claim on the ground that the driver of the first respondent is not responsible for the accident. Hence, the insurance company is liable to take up the complaint and they further disputed disability of the claimants and also the compensation claimed by the petitioners under various heads.



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4. The Tribunal after considering the evidence placed on record has accepted the case of the claimants and awarded Rs. 3,23,000/- to the claimant S.Dhinakaran in M.C.O.P.No.20 of 2015 and awarded Rs.4,30,830/- to the claimant A.Rajesh Kumar in M.C.O.P No. 21 of 2015. The Tribunal has also awarded interest at the rate of 7.5% p.a from the date of application till the date of deposit.

5. Aggrieved over the quantum of compensation awarded by the Tribunal, both the claimants have filed separate appeals and respondents have not challenged the award.

6. The learned counsel for the claimants submits that the Tribunal has not properly awarded the compensation to both the claimants and the compensation awarded under various heads is also on the lower side and prays to enhance the same.

7. He further submits that in the case of A.Rajeshkumar, the medical board has assessed permanent disability of 52% on his whole body due to the forefoot Amputated, right middle 3rd comminuted fracture shaft of femur, type 3 Tibial Plateau fracture of right tibia. But the Tribunal has not awarded compensation for treating the disability. In this case, he has lost earning capacity and prays to award just compensation.



8. The learned counsel for the insurance company submits that the Tribunal after taking note of the evidence placed on record has rightly awarded just compensation and there is no reason for enhancing the compensation awarded by the Tribunal.

9. I have considered the submissions of either side and perused the entire evidence placed on record.

10. As far as the claimant S.Dhinakaran concern, he has sustained right comminuted mid 3rd Distal 3rd junction shaft Femur Fracture, LCL tear and hemarthrosis. He was subjected to Medical Board examination and assessed 26% permanent disability to his whole body due to the fracture distal femur. Except the disability, there was no evidence placed on record to show that this injury has led to loss on his earning capacity. After considering the evidence, the Tribunal has rightly held that the claimant herein has not sustained any functional disability and by adopting percentage method, the Tribunal has awarded compensation. This court finds there is no infirmity in awarding compensation by treating the injuries as a non-functional disability. However, this Court by following the norms of awarding Rs. 4,000/- for the injuries sustained in the year 2014. Accordingly, the compensation awarded under the head disability is



modified as 26 x Rs.4000=Rs.1,04,000/-

11. The Tribunal has not awarded any compensation under head loss of income during his treatment period. The discharge summary produced by the claimant herein shows that the claimant S.Dhinakaran underwent inpatient for 20 days and he was also in continuous treatment for nearly 3 months. Considering the same, this Court is inclined to award Rs.40,000/- under the head loss of income during treatment period. Similarly, the claimant S.Dhinakaran is also entitled for attender charges and accordingly, this Court is inclined to grant Rs.20,000/- as attender charges.

12. The Tribunal has also awarded compensation under various heads and this court finds the same just and proper and accordingly the compensation is modified as follows:-

<i>S. No.</i>	<i>Description</i>	<i>Amount Awarded by Tribunal (Rs.)</i>	<i>Amount Awarded by the Court (Rs.)</i>	<i>Award confirmed or enhanced or reduced</i>
1.	Partial Permanent Disability	78,000/-	1,04,000/-	Enhanced
2.	Pain and suffering	50,000/-	50,000/-	Confirmed
3.	Attendant Charges	5,000/-	20,000/-	Enhanced
4.	Transport to Hospital	67,100/-	67,100/-	Confirmed
5.	Special Diet	10,000/-	10,000/-	Confirmed
6.	Medical Expenses	1,12,900/-	1,12,900/-	Confirmed



S. No.	Description	Amount Awarded by Tribunal (Rs.)	Amount Awarded by the Court (Rs.)	Award confirmed or enhanced or reduced
7.	Loss of Income	-	40,000/-	Granted
	Total	3,23,000/-	4,04,000/-	Enhanced

13. As far as the claimant Rajeshkumar is concerned, the discharge summary Ex. P12 shows that the claimant Rajeshkumar has sustained right forefoot Amputated, right middle 3rd comminuted fracture shaft of femur, type 3 tibial plateau fracture of right Tibia and that the injury sustained by the claimant are grievous in nature. The injured herein is a manual worker. The earlier avocation of the injured herein is a maintenance engineer. The disability caused to him would affect his earning capacity to the extent of 50%. Since, he needs good physio in order to carry out the maintenance work in the industries.

14. Considering the injuries sustained by the claimant/Rajeshkumar, this Court is of the view that these injuries would have drastically reduced the earning capacity of the claimant herein. As per the judgement of the Hon'ble Apex Court in **Raj Kumar vs. Ajay Kumar [2011 ACJ 1]** for the injuries sustained which resulted in causing functional disability and



disability further prevented him from doing his earlier avocation then it is to be treated as loss of earning capacity. Hence, this Court inclined to grant compensation under the head loss of earning capacity to the extent of 50 percentage.

15. In this case having carefully considered the injuries sustained and this court is of the view that the claimant herein has loss of earning capacity to the extent of 50%. Further considering the date of accident and the age of the claimant, the monthly income of the deceased is notionally fixed as Rs.10,000/-. Accordingly the compensation under the head loss of earning capacity is summed up as follows:-

Annual Income Rs.10,000 x12	= Rs. 1,20,000/-
Future Prospects @ 40%	= Rs. 48,000/-
Yearly income of the deceased	= Rs.1,68,000/-
Applicable Multiplier	= 17
Total Compensation (Rs. 1,68,000x17)	= Rs.28,56,000 /- = 28,56,000 x 50% = 14,28,000/-



16. The claimant is also entitled for future prospectus has held by the Apex Court *Erudhaya Priya vs. State Express Transport Corporation Ltd.*, reported in *[2020 SSCR 299 : 2020 ACJ 2159]* and *Jagdish vs. Mohan and others [(2018) 4 SCC 571]*. Accordingly, 40% is awarded for future prospectus. The Tribunal has not awarded any compensation under the head loss of amenities. This Court inclined to award Rs.50,000/- under the head of loss of amenities by considering the nature of injuries sustained. The Compensation awarded by the tribunal for other heads is hereby confirmed. Accordingly, the compensation is modified as follows:-

S.No.	Description	Amount Awarded by Tribunal (Rs.)	Amount Awarded by the Court (Rs.)	Award confirmed or enhanced or reduced
1.	Loss of earning capacity	1,56,000/-	14,28,000/-	Enhanced
2.	Transport to Hospital	24,000/-	24,000/-	Confirmed
3.	Special Diet	10,000/-	10,000/-	Confirmed
4.	Pain and Sufferings	1,00,000/-	1,00,000/-	Confirmed
5.	Loss of Income	25,000/-	25,000/-	Confirmed
6.	Attendant Charge	10,000/-	10,000/-	Confirmed
7.	Medical Bill	1,05,830/-	1,05,830/-	Confirmed
8.	Loss of amenities	-	50,000/-	Granted
	Total	4,30,830/-	17,52,830/-	Enhanced



17. The Insurance Company is directed to deposit the enhanced compensation ordered by this Court within a period of six weeks from the date of receipt of copy of this Order along with interest and cost. On such deposit, the claimants herein are entitle to withdraw the same. Accordingly, the appeal filed by claimant in C.M.A.Nos. 2543 & 2553 of 2021 are partly allowed. No costs.

22.02.2024

nsI
Index: Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No

To
The Oriental Insurance Company Limited,
Subagovindham Building,
Imperial Road,
Cuddalore - 2



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