

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal Nos.1147 to 1160 of 2018 and
CMP.Nos.9527 to 9540 of 2018

The New India Assurance Company Ltd.,
Divisional Office at Premier Complex,
102-Uction Main Road,
Salem-16. Appellant/2nd Respondent in CMA's

Vs

1.D.Sivakumar ... 1st Respondent/Claimant in CMA.1147/18
2.M.Dhanasekaran
3.K.Krishnamoothi
4.Iffco-Tokio General Insurance Company Ltd.,
82-Pretham Plaza, I Floor,
Chenadra Gandhi Nagar,
Ponmeni, Bye-pass,
Madurai-10. ... Respondents 2 to 4 /Respondents 1, 3 & 4
in CMA.1147, 1148, 1151 to 1160/18
and Respondents 4 to 6 in CMA.1149/18 and
Respondents 5 to 7 in CMA.1150/18

Minor V.Akshita
rep by next Friend Guardian
father S.Velraj ... 1st Respondent in CMA.1148/18
/Claimant

1 V.Hemamalini
2.Minor V.Keerthana
3.Minor G.V.Rajesh Kumar
(Minors 2 & 3 are rep by
Next Friend /Guardian
their mother 1st respondent)
.... Respondents 1 to in
CMA.1149/2018/Claimants 1 to 3

1) S.Padmavathy
2) S.Sumathy
3) S.Velraj
4) M.Saraswathi ... Respondents 1 to 4 in CMA
1150/2018/Claimants

5) Minor V.Keerthana rep by
Next Friend/Guardian
Mother V.Hemamalini

... 1st Respondent in
CMA.1151/2018/Claimant

1) D.Dhanalakshmi

... 1st Respondent in CMA.1152/18
/Claimant

1)M.Sakthivel

... 1st Respondent in CMA.1153/18
/Claimant

1) V.Sowmia

... 1st Respondent in CMA.1154/18
/Claimant

1) M.Muruganandham

... 1st Respondent in CMA.1155/18
/Claimant

1) V.Hemamalini

... 1st Respondent in CMA.1156/18
/Claimant

1) S.Velraj

... 1st Respondent in CMA.1157/18
/Claimant

1)S.Jammuna Rani

... 1st Respondent in CMA.1158/18
/Claimant

1) R.Parvathi

... 1st Respondent in CMA.1159/18
/Claimant

1) S.Angayarkanni

... 1st Respondent in CMA.1160/18
/Claimant

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the common award dated 23.7.2012 passed in M.C.O.P.Nos.436 of 2007; 65, 67, 203 of 2010; 247 of 2008; 428, 429, 430, 431, 432, 433, 434, 435 and 437 of 2007 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Salem.

For Appellant :

Ms.R.Sreevidhya (in all CMA's)

For Respondents:

Mr.S.Suresh Kumar (for R1)
in CMA.1147, 1148, 1151 to 1160/18
& R1 to 3 in CMA.1149, R1 to 4 in
CMA.1150/18

Mr.C.R.Krishnamurthy (for R4)

in Cma. 1147, 1148, 1151 to 1160/18
& R6 in CMA.1149/18
& R7 in CMA.1150/18

COMMON JUDGMENT

Calling in question the common award dated 23.7.2012 passed in M.C.O.P.Nos.436 of 2007; 65, 67, 203 of 2010; 247 of 2008; 428, 429, 430, 431, 432, 433, 434, 435 and 437 of 2007 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Salem, the appellant - New India Assurance Company Limited has filed these Civil Miscellaneous Appeals.

2. For the sake of convenience, the parties are referred to as per their array in the claim petitions.

3. The facts in a nutshell are as follows:

All the claimants are close relatives. The deceased in M.C.O.P.No.67 of 2010 is the husband of the claimant in M.C.O.P.No.432 of 2007; the minor claimant in M.C.O.P.No.247 of 2008 is the daughter of the claimant in M.C.O.P.No.432 of 2007; the minor claimant in M.C.O.P.No.65 of 2010 is the daughter of the claimant in M.C.O.P.No.433 of 2007 and the deceased in M.C.O.P.No.203 of 2010 is the husband of the 1st claimant.

