



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA Nos.2322 & 2323 of 2022

B.Mohanasundaram

..Appellant
in CMA No.2322 of 2022

M.Vignesh

..Appellant
in CMA No.2323 of 2022

.VS.

1.R.Palanivel

2.United India Insurance Co., Ltd.,
No.134, Greams Road,
Chennai – 600 006.

..Respondents
in both CMAs

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, against the judgment and Decree dated 23.10.2017 made in MACTOP Nos.4469 and 4470 of 2012 on the file of the Motor Accident Claims Tribunal, in the IV Court of Small Causes, Chennai.

For Appellants
in both CMAs

: Ms.A.Subadra

For Respondent
in CMA No.2322 of 2022

: Mr.V.Dakshanamoorthy

For Respondent
in CMA No.2323 of 2022

: Mr.K.Swaminathan



JUDGMENT

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2.The case of the claimants is that both of them are Engineering Students and they were travelling in a two wheeler driven by the appellant in CMA No.2322 of 2022 and the appellant in CMA No.2323 of 2022 was the pillion rider. On 20.04.2012 at about 12.40 hours, when the two wheeler was driven at Poonamallee to Avadi Road, near S.A. Engineering College, the offending vehicle was driven in a rash and negligent manner by the 1st respondent and as a result, the car dashed on the two wheeler and both the appellants were thrown out of the two wheeler. Insofar as the appellant in CMA No.2322 of 2022 is concerned, he sustained fracture shaft of right femur and insofar as the appellant in CMA No.2323 of 2022, he sustained fracture of shaft of right femur, fracture of right ulna and fracture of right lateral malleolus. The Doctor assessed disability suffered by the appellants and insofar as the appellant in CMA No.2322 of 2022 is concerned it was assessed at 45% and insofar as CMA No.2323 of 2022 is concerned it was assessed at 70%. It is under these circumstances, the claim petitions came to be filed by the appellants in MCOP Nos.4469 & 4470 of 2012.

3 The Tribunal on considering the facts and circumstances of the case and



appreciation of evidence came to a conclusion that the offending vehicle was driven in a rash and negligent manner and as a result, the accident took place. Having rendered such a finding, the Tribunal proceeded to fix the compensation under various heads in the following manner:

In MCOP No.4469 of 2012

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Disability	1,05,000
2.	Pain and Sufferings	35,000
3.	Extra Nourishment	4,500
4.	Transport to Hospital	4,500
5.	Damages to Clothes	1,000
6.	Attender Charges	2,200
7.	Medical Expenses	7,500
8.	Future Medical Expenses	5,000
9.	Loss of Education	18,000
10.	Loss of Amenities	5,000
	Total	1,87,700

In MCOP No.4470 of 2012

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Disability	1,20,000
2.	Pain and Sufferings	40,000
3.	Extra Nourishment	4,000
4.	Transport to Hospital	4,000



S.No	Compensation awarded under the head	Amount (in Rs.)
5.	Damages to Clothes	1,000
6.	Attender Charges	1,400
7.	Medical Expenses	3,29,922
8.	Future Medical Expenses	4,000
9.	Loss of Income	12,000
10.	Loss of Amenities	5,000
	Total	5,21,322

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

5.The claimants not being satisfied with the quantum of compensation fixed by the Tribunal have filed these appeals before this Court.

6.Heard Ms.A.Subadra, learned counsel appearing on behalf of the appellants, Mr.V.Dakshanamoorthy, learned counsel appearing on behalf of the 2nd respondent in CMA No.2322 of 2022 and Mr.K.Swaminathan, learned counsel appearing on behalf of the 2nd respondent in CMA No.2323 of 2022.

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

8.The main ground of challenge is regarding the lower percentage of disability



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that was fixed by the Tribunal. That apart, under some of the heads, it was contended that the compensation fixed is on a lower side.

9. Insofar as the appellant in CMA No.2322 of 2022 is concerned, the Disability Certificate and the X-ray that was marked as Ex.P.12 to Ex.P.15, the disability was assessed at 45%. Similarly, the disability was assessed at 70% for the appellant in CMA No.2323 of 2022. The injuries suffered has already been referred *supra*. The Tribunal has fixed the disability as 35% and 40% respectively. This percentage that was fixed for the Tribunal requires some interference considering the nature of injuries sustained.

10. In view of the above, the percentage of disability in CMA No.2322 of 2022 is increased to 40% and percentage of disability in CMA No.2323 of 2022 is increased to 50%. In view of the same, the compensation under the head of 'Disability' is fixed at Rs.3000/- per percentage.

11. Insofar as the compensation that was fixed under the head of 'Extra Nourishment' and 'Attender Charges', the same requires some enhancement, since the appellant in CMA No.2322 of 2022 was an in-patient for eleven days and insofar as the appellant in CMA No.2323 of 2022, he was an in-patient for nearly six days.

Therefore, the compensation under the head of 'Extra Nourishment' and 'Attender



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Charges' is increased to Rs.10,000/- for the appellant in CMA No.2322 of 2022. For the appellant in CMA No.2323 of 2022, it is enhanced to Rs.5000/- and Rs.7,500/- respectively.

12.In the light of the above discussion, the compensation awarded by the tribunal is modified as follows:

In CMA No.2322 of 2022

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Disability	1,20,000
2.	Pain and Sufferings	35,000
3.	Extra Nourishment	10,000
4.	Transport to Hospital	4,500
5.	Damages to Clothes	1,000
6.	Attender Charges	10,000
7.	Medical Expenses	7,500
8.	Future Medical Expenses	5,000
9.	Loss of Education	18,000
10.	Loss of Amenities	5,000
	Total	2,16,000

In CMA No.2323 of 2022



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S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Disability	1,50,000
2.	Pain and Sufferings	40,000
3.	Extra Nourishment	5,000
4.	Transport to Hospital	4,000
5.	Damages to Clothes	1,000
6.	Attender Charges	7,500
7.	Medical Expenses	3,29,922
8.	Future Medical Expenses	4,000
9.	Loss of Income	12,000
10.	Loss of Amenities	5,000
	Total	5,59,422

13.Insofar as CMA No.2322 of 2022 is concerned, the compensation awarded by the tribunal at Rs.1,87,700/- is enhanced to Rs.2,16,000/-. The second respondent insurance company is directed to deposit the enhanced compensation of Rs.2,16,000/-, 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 of Rs.28,300/- is concerned, the appellant/claimant will not be entitled for interest for the period of delay period of 1578 days as was ordered by this Court in C.M.P.No.12335 of 2022, dated 11.10.2022.

14.Insofar as CMA No.2323 of 2022 is concerned, the compensation awarded



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by the tribunal at Rs.5,21,322/- is enhanced to Rs.5,59,422/-. The second respondent insurance company is directed to deposit the enhanced compensation of Rs.5,59,422/-, 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 of Rs.38,100/- is concerned, the appellant/claimant will not be entitled for interest for the period of delay period of 1578 days as was ordered by this Court in C.M.P.No.12332 of 2022, dated 11.10.2022. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

15. Accordingly, these Civil Miscellaneous Appeals are allowed. No costs.

16.04.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
ssr



To

WEBKIMSON
The Motor Accident Claims Tribunal,
IV Court of Small Causes, Chennai.



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N. ANAND VENKATESH., J

SSR

CMA Nos.2322 & 2323 of 2022

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