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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA Nos.3003 & 3096 of 2023

Suthakar

..Appellant
in CMA No.3003 of 2023

Sabeshkumar

..Appellant
in CMA No.3096 of 2023

.VS.

1.Geetha

2.The Manager

Oriental Insurance Company Limited
DO Office, Gopalrao
Library Building
Townhall Road
Kumbakonam
Tanjavur District-612 001.

..Respondents
in Both CMAs

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Decree and Judgment dated 26.10.2022 made in M.C.O.P.Nos.26 & 27 of 2020, on the file of the Motor Accidents Claims Tribunal (Sub Court) Jayankondam.

For Appellant : Mr.P.Parthikannan
(Both CMAs)

For Respondents : Mr.M.J.Vijayaraghavan [R2]
(Both CMAs)



COMMON JUDGMENT

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The claimants not being satisfied with the quantum of compensation, have filed these appeals against the award passed by the Motor Accident Claims Tribunal (Sub Court) Jayankondam, in MCOP Nos.26 & 27 of 2020, dated 26.10.2022.

2.The case of the claimants is that the claimant in CMA No.3096 of 2023, was riding the two wheeler and the claimant in CMA No.3003 of 2023 was the pillion rider and on 18.01.2020, they were travelling at Aandimadam - Jayankondam Road and at about 6.30 p.m., the offending vehicle which was a Car was driven in a rash and negligent manner and it dashed on the two wheeler as a result of which both the rider and the pillion rider fell down and sustained fracture and other injuries. Insofar as the claimant in CMA No.3003 of 2023, he underwent treatment as an inpatient for nearly 13 days and his disability was assessed at 21%. The claimant in CMA No.3096 of 2023, underwent treatment as an inpatient for 17 days and his disability was assessed at 36%. It is under these circumstances, the claimants filed independent claim petitions in MCOP Nos.26 & 27 of 2020, seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle. The Tribunal having rendered this finding proceeded to fix the total compensation at Rs.4,19,104/- under various heads in MCOP No.26 of 2020 as follows:



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S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Income	39,000/-
2.	Medical Expenses	1,13,004/-
3.	Transportation Expenses	45,100/-
4.	Pain and suffering	50,000/-
5.	Extra Nourishment	5,000/-
6.	Attender charges	10,000/-
7.	Damage to cloths	2,000/-
8.	Partial Disability (21 * 5000)	1,05,000/-
9.	Loss of future prospects	50,000/-
	Total	4,19,104/-

Insofar as MCOP No.27 of 2020, the Tribunal fixed the total compensation at Rs.6,87,267/- under various heads as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Income	39,000/-
2.	Medical Expenses	2,71,367/-
3.	Transportation Expenses	54,900/-
4.	Pain and suffering	75,000/-
5.	Extra Nourishment	5,000/-
6.	Attender charges	10,000/-
7.	Damage to cloths	2,000/-
8.	Partial Disability (36 * 5000)	1,80,000/-
9.	Loss of future prospects	50,000/-
	Total	6,87,267/-



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4.The above compensation was directed to be paid with interest at the rate of 7.5%

p.a.

5.The claimants not being satisfied with the quantum of compensation fixed by the Tribunal have filed these appeals seeking for enhancement of compensation.

6.Heard Mr.P.Parthikannan, learned counsel for the appellant and Mr.M.J.Vijayaraghavan, learned counsel for the 2nd respondent – Insurance Company.

7.This Court has carefully considered the submissions made on either side and the materials available on record. This Court has also carefully gone through the award passed by the Tribunal.

8.The first ground that was raised on the side of the appellant is with regard to the compensation that was paid under the head of disability. The Tribunal has adopted the per percentage method and fixed a sum of Rs.5000/- per percentage. Considering the fact that the accident had taken place in the year 2020, this Court is inclined to fix a sum of Rs.8000/- per percentage. Accordingly, the compensation under the head of disability in MCOP No.26 of 2020 is fixed at Rs.1,68,000/- [21 * 8000/-] and the disability in MCOP No.27 of 2020, is fixed at Rs.2,88,000/- [36 * 8000/].

