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Civil Miscellaneous Appeal Nos.1252 and 1259 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal Nos.1252 and 1259 of 2023

CMA No.1252 of 2023

Koothaiyan

... Appellant

Vs.

1. Panjayudam

2. T.Elavarasan

3. National Insurance Company Limited,
No.751, Annasalai,
Chennai – 2

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree dated 19.01.2023 made in MACTOP No.2925 of 2013 on the file of Motor Accident Claims Tribunal (Special Sub Court No.1, Motor Accident Claims petitions, Small causes Court, Chennai.

For Appellant : Mrs.A.Subadra

For Respondents : Mr.S.Senthilkumar
for R3



Civil Miscellaneous Appeal Nos.1252 and 1259 of 2023

CMA No.1252 of 2023

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Duraisamy

... Appellant

Vs.

1. Panjayudam

2. T.Elavarasan

3. National Insurance Company Limited,
No.751, Annasalai,
Chennai – 2

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree dated 19.01.2023 made in MACTOP No.2926 of 2013 on the file of Motor Accident Claims Tribunal (Special Sub Court No.1, Motor Accident Claims petitions, Small causes Court, Chennai.

For Appellant : Mrs.A.Subadra

For Respondents : Mr.S.Senthilkumar
for R3

JUDGMENT

These appeals arise out of a common award passed by the Tribunal and hence, both the appeals are heard together and disposed of



through this common judgment.

2. The claimant in CMA No.1252 of 2023 filed MCOP No.2926 of 2013 and the claimant in CMA No.1259 of 2023 filed MCOP No.2925 of 2013 and both these claimants not being satisfied with the quantum of compensation awarded by the Tribunal have filed these appeals before this Court.

3. The case of the claimants is that on 10.09.2012, a two wheeler was driven by the claimant in MCOP No.2926 of 20113 and the claimant in MCOP No.2925 of 2013 was the pillion rider. They were travelling from Senthanaad to Senthamangalam Road and at about 7.30 hours, near Kalathur Ganapathy nainar house, the offending vehicle which was a Tata Ace van was driven in a rash and negligent manner and it hit the two wheeler. As a result of which, the claimant in MCOP No.2925 of 2013 sustained head injury with frontal bone extending to orbital run. He also sustained fracture on the left knee and right shoulder dislocation. He underwent treatment as an in patient for nearly 17 days in two hospitals.



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4. Insofar as the claimant in CMA No.1259 of 2023, he sustained RTA Head Injury Fracture femur fracture frontal partial bone, fracture big toe and compression injury. He underwent treatment as an in patient for nearly 24 days. Insofar as the claimant in CMA No.1252 of 2023, the Medical Board assessed the disability at 11% and insofar as the claimant in CMA No.1259 of 2023, the medical board assessed the disability at 8%. It is under these circumstances, both the claimants filed independent claim petitions seeking for payment of compensation before the Tribunal.

5. 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 Tata Ace Van. Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.95,800/- (MCOP No.2925 of 2013) under various heads as follows :-



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<i>Sl.No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Diability	Rs.24,000/-
2.	Pain and sufferings	Rs.30,000/-
3.	Transportation	R. 4,000/-
4.	Extra Nourishment	Rs.10,000/-
5.	Attender charges	Rs. 1,800/-
6.	Loss of earnings	Rs.16,000/-
7.	Loss of amenities	Rs.10,000/-
	Total	Rs.95,800/-

6. Insofar as MCOP No.2926 of 2013, the Tribunal fixed Rs.1,31,500/- under various heads as follows :-

<i>Sl.No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Diability	Rs.33,000/-
2.	Pain and sufferings	Rs.35,000/-
3.	Transportation	R. 4,000/-
4.	Medical expenses	Rs.8,272/-
4.	Extra Nourishment	Rs.10,000/-
5.	Attender charges	Rs. 7,200/-
6.	Loss of earnings	Rs.24,000/-
7.	Loss of amenities	Rs.10,000/-
	Total	Rs.1,31,472 /-



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(Rounded off to Rs.1,31,500/-)

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

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

8. Heard Mrs.A.Subadra, learned counsel for appellant /claimant in both CMAs and Mr.S.Senthil Kumar, learned counsel for 3rd respondent/Insurance company.

9. This Court has carefully considered the submissions made on either side and the materials available on record.

10. This Court also carefully went through the award passed by the Tribunal.



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11. **CMA No.1259 of 2023**

In this case, the claimant has undergone treatment as an inpatient for nearly 17 days, which is evident from Ex.P4 and P5. The injury sustained by the claimant has already been extracted supra. In view of the same, this Court is inclined to enhance the compensation under the head of pain and sufferings to Rs.50,000/-, Transportation charges to Rs.10,000/-, Extra Nourishment to Rs.20,000/- and Attender charges to Rs.15,000/-. Insofar as the loss of earnings is concerned, the Tribunal had fixed a sum of Rs.16,000/- (Rs.8000 x 2 months). Considering the nature of injuries sustained by the claimant and the treatment undergone, this Court is inclined to fix a sum of Rs.25,000/- under this head. In view of the above, the compensation fixed by the Tribunal is modified in the following terms :-

<i>Sl.No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Diability	Rs.24,000/-
2.	Pain and sufferings	Rs.50,000/-
3.	Transportation	R. 10,000/-
4.	Extra Nourishment	Rs.20,000/-
5.	Attender charges	Rs. 15,000/-



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6.	Loss of earnings	Rs.25,000/-
7.	Loss of amenities	Rs.10,000/-
	Total	Rs.1,54,400/-

12. CMA No.1252 of 2023

The injury sustained by the claimant has already been extracted supra. The claimant in this case underwent treatment as an in patient for nearly 24 days and the same is evident from Ex.P8 and Ex.P12. In view of the same, this Court is inclined to enhance the compensation under the head of pain and sufferings to Rs.60,000/-, Transportation charges to Rs.15,000/-, Extra Nourishment to Rs.25,000/- and Attender charges to Rs.20,000/-. The Tribunal has granted a sum of Rs.24,000/- under the head of loss of earnings. Considering the nature of injuries sustained by the claimant and the treatment undergone, this Court is inclined to increase the compensation under this head to Rs.40,000/- (Rs. 8000 x 5 months). In the light of the above, the compensation fixed by the Tribunal is modified in the following terms :-

<i>Sl.No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
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1.	Diability	Rs.33,000/-
2.	Pain and sufferings	Rs.60,000/-
3.	Transportation	R. 15,000/-
4.	Medical expenses	Rs.8,272/-
4.	Extra Nourishment	Rs.25,000/-
5.	Attender charges	Rs. 20000/-
6.	Loss of earnings	Rs.40,000/-
7.	Loss of amenities	Rs.10,000/-
	Total	Rs.2,11,272 /-

13. The compensation granted by the Tribunal under the other heads are reasonable and it does not require the interference of this Court.

14. The compensation awarded by the Tribunal at 95,800/- (in MCOP No.2925 of 2013) and Rs.1,31,500/- (in MCOP No.2926 of 2013) is enhanced to Rs. 1,54,400/- and 2,11,272/- respectively. The respondent Insurance company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 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. The other directions issued by the Tribunal



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with regard to the mode of payment of compensation remains unaltered.

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15. In the result, both these Civil Miscellaneous Appeals are partly allowed in the above terms. No costs.

03.07.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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N.ANAND VENKATESH.,J

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