4. All the claimants including deceased have made their pilgrimage to Rameswaram and other holy places on 28.7.2007. At about 00.30 hours on 28.7.2007, the claimants and the deceased persons have started from Salem by a Mahendra Tourist van bearing registration No.TN-45 AH 1651. When the van was nearing Oormetchikulam on Dindigul-Madurai main road, a lorry bearing registration No.KA-01 AE 8887 came from the opposite direction driven by its driver in a rash and negligent manner dashed against the van. Due to the impact, all the claimants including deceased sustained grievous injuries. Immediately after the accident, all the injured were admitted in Vadamalaiyan Hospital at Madurai, where they have taken treatment as inpatient.

5. Regarding the accident, a criminal case in Crime No.218 of 2007 under Sections 279, 337 and 304(A) IPC was registered by Samayanallur Police Station. The van in which the claimants and the deceased travelled belongs to the third respondent - K.Krishnamoorthi, insured with the fourth respondent - Iffco-Tokio General Insurance Company Limited. The lorry bearing registration No.KA-01 AE 8887 belongs to the first respondent - M.Dhanasekaran, insured with the second respondent - New India Assurance Company Ltd. (appellant herein). Stating that the accident occurred due to rash and negligent driving of the driver of the lorry, the injured claimants and the legal heirs of the deceased have filed claim petitions claiming compensation before the Tribunal.

6. The second respondent - New India Insurance Company has filed counter stating that the driver of the lorry drove the

same in a slow manner on the left side of the road, whereas the van with overloaded passengers was driven by its driver in the wrong side in a rash and negligent manner and dashed against the lorry. There was no fault on the part of the driver of the lorry. Since there were overloaded persons in the van, the respondents 3 and 4 were liable to pay compensation to the claimants. It is stated in the counter that the driver of the van had no valid driving licence at the time of accident. The second respondent also denied the age, income of the claimants and also stated that the compensation claimed by the claimants are highly excessive.

7. The fourth respondent - Iffco-Tokio General Insurance Company Limited has filed the counter stating that the accident took place only due to the rash and negligent driving of the driver of the lorry. The driver of the van had driven the same in a careful manner. Since the driver of the van sustained injuries and became unconscious, the driver of the lorry has lodged the complaint with false allegations. Since the accident occurred due to rash and negligent driving of the driver of the lorry, the first and second respondent were alone liable to be pay the compensation. The fourth respondent also denied the age, occupation of the claimants and that the total compensation claimed by them are excessive.

8. Before the Tribunal, a joint memo was filed for conduction of joint trial in all claim petitions and the evidence was recorded in M.C.O.P.No.437 of 2007. The claimants in M.C.O.P.Nos. 436, 428, 429, 430, 431, 432, 433, 434, 435, 437 of 2008 and the first claimant in M.C.O.P.No.203 of 2010 were examined as P.Ws.1 to 11. The Doctor who assessed the disability for P.Ws.3, 4, 7, 8 and 9 was examined as P.W.12; the Doctor who assessed the disability for P.W.2 was examined as P.W.13; the Doctor who assessed the disability for the claimant in M.C.O.P.No.65 of 2010 was examined as P.W.14 and Exs.P1 to P67 were marked. On the side of respondent No.4, the driver of the van was examined as R.W.1; the Junior Assistant of RTO, Trichy was examined as R.W.2 and the Executive of the fourth respondent was examined as R.W.3. The legal officer of the second respondent was examined as R.W.4 and the driver of the lorry was examined as R.W.5 and Exs.R1 to R6 were marked.

9. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident took place due to composite negligence of R.W.1 and R.W.5 in equal manner and that the driver of the van (R.W.1) had no valid and effective driving licence at the time of accident. Therefore, the Tribunal fastened the liability on the respondents 1 and 2 at 50% and another 50% on the respondents 3 and 4. Since there was violation of policy condition on the part of the third

respondent, the Tribunal directed the fourth respondent to pay 50% liability to the claimants and then recover the same from the third respondent.

