

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. Nos.2605 & 2606 of 2016 &
C.M.P.Nos.18680 & 18681 of 2016

The National Insurance Co. Ltd.,
No.638, Cuddalore Main Road,
Attur,
Salem District-636 102. ... Appellant in both CMAs/2nd
Respondent

Versus

1.Minor Sriram ...Respondent/Petitioner
in CMA No.2605 of 2016

Minor Oviya ... Respondent/Petitioner
in CMA No.2606 of 2016

2.Chandra Sekar

3.Mathiyalagan

4.M/s.Cholamandala General Insurance Co. Ltd.,
NSC Bose Road,
Chennai-600 001. ...Respondents 2 to 4
in both CMAs

Prayer in both appeals: Civil Miscellaneous Appeals filed under
Section 173 of the Motor Vehicles Act, 1988 against the judgment
and decree dated 29.04.2016 made in M.C.O.P.Nos.806 & 807/2010
on the file of the Motor Accidents Claims Tribunal, (Special
Subordinate II Judge) at Salem District.

For Appellant : Mr.J.Chandran

C O M M O N J U D G M E N T

In CMA No.2605 of 2016, the National Insurance Co. Ltd., has
questioned the correctness of the impugned award made in M.C.O.P
No.806 of 2010 dated 29.04.2016 on the file of the Motor
Accident Claims Tribunal cum Special Subordinate II Judge, Salem
District, granting a sum of Rs.35,000/- in favour of minor
Sriram for the injuries sustained by him in the accident
occurred on 27.09.2009 caused by the vehicle bearing

Registration No.TN-10-8569 insured with the appellant Insurance Company. In CMA No.2606 of 2016, the appellant has questioned the award dated 29.04.2016 made in M.C.O.P.No.807 of 2010 in favour of minor Oviya awarding a sum of Rs.75,000/- on the file of Motor Accident Claims Tribunal cum Special Subordinate II Judge, Salem District for the injuries sustained in the same accident. As both the appeals are arising out of the common award, they are taken up together for common disposal.

2.The sole contention made by the learned counsel for the appellant / Insurance Company is that the accident had occurred due to rash and negligent act of the claimants and therefore, the compensation has to be reduced under Section 140 of the Motor Vehicles Act. As per the Insurance Policy, the vehicle was insured under Private Car Policy covering the risk of seven passengers for maximum of Rs.1 lakh personal accident policy per person. Therefore, whether it is for death or injury as per schedule mentioned in the Insurance Policy, the Tribunal ought to have seen whether the injuries sustained by the injured are covered by the Schedule. But in the present case, none of the injuries sustained by the claimants are covered under the schedule. Therefore, the Tribunal ought not to have awarded a sum of Rs.35,000/- in favour of Minor Sriram and a sum of Rs.75,000- in favour of minor Oviya. Again taking into consideration the injuries sustained by the minors, it is contended that when the Tribunal also agreed with the case of the Insurance Company that both the injured sustained minor injuries, which are not covered by the Schedule, it is not known as to how the Tribunal using its discretion by overlooking the provision of law, can award the compensation in the present impugned award.

3.Considering the above submissions and perusing the records, this Court finds no merits on the submissions of the learned counsel for the appellant/Insurance Company, for the reason that on 26.09.2009 at about 12.00 Night, the injured along with their family members were going to Aragalur by Maruthi Van bearing Registration No.TN-10-8569, at Salem to Chennai National Highways Road and at about 1.15 a.m., on 27.09.2009, when the vehicle in which they were travelling, was nearing Thalaivasal Mummudi Jayamurugan Sago Factory, the driver of the Van has driven it in a rash and negligent manner and only due to his negligent driving, he dashed against the lorry bearing Registration No.TN-28-AB-5910, which was going in front of the Van, as a result, the front side of the van was damaged and the minor claimants sustained head injuries along with other persons. Immediately, all the injured were taken to Attur Government Hospital and subsequently, the minor Sriram was shifted to Palaniyandi Mudaliar Hospital, Ammapet, Salem. The injured Sriram was aged about 11 years at the time of the accident and was studying in 6th Standard at Jay Matriculation

School, Ammapet, Salem and Oviya/claimant was aged about 12 years at the time of accident and she was studying in 7th Standard at Saradha Vidhyalaya Higher Secondary School, Salem and due to head injuries, she has taken treatment as inpatient for a period of 12 days and she was unable to attend the school for 45 days. As the said Sriram sustained head injury and multiple injuries all over the body, he has taken treatment as in-patient for a period of one week. Due to the accident, he is suffering from headache and unable to attend school for 15 days. When he has spent a reasonable amount Rs.12,000/- for his treatment, considering the age and injuries, disability, pain and suffering, medical expenses etc., as against the claim of Rs.1 lakh, the Tribunal has awarded a sum of Rs.35,000/- alone. Before fixing the quantum, it has also gone into the Insurance Coverage taken by the owner of the van with the appellant/Insurance Company. After perusing the Insurance Policy in respect of the vehicle bearing Registration No. TN-10-8569, the Tribunal came to the conclusion that there was a coverage for seven other persons also. But the only contention raised by the Insurance Company is that although there was a coverage, unless it is a case of death or injuries covered under the schedule, the Tribunal ought not to have entertained the claim petitions.

