

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.10.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. Nos.2167 & 2168 of 2016
C.M.P. Nos.15594 and 15595 of 2016

United India Insurance Company Ltd.,
Silling Buildings, No.134, 4th Floor,
Greams Road, Chennai-600 006. .. Appellant in both appeals

Versus

1.K.Swarnaraj (minor)
rep. by his mother and
next friend Sangeetha .. 1st respondent in CMA. No.2167 of 2016

1.Sumathi .. 1st respondent in CMA. No.2168 of 2016

2.A.Rajakili .. 2nd Respondent in both appeals
(second respondent herein called absent
and remained exparte before the Tribunal)

Prayer in both appeals: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 07.03.2015 made in M.C.O.P.Nos.6154 & 6051/2012 on the file of the Motor Accidents Claims Tribunal, (VI Judge, Court of Small Causes), Chennai.

For Appellant in both appeals : Mr.G.Udaya Sankar

COMMON JUDGMENT

The United India Insurance Company Limited has brought these appeals challenging the impugned award dated 07.03.2015 made in M.C.O.P.Nos.6154 & 6051/2012 on the file of the Motor Accidents Claims Tribunal, (VI Judge, Court of Small Causes), Chennai, awarding a sum of Rs.1,00,000/- each for the multiple injuries sustained by the claimants.

2.As both the appeals are arising out of the common award, they are taken up together for common disposal.

3.According to the claimants, on 16.01.2012 at about 10.00 hours, while the claimants were travelling in the Tata Sumo Car bearing Registration No.TN-25-Y-5757 at Sriperumbudur to Tambaram Road and nearing Navalur Village, Kanchipuram District, the driver of the vehicle drove the same in a rash and negligent manner and as a result, the above vehicle was capsized in a big ditch. Due to the above said accident, the claimants had sustained grievous injuries.

4.With regard to CMA. No.2167 of 2016, learned counsel appearing for the Insurance company/appellant would submit that when the child was only aged about 6 years at the time of accident, the learned Tribunal has awarded a sum of Rs.1,00,000/- towards total compensation. Although the nature of injuries sustained by the minor child shows that he has suffered simple injuries, the learned Tribunal without considering the said fact, has awarded Rs.1,00,000/-, which is exorbitant and un-reasonable and therefore, the quantum of compensation is liable to be interfered with.

4.1.With regard to CMA. No.2168 of 2016, learned counsel appearing for the Insurance Company/appellant would submit that without any document filed by the claimant to prove her age, employment and monthly

income, the learned Tribunal, has fixed the monthly salary of the claimant at Rs.6,500/- per month and on this basis, it has arrived at a sum of Rs.19,500/- towards loss of income for a period of three months. He would further submit that accepting the oral evidence of the doctor, who was examined as P.W.3, the learned Tribunal has fixed 20% disability at the rate of Rs.3,000/- per percentage of disability and thereby Rs.65,000/- has been arrived towards disability and Rs.1,00,000/- has been awarded towards total compensation, which is un-reasonable. Therefore, the same is also liable to be interfered with.

5.This Court finds no merit in the contention made by the learned counsel for the Insurance Company/appellant herein. The reasons are that in the case of minor boy, who was aged about 6 years at the time of accident, learned Tribunal, after examining the injuries sustained by him in the left temporal bone, left temporal polar EDH, left temporal haemorrhage brain and conservative management has been done, which are supported by the evidence of doctor, who was examined as P.W.3 and the discharge summary issued by Rajiv Gandhi Government General Hospital, Chennai, which was marked as Ex.P6, has come to the conclusion that the minor has sustained the above injuries and moreover, he was admitted in the hospital on 16-01-2012 and discharged on 31-01-2012. This apart, P.W.1 also stated in her proof affidavit that in respect of the injuries sustained by the minor boy in the above said accident, he was getting post traumatic headache, giddiness,

tremors hands, memory deficit and atoxic. Therefore, on the basis of the above injuries, the above said doctor has assessed 40% disability. However, the learned Tribunal, without going much deeper into the issue, considering the two vital aspects namely the injured was admitted in the hospital on 16-01-2012 and discharged only on 31-01-2012 and he has been assessed 40% disability, to meet the ends of justice, has awarded a sum of Rs.1,00,000/- for all other pecuniary and non-pecuniary damages of the child. Therefore, this Court is not inclined to interfere with the quantum of compensation awarded by the learned Tribunal, as the same is only a meagre amount towards total compensation.

6. In the case of claimant, who was aged about 32 years at the time of accident and claiming to be working as a Tailor and earning a sum of Rs.10,000/- per month, after examining the injuries sustained namely fracture in left wrist and head injury and for which she was taken to the Government General Hospital, Chennai and admitted as inpatient from 16-01-2012 to 20-01-2012 for the said injuries and considering the evidence given by the doctor, who was examined as P.W.3 and has fixed 25% disability, the learned Tribunal has fixed only 20% disability. On this basis, a sum of Rs.65,000/- has been arrived towards disability of 20% at the rate of Rs.3,000/- per percentage and as she was taking treatment as inpatient, Rs.5,000/- has been awarded towards medical expenses. Moreover, considering the fact that she has undergone pain and suffering and loss of

amenities, a sum of Rs.10,000/- alone has been awarded. With regard to other heads namely transportation, extra nourishment, attender charges and damage to clothes, the learned Tribunal has awarded the reasonable compensation.

7. Accordingly, the appeals fail and the same are dismissed. No costs. Consequently, connected C.M.Ps are also dismissed.

8. Since the learned counsel for the appellant/Insurance Company submitted that the appellant has deposited Rs.25,000/- towards statutory deposit, the balance amount is directed to be deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is for the claimant in C.M.A. No.2168 of 2016 to move a petition before the learned Tribunal for withdrawing the said amount. The award amount of the minor claimant shall be deposited in any Nationalised Bank in fixed deposit till he attains majority and the mother of the minor is entitled to withdraw the accrued interest once in three months.

18.10.2016

Index : Yes / No
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To
1. The Motor Accidents Claims Tribunal,
(VI Judge, Court of Small Causes), Chennai.

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

T.RAJA, J.

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C.M.A. Nos.2167 & 2168 of 2016

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