10. Considering the nature of injuries and also the period of treatment undergone by the injured, the Tribunal has awarded compensation in all the cases as under:

M.C.O.P.No.	Total compensation awarded by the Tribunal
M.C.O.P.No.436 of 2007	Rs.12,500/-
M.C.O.P.No.428 of 2007	Rs.59,600/-
M.C.O.P.No.429 of 2007	Rs.68,925/-
M.C.O.P.No.430 of 2007	Rs.2,76,835/-
M.C.O.P.No.431 of 2007	Rs.12,500/-
M.C.O.P.No.432 of 2007	Rs.10,300/-
M.C.O.P.No.247 of 2008	Rs.10,170/-
M.C.O.P.No.67 of 2010	Rs.8,68,000/-
M.C.O.P.No.433 of 2007	Rs.2,46,600/-
M.C.O.P.No.65 of 2010	Rs.4,59,525/-
M.C.O.P.No.434 of 2007	Rs.1,10,000/-
M.C.O.P.No.435 of 2007	Rs.56,470/-
M.C.O.P.No.437 of 2007	Rs.13,660/-
M.C.O.P.No.203 of 2010	Rs.2,12,640/-

Challenging the 50% liability fastened on the third respondent - New India Assurance Company Limited, the appellant has filed these Civil Miscellaneous Appeals.

11. The learned counsel for the appellant submitted that the Tribunal erroneously apportioned the negligence as 50 : 50 on R.W.1, driver of the van and R.W.5, driver of the lorry by relying upon the oral statement of P.W.1 without appreciating the fact that all the material evidence viz., Ex.P1-FIR and Ex.P5-rough sketch speak otherwise. He would submit that the Tribunal has failed to discharge the appellant from the liability on the ground that R.W.1 does not possess valid and effective driving licence at the time of accident and it is proven fact that the driving licence marked by R.W.2 as Ex.R3 was authorized him to drive only light motor vehicle.

12. The learned counsel further submitted that the Tribunal ought to have seen that R.W.1 has overloaded the vehicle than permissible capacity which is in violation of the Motor Vehicles

Act. The majority of witnesses admitted that the negligence is on the part of the driver of the van and therefore, the second respondent, who is the insurer of the first respondent's vehicle is not liable to pay the compensation to the victims and/or deceased family.

13. The learned counsel for the claimants argued that upon appreciation of oral and documentary evidence, the Tribunal apportioned the liability both on the respondents 1 and 2 and the respondents 3 and 4 in the ratio 50:50. Since claimants were suffering lot due to injuries sustained in the accident and also lost the deceased, they are very much interested in getting the compensation from the respondents and prayed for a direction on the respondents to deposit the compensation amount at the earliest.

14. The learned counsel for the fourth respondent - Iffco-Tokio General Insurance Company Limited submitted that the accident was on the negligent driving of the driver of the lorry and in fact, on the date of accident, the driver of the van drove the same in a careful manner and he has not caused any accident. While so, the Tribunal erred in apportioning 50% liability on the fourth respondent and prayed for dismissal of the appeals.

15. I have heard Ms.R.Sreevidhya, learned counsel for the appellants, Mr.S.Sureshkumar, learned counsel for the 1st respondent and Mr.C.R.Krishnamurthy, learned counsel for the 4th respondent and also perused the materials available on record.

16. The points arise for consideration are:

- (1) Whether the Tribunal was right in apportioning the liability in the ratio 50:50 both on the van and the lorry?
- (2) Whether the compensation awarded by the Tribunal in all cases is just and reasonable?

17. Point No.1:

The appellant is the insurer of the lorry bearing registration No.KA-01 AE 8887 and the fourth respondent is the insurer of the van bearing registration No.TN-45 AH 1651, which is a tourist van.

18. According to the claimants, on 28.7.2007, the claimants including the deceased have made their pilgrimage to Rameswaram and other holy places and they have started from Salem by the tourist van bearing registration No.TN-45 AH 1651. When the van was proceeding on Dindigul-Madurai main road and was nearing Oormetchikulam, a lorry bearing registration No.KA-01 AE 8887 came from the opposite direction driven by its driver in a rash

and negligent manner dashed against the van and thereby, caused the accident.

19. The second respondent, insurer of the lorry denied the manner of accident and contended that the van with overloaded passengers was driven by its driver in the wrong side of the road and dashed with the lorry and therefore, the accident was solely on the negligent driving of the driver of the van. Hence, there was no fault on the part of the driver of the lorry.

20. In their evidence, P.Ws.1 to 11 have deposed that the driver of the van cautiously drove the same and that the accident occurred only due to the rash and negligent driving of the driver of the lorry. It is seen that on the basis of the complaint given by P.W.1, the police have registered Ex.P1-FIR against the driver of the van.

