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CMA No.2971 of 2019 and C.M.A.No.2532 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

CMA No.2971 of 2019 and C.M.A.No.2532 of 2023

and

C.M.P.No.23443 of 2023

Judgment reserved on 27.02.2024	Judgment pronounced on 27.03.2024
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Suresh

... Appellant in C.M.A.No.2971 of 2019

M/s.Reliance General Insurance Co.Ltd.,
Sri Lakshmi Complex, 1st Floor, Bharathi Street,
Omalur Main Road, Swarnapuri, Salem.

... Appellant in C.M.A.No.2532 of 2023

Vs.

1.Abdul Kadhar

2.Reliance General Insurance Company Limited,
Sri Lakshmi Complex, 1st Floor, Bharathi Street,
Omalur Main Road, Swarnapuri, Salem.

.....Respondents in C.M.A.No.2971 of 2019

1.Suresh

2.Abdul Kadhar

...Respondents in C.M.A.No.2532 of 2023

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 13.12.2018 made in MCOP No.761 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court at Sankagiri.



CMA No.2971 of 2019 and C.M.A.No.2532 of 2023

C.M.A.No.2971 of 2019:-

For Appellant : Mr.T.S.Arthanareeswaran
For R1 : No appearance
For R2 : Mrs.C.Bhuvanasundari

C.M.A.No.2532 of 2023:-

For Appellant : Mrs.C.Bhuvanasundari
For R1 : Mr.T.Arthanareeswaran
For R2 : No appearance

COMMON JUDGMENT

Both the appeals arise out of the same award and same accident hence disposed of by this common judgment. Parties are referred to as per their ranking in the claim petition for the sake of convenience.

2. CMA No.2971 of 2019 has been filed by the claim petitioner seeking enhancement of compensation awarded in MCOP No.761 of 2011 on the file of the Motor Accident Claims Tribunal, Sub-Court, Sankagiri.

3. CMA No.2532 of 2023 has been filed by the Insurance Company challenging the very same award on the point of liability as well as quantum of compensation awarded by the Tribunal.



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4. By the Administrative Order of My Lord, The Hon'ble Chief Justice, both the Civil Miscellaneous Appeals are posted before this court.

5. The factum of accident, manner of accident, rash and negligent driving on the part of the driver of the vehicle belonging to the first respondent and insured with the second respondent are not in dispute. Accordingly, the findings rendered by the Trial Court with regard to negligence is hereby confirmed.

6. On the point of quantum of compensation, heard the learned counsel appearing for the claim petitioner as well as second respondent and perused the materials available on record.

7. During the trial, the injured was examined himself as P.W.1 and examined P.W.2 and Exs.P1 to P12 were marked. On behalf of the Insurance Company, R.W.1 is examined and Exs.R1 to R3 were marked.



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8. The learned counsel appearing for the appellant contended that the notional income and the percentage of disability fixed by the Tribunal is too low hence seeks enhancement.

9. The learned counsel appearing for the Insurance Company contended that it is a partial permanent disability combined by the formula which was not worked out as to the whole body disability and hence submitted that the formula has contemplated under The Rights of Persons with Disability Act, 2016 has to be adopted so the percentage will not be more than 25%.

10. P.W.1 is the injured filed M.C.O.P. seeking compensation for the injuries sustained in the road transport accident on 02.04.2011. While he was travelling in the two wheeler Hero Honda Splendor Plus bearing Registration No.TN 34 J 1152.

11. After perusing the formula adopted as said to have been brought by the Insurance Company and also the disability certificate issued by the Medical Board, I find that though it is mentioned as 85%, I am



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inclined to accept as 80%. As per the judgment of the Hon'ble Supreme

Court in ***SARLA VERMA & OTHER v. Delhi Transport Corporation &***

Another reported in 2009 (2) TNMAC (1) SC, the Tribunal applied

multiplier '17' to be adopted. Hence, the loss of earning capacity is

calculated as follows:-

$$10,000 \times 80\% \text{ of disability} \times 12 \times 17 = \text{Rs. } 20,48,000/-$$

12. Considering the distance between the residential place and the hospital, this Court has awarded a sum of Rs.10,000/- towards transportation charges.

13. The Tribunal has also awarded a sum of Rs.5,000/- towards attender charges and the same is enhanced to Rs.10,000/-

14. The Tribunal has not awarded any compensation towards loss of amenities. Accordingly, this Court is inclined to award Rs.15,000/-

15. The amounts awarded by the Tribunal under other heads are just and reasonable and hence those are confirmed.



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16. Accordingly, the compensation awarded by the Tribunal is enhanced from **Rs.15,00,000/-** to **Rs.22,40,000/-**, break-up as follows -

<i>Sl. No</i>	<i>Heads under which the amount is awarded</i>	<i>Amount awarded by the Tribunal – Rs.</i>	<i>Amount awarded by this Court – Rs.</i>
1.	Loss of earning capacity	Rs. 13,38,000/-	Rs. 20,48,000/-
2.	Medical Expenses	Rs. 61,000/-	Rs. 61,000/-
3.	Pain and sufferings	Rs. 35,000/-	Rs. 35,000/-
4.	Nutrition and extra nourishment	Rs. 15,000/-	Rs. 15,000/-
5.	Attender charges	Rs. 5,000/-	Rs. 10,000/-
6.	Loss of simple injury	Rs. 25,000/-	Rs. 25,000/-
7.	Future medical expenses	Rs. 20,000/-	Rs. 20,000/-
8.	Loss of property	Rs. 1,000/-	Rs. 1,000/-
9.	Transportation		Rs. 10,000/-
10.	Loss of Amenities	-----	Rs. 15,000/-
	Total	Rs. 15,00,000/-	Rs.22,40,000/-

17. In total, the claim petitioner is entitled to a sum of Rs.22,40,000/- (Rupees Twenty Two Lakhs and Forty Thousand only).



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18. In fine,

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(i) **CMA No.2971 of 2019 filed by the claim petitioner is partly allowed, enhancing the award amount from Rs.15,00,000/- to Rs.22,40,000/- to the extent indicated above, along with 7.5% interest per annum.**

(ii) **C.M.A.No.2532 of 2023 filed by the Insurance Company is dismissed.**

(iii) the respondent/Insurance Company is directed to deposit the enhanced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited, at the first instance and recover the same from the first respondent/owner of the offending vehicle.

(iv) on such deposit being made, the claim petitioner is permitted to withdraw the entire enhanced award amount with accrued interest and costs.

(v) the claim petitioner is directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.



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(vi) No costs. Consequently, connected C.M.P is closed.

27.03.2024

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Index : Yes/No

Speaking/Non-speaking order

To

1.The Motor Accident Claims Tribunal,
Sub Court at Sankagiri.

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



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CMA No.2971 of 2019 and C.M.A.No.2532 of 2023

RMT.TEEKAA RAMAN, J.

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Common Judgment in
CMA No.2971 of 2019 and C.M.A.No.2532 of 2023 and
C.M.P.No.23443 of 2023

27.03.2024