9.The claimant in CMA No.3003 of 2023, has undergone treatment as an inpatient for nearly 13 days. Considering the injury sustained by the claimant, this Court is inclined



to enhance the compensation under the head of extra nourishment to Rs.15,000/-.

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10.The Tribunal has fixed a sum of Rs.39,000/- under the head loss of earnings.

Considering the injury sustained by the claimant and the disability, this Court is of the view that the claimant would not have been able to do his normal work for atleast five months. Therefore, this Court is inclined to fix a sum of Rs.50,000/- under the head 'loss of earnings' [5 x 10000].

11.The Tribunal has granted a sum of Rs.50,000/- under the head 'loss of future prospects'. Once the compensation is granted under the head of disability and the loss of income is also separately given, there is no scope for giving a separate compensation under the head 'loss of future prospects'. Hence, the sum of Rs.50,000/- granted by the Tribunal is liable to be interfered and the same is hereby set aside.

12.In the light of the above discussion, the compensation fixed by the Tribunal in MCOP No.26 of 2020, is modified as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Income [10,000 * 5]	50,000/-
2.	Medical Expenses	1,13,004/-
3.	Transportation Expenses	45,100/-
4.	Pain and suffering	50,000/-
5.	Extra Nourishment	15,000/-
6.	Attender charges	10,000/-
7.	Damage to cloths	2,000/-
8.	Partial Disability (21 * 5000)	1,68,000/-



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S.No	Compensation awarded under the head	Amount (in Rs.)
	Total	4,53,104/-

13.The claimant in CMA No.3096 of 2023, was assessed with disability at 36% . The Tribunal while applying the per percentage method only granted a sum of Rs.5000/- per percentage. This Court is inclined to fix Rs.8000/- per percentage and accordingly, the compensation under the head of 'disability' works out to Rs.2,88,000/- [36 * 8000].

14.The claimant had sustained fracture and underwent treatment as an inpatient for nearly 17 days. In view of the same, this Court is inclined to enhance the compensation under the head of extra nourishment to Rs.20,000/- and attender charges to Rs.15,000/-

15.The Tribunal has granted a sum of Rs.75,000/- under the head 'pain and suffering'. The same is on the higher side and this Court fixes a sum of Rs.50,000/- under this head.

16.Considering the nature of injury sustained by the claimant and the treatment that was given to the claimant, this Court is inclined to enhance the compensation under the head 'loss of earnings' to Rs.50,000/- [5 x 10,000].

17.The Tribunal has granted a sum of Rs.50,000/- as compensation under the head

'loss of future prospects' and the same is hereby set aside. Since compensation has



already been granted under the head of disability and loss of income.

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18. In the light of the above discussion, the compensation fixed by the Tribunal in MCOP No.27 of 2020, is modified as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Income [10,000 * 5]	50,000/-
2.	Medical Expenses	2,71,367/-
3.	Transportation Expenses	54,900/-
4.	Pain and suffering	50,000/-
5.	Extra Nourishment	20,000/-
6.	Attender charges	15,000/-
7.	Damage to cloths	2,000/-
8.	Partial Disability 36 * 8000)	2,88,000/-
	Total	7,51,267/-

19. Thus, the compensation awarded by the Tribunal in MCOP.No.26 of 2020 at Rs.4,19,104/- is enhanced to 4,53,104/-. The compensation awarded by the Tribunal in MCOP No.27 of 2020 at Rs.6,87,267/- is enhanced to Rs.7,51,267/-. The 2nd respondent - Insurance Company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest @ 7.5% p.a., from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant/claimant. It is made clear that the pay and recovery ordered by



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the Tribunal is confirmed and the compensation that is paid by the 2nd respondent – Insurance Company can be recovered from the 1st respondent. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

N. ANAND VENKATESH., J

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In the result, both the Civil Miscellaneous Appeals are allowed in the above terms.

No costs.

23.07.2024

Index : Yes
Speaking Order
Neutral citation : Yes
kp

To

Motor Accidents Claims Tribunal
(Sub Court) Jayankondam.

COMMON Judgment in
CMA Nos.3003 & 3096 of 2023



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