21. The driver of the van was examined as R.W.1 and the driver of the lorry was examined as R.W.5. In his evidence, R.W.5 deposed that the van only dashed on the lorry and caused the accident. On the contrary, R.W.1 deposed that the accident occurred due to the rash and negligent driving of the driver of the lorry. Thus, according to their convenience, both the drivers given their evidence before the Tribunal accusing themselves. As rightly observed by the Tribunal, no other independent witnesses were examined by the parties to speak about the occurrence of the accident.

22. Through R.W.4, the appellant has marked Ex.R5-rough sketch. In the absence of independent eye-witness, Ex.R5-rough sketch plays a vital role and the same can be taken into consideration for ascertaining the truth. On a perusal of Ex.R5-rough sketch, it is seen that the place of occurrence is middle portion of the road and thus, it is clear that the van was not proceeding with left side of the road and came near to its right side of the road. Thus, it is clear that by violating the road rules, the driver of the van drove the same. The lorry was proceeding opposite direction on its left side of the same road. It is also seen from Ex.R5-rough sketch that there was enough space on the further left side of the lorry and if the driver of the lorry also drove the same cautiously, would have averted the accident, but R.W.5 has failed to do so. From Ex.R5-rough sketch, it is clear that the driver of the van/R.W.1 alone went middle of the road and invited the accident. Since the time of accident was 00.30 hours, there was every possibility of drivers of both the van and the lorry to drove the vehicles with slight sleeping. As per Ex.R5-rough sketch, the driver of the van alone driven the same in the wrong side of the road and dashed with the lorry. Therefore, his negligence is major and the equal negligence cannot be applied in this

case.

23. In its award, the Tribunal held that there was a major portion of negligence on the part of R.W.1. However, the Tribunal erred in apportioning the liability as 50 : 50. In paragraph 48 of the common award, the Tribunal observed as under:

"48. On perusing Ex.R5, it is found that the place of occurrence is just beyond south to the central portion of the east - west road. So, it is clear that the van was not proceeding along with this left side, but came near to its right side of the road. So, there is a major portion of the negligence on the part of R.W.1, the driver of the van that proceeded from Salem towards Madurai. Nor is there any doubt that the lorry was proceeding from Thoothukkudi towards Salem and it was coming on its left side of the same road. At the same time, it is also found as there is sufficient space on the further left side and R.W.5 who was driving the lorry would have averted the accident, if he also applied the theory of last opportunity. But he has failed to do so, since he was also rash and negligent in driving his lorry. So, it is very clear that this accident took place due to the composite negligence on the side of R.W.1 and R.W.5 in equal manner and the point is answered accordingly."

24. As stated supra, when the Tribunal arrived at a conclusion that the major portion of negligence was on the part of the driver of the van, it ought not to have apportioned the negligence in equal manner. Therefore, considering the facts and circumstances of the case, it would be appropriate to apportion the negligence in the ratio 65 : 35 i.e., 35% on the driver of the lorry and 65% on the driver of the van.

25. Before the Tribunal, the fourth respondent raised a plea that the driver of the van had no valid driving licence at the time of accident. Ex.R1 is the driving licence of the driver of the van. Through R.W.2-Junior Assistant of the Regional Transport Office at Trichy, the particulars of driving licence of R.W.1 was marked as Ex.R3. In his evidence, R.W.2 deposed that the driver of the van was possessing licence to drive the two wheeler and the light motor vehicle and he had obtained badge to drive the transport vehicle only from 24.6.2010. In the case on hand, the occurrence took place on 28.7.2007. Thus, at the time of accident, the driver of the van was not having valid driving licence to drive the transport vehicle. Hence, as rightly held by the Tribunal that on the date of accident, R.W.1/driver of the van had no valid and

effective driving licence to drive the offending van, which is the transport vehicle.

26. As stated supra, the offending van was owned by the third respondent and was insured with the fourth respondent at the time of accident. Since the third respondent allowed R.W.1 to drive the offending van without having valid driving licence, the third respondent violated the policy conditions. Therefore, while fastening liability, the Tribunal directed the fourth respondent to pay the compensation at the first instance and then recover the same from the third respondent. Since the said finding of the Tribunal is based on evidence, this Court does not want to interfere with the same. As stated supra, since this Court fixed 65% liability on the van, the fourth respondent who is the insurer of the van is liable to pay the compensation to the extent of 65% to the claimants and then they are entitled to recover the same from the third respondent. Point No.1 is answered accordingly.

27. Point No.2:

C.M.A.No.1147 of 2018 (M.C.O.P.No.436 of 2007) - In the accident, the claimant sustained only simple injury and the same was evident from Exs.P2-discharge summary and Ex.P3-wound certificate issued by Vadamalaiyan Hospital, Madurai. On a perusal of Ex.P2-discharge summary, it is seen that the claimant was treated as inpatient for only one day. In the accident, the claimant neither sustained fracture nor any grievous injuries.

28. Considering the simple injury sustained by the claimant, the Tribunal has awarded Rs.1,000/- for transport charges; Rs.2,000/- for extra-nourishment; Rs.2,000/- for pain and suffering; Rs.3,000/- for medical expenses and Rs.4,500/- for loss of income. This Court finds that the amounts awarded by the Tribunal is reasonable and therefore, the total compensation of Rs.12,500/- awarded by the Tribunal in favour of the claimant is just and reasonable and the same is confirmed.

29. C.M.A.No.1148 of 2018 (M.C.O.P.No.65 of 2010) - In the accident the claimant, who was one year old baby had sustained head injury inchemic cerebral insult in both cerebral hemispheres. After the accident, the baby was admitted in Vadamalaiyan Hospital, Madurai and she had taken treatment from 28.7.2007 to 24.8.2007 as inpatient. P.W.14-Doctor examined the claimant and issued Ex.P65 disability certificate. Further, medical records reveal that P.W.14 is one among the Doctor, who treated the claimant in Vadamalaiyan Hospital, Madurai.

30. In his evidence, P.W.7, the father of the injured baby claimant deposed that for the injuries sustained by her

daughter, she had taken treatment for nearly 28 days. P.W.7 has produced Ex.P38 medical bills to show that totally a sum of Rs.1,84,513/- was incurred towards medial expenses. From Ex.P67, it is found that the claimant's eyes were severely affected due to the accidental injuries.

31.In his evidence, P.W.14-Doctor deposed that the injured baby had sustained head injury and cerebral injury and took treatment in Vadamalaiyan Hospital at Madurai and K.M.C. Hospital, Coimbatore respectively. P.W.14 further deposed that the baby claimant cannot stand more than 10 minutes and her both eye vision was affected. Due to injuries, the baby claimant was not able to speak in normal way and hence, he assessed the disability at 100%.

32.Considering the nature of injuries sustained by the baby claimant and taking note of 100% disability, the Tribunal fixed the notional income of the claimant at Rs.15,000/- per annum and adopting multiplier 15, calculated the loss of income at Rs.2,25,000/-. Apart from the above, the Tribunal has awarded Rs.10,000/- for transport charges; Rs.15,000/- for extra-nourishment; Rs.25,000/- towards pain and suffering; Rs.1,84,525/- for medical expenses. Thus, the Tribunal awarded total compensation of Rs.4,59,525/-. Since the compensation of Rs.4,59,525/- awarded by the Tribunal is just and reasonable, the same is confirmed.

33. C.M.A.No.1149 of 2018 (M.C.O.P.No.67 of 2010) - For the death of the deceased Vivekanandan in the accident, the claimants, who are wife and children have filed the claim petition claiming compensation of Rs.15,00,000/-. In her evidence P.W.6, who is the wife of the deceased deposed that at the time of accident, her husband was working as goldsmith by profession. P.W.6 has produced Ex.P48 certificate issued by the Central Excise Department recognizing her husband as goldsmith. In her evidence, P.W.6 further deposed that her husband was an income tax assessee. To prove the same, she had produced Ex.P47 SARAL form, where from, it is seen that as on 31.3.2006, his annual income was Rs.1,11,598/-.

34.In her evidence, P.W.6 stated that her husband was earning Rs.7,000/- per month, which is quite contrary to the particulars found in Ex.P47. Therefore, in the absence of specific proof, considering the age of the deceased and he was an income assessee, the Tribunal has fixed the daily income of the deceased at Rs.250/- and the monthly income at Rs.7,500/- and also calculated the annual income at Rs.90,000/-. Deducting one-third towards personal expenses, the annual contribution was calculated at Rs.60,000/-. Since the deceased was aged 45 years at the time of accident, the Tribunal applied multiplier

"14". Adopting multiplier "14", the Tribunal calculated the loss of dependency at Rs.8,40,000/-.

35. Adding conventional damages viz., Rs.10,000/- for loss of consortium; Rs.10,000/- for loss of estate; Rs.3,000/- for transport charges and Rs.5,000/- for funeral expenses, the Tribunal awarded total compensation of Rs.8,68,000/-. Since the compensation of Rs.8,68,000/- awarded by the Tribunal is just and reasonable, this Court does not want to interfere with the same and the same is confirmed.

36. C.M.A.No.1150 of 2018 (M.C.O.P.No.203 of 2010) - In the accident the deceased Subburathinam sustained fatal injuries and succumbed to injuries on 5.8.2007. The claimants are Class I heirs of the deceased. According to the claimants, the deceased was a retired Government employee and was receiving pension at the time of accident. Ex.P42 is the death certificate of deceased Subburathinam. As per Ex.P42, at the time of accident, the deceased was aged 64 years and was receiving pension of Rs.1,971/- per month. After the death, the pension was converted into as the family pension, which was payable to his wife.

37. Holding that a pensioner is a non-earning person and he depends upon his pension only, the Tribunal has taken the notional income of the deceased at Rs.15,000/- per annum. Since the number of dependents was 4, the Tribunal deducted one-fourth towards personal expenses and calculated the annual contribution to the family at Rs.11,250/-. Adopting multiplier "7", the Tribunal calculated the loss of dependency at Rs.78,750/-, which in my considered opinion is reasonable.

38. The deceased was treated as inpatient in Vadamalaiyan Hospital, Madurai from 28.7.2007 to 5.8.2007. During the said period, the claimants have spent a sum of Rs.1,18,890/- towards medical expenses. To prove the same, the claimants have produced Ex.P39 medical bills and the Tribunal has awarded a sum of Rs.1,18,890/- for medical expenses and the same is maintained.

39. Adding conventional damages i.e., Rs.5,000/- towards transportation; another sum of Rs.5,000/- towards funeral expenses; Rs.5,000/- for loss of consortium, the Tribunal awarded total compensation of Rs.2,12,640/-. Since the total compensation of Rs.2,12,640/- awarded by the Tribunal is very reasonable, the same is maintained.

40. C.M.A.No.1151 of 2018 (M.C.O.P.No.247 of 2008) - In the accident, the minor claimant sustained laceration near the left eye-brow and contusion in her right knee and she was treated at Vadamalaiyan Hospital, Madurai. Ex.P50-wound certificate and

Ex.P51-discharge summary show that the minor claimant sustained only simple injury. The claimant had also produced Ex.P52-medical bills to show that she had incurred a sum of Rs.2,170/- for medical expenses.

41.Considering the nature of injury sustained in the accident and the treatment undergone by the minor claimant, the Tribunal awarded total compensation of Rs.10,170/-, which in my considered opinion is reasonable and the same is confirmed.

42. C.M.A.No.1152 of 2018 (M.C.O.P.No.428 of 2007) - In her claim petition, the claimant has stated that in the accident, she had sustained lacerated injury on the left eye-brow; right arm internal injury, contusion over the left thigh and also multiple injuries all over the body. For the injuries sustained in the accident, the claimant has taken treatment for 3 days and incurred Rs.10,100/- towards medical expenses. Ex.P10 is the medical bills.

43.P.W.13 is the Doctor who examined the claimant and assessed the disability at 20%. In his evidence, P.W.13-Doctor deposed that the claimant had sustained nasal bone fracture and due to which the nerve zone in the nasal region was affected.

44.Taking the disability at 20% and giving Rs.1,000/- per percentage of disability, the Tribunal awarded Rs.20,000/- towards disability. Tribunal has awarded Rs.4,500/- towards loss of income for one month taking the notional income of the claimant at Rs.4,500/-. The Tribunal also awarded a sum of Rs.5,000/- for transport charges; Rs.5,000/- for extra-nourishment and Rs.15,000/- for pain and suffering. Thus, the Tribunal has awarded total compensation of Rs.59,600/-, which in my considered view is reasonable and the same is confirmed.

45. C.M.A.No.1153 of 2018 (M.C.O.P.No.429 of 2007) - The claimant Sakthivel was examined as P.W.3, who deposed that in the accident he had sustained fracture in his left scapula. Ex.P11 is the wound certificate. Ex.P12 is the discharge summary, where from it is seen that the claimant was admitted on 28.7.2007 and discharged on 6.8.2007. P.W.3 had also produced Ex.P13 medical bills to show that he had incurred a sum of Rs.1,425/- towards medical expenses.