4.As mentioned above, the law says that only in respect of scheduled injuries, the Tribunal ought to have awarded just and reasonable compensation. In the present case, it is not in dispute that there was an accident on 27.09.2009, in which the passengers travelling in the van, dashed against the lorry bearing Registration No.TN 28 AB 5910 and resultantly, the claimants sustained injuries for which they also took treatment. For the reason that the injuries are not covered under the schedule, the compensation cannot be rejected, since it has been repeatedly held by this Court that the Motor Vehicles Act has to be liberally interpreted in favour of the injured, for the purpose of giving a just and reasonable compensation. In the instant case, a sum of Rs.35,000/- and Rs.75,000/- were awarded to the claimants. Therefore, this Court is not able to find any infirmity in the impugned award passed in MCOP Nos.806 and 807 of 2010 on the file of the Motor Accident Claims Tribunal (Special Subordinate II Judge) at Salem District. Accordingly, both these Civil Miscellaneous Appeals are dismissed as devoid of merits. Consequently, connected miscellaneous petitions are dismissed. No costs.

5.Since the learned counsel for the appellant submitted that the appellant has deposited Rs.25,000/- only towards statutory deposit, in each case, 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, failing which the interest payable would become 12% for the delayed period. On such deposit, the

Tribunal is directed to deposit the claimants/injured shares in any one of the nationalised banks in a fixed deposit scheme and being the guardian/next friend of the injured, the father is permitted to withdraw the accrued interest once in three months till they attain majority.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

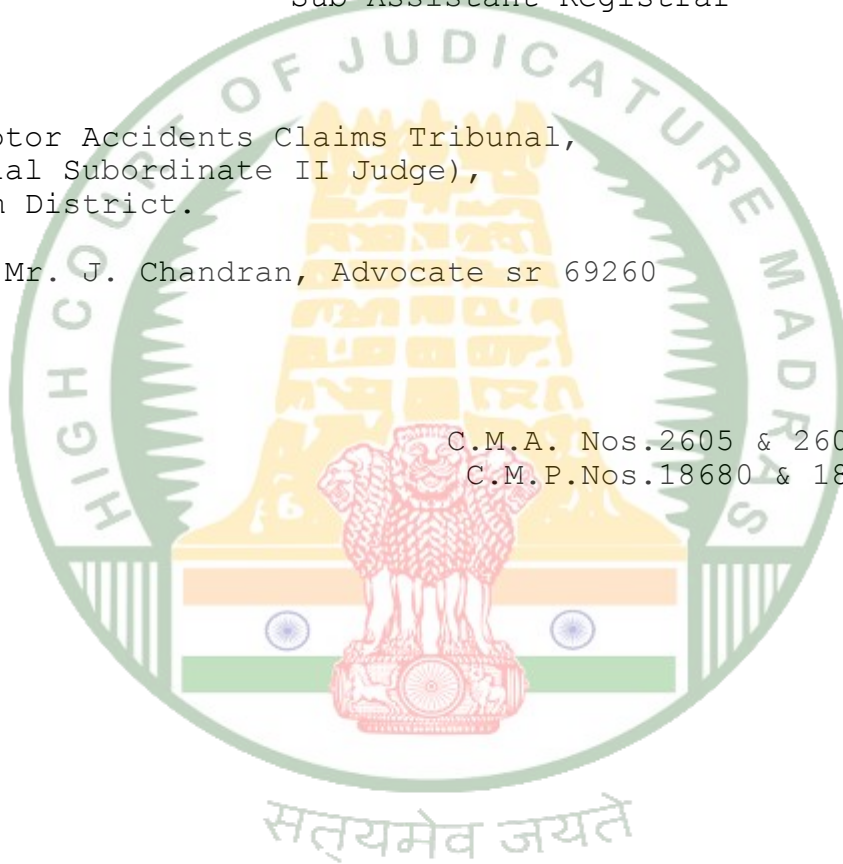
To

1. The Motor Accidents Claims Tribunal,
(Special Subordinate II Judge),
Salem District.

+2 Ccs to Mr. J. Chandran, Advocate sr 69260

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