46.P.W.12-Doctor examined the claimant and issued Ex.P53 assessing the disability at 25%. Further, the evidence of P.W.12 was supported by Ex.P11 and P12-wound certificate and discharge summary.

47.Taking the disability at 25%, the Tribunal awarded a sum of Rs.37,500/- towards disability; Rs.5,000/- for loss of

income; Rs.5,000/- for transport charges; Rs.5,000/- for extra-nourishment and Rs.15,000/- for pain and suffering. Thus, the Tribunal awarded total compensation of Rs.68,925/- in favour of the claimant. Since the compensation of Rs.68,925/- arrived at by the Tribunal is just and reasonable, the same is maintained.

48. C.M.A.No.1154 of 2018 (M.C.O.P.No.430 of 2007) - The claimant has claimed a sum of Rs.5,00,000/- for the injuries sustained in the accident. In her petition, the claimant stated that in the accident, she sustained (i) internal injury over the face and bone fracture; (ii) injury in the mount and teeth fell down; (iii) fracture in the hip; (iv) right hand fracture. For the injuries sustained by her, the claimant had taken treatment from 28.7.2007 to 22.8.2007. The claimant had produced Ex.P17-series medical bills to show that she had incurred a sum of Rs.1,28,835/- towards medical expenses. Finding that the claimant had incurred a sum of Rs.1,28,835/- for medical expenses, the Tribunal awarded the said sum towards medical expenses and the same is maintained.

49.P.W.12-Doctor examined the claimant (P.W.4) and assessed the disability at 50%. In his evidence, P.W.12-Doctor deposed that the claimant was having surgical scar 18 cm long on the left buttock extending over the trochanter and upper third of thigh and chronic intense pain in the hip joint and on the back and she walks with limping. P.W.12 further deposed that the range of movements in the hip joint and other movements in all directions were restricted.

50.Taking the disability at 50% and giving Rs.2,000/- per percentage of disability, the Tribunal awarded Rs.1,00,000/- towards disability. Considering the nature of injuries sustained by the petitioner and the disability assessed by P.W.12-Doctor, a sum of Rs.1,00,000/- awarded by the Tribunal towards disability is maintained.

51.The Tribunal also awarded a sum of Rs.5,000/- for transportation; another sum of Rs.5,000/- for extra-nourishment; Rs.20,000/- for pain and suffering and Rs.18,000/- for loss of income. Thus, the Tribunal has awarded total compensation of Rs.2,76,835/- for the injuries sustained by the claimant in the accident. Considering the nature of injuries and also the period of treatment undergone by the claimant, the total compensation of Rs.2,76,835/- awarded by the Tribunal is reasonable and the same is confirmed.

52. C.M.A.No.1155 of 2018 (M.C.O.P.No.431 of 2007) - In the accident, the claimant had sustained lacerated wounds in his left leg and middle finger in his right hand. The claimant was treated as inpatient for only one day and as per Exs.P18 and

P19, the injury sustained by the claimant are simple in nature.

53. Considering the nature of injury sustained by the claimant, the Tribunal awarded a sum of Rs.1,000/- for transportation; Rs.2,000/- for extra-nourishment; another sum of Rs.2,000/- for pain and suffering; Rs.3,000/- for medical expenses and Rs.4,500/- for loss of income for one month. Thus, the Tribunal awarded total compensation of Rs.12,500/-. Since the total compensation of Rs.12,500/- awarded by the Tribunal is just and reasonable, the same is confirmed.

54. C.M.A.No.1156 of 2018 (M.C.O.P.No.432 of 2007) - The claimant Hemamalini was examined as P.W.6. In her evidence, P.W.6 deposed that she sustained multiple injuries all over the body. She further stated that after the accident, the claimant was admitted in Vadamalaiyan Hospital, Madurai. The claimant had also produced Exs.P20 and P21, wound certificate and discharge summary. On a perusal of the discharge summary, it is seen that the injuries sustained by the claimant are simple in nature. The claimant had produced Ex.P22-medical bill to show that she had incurred a sum of Rs.1,300/- for medical expenses.

55. Considering the nature of injuries by the claimant in the accident and the period of treatment undergone by her, the Tribunal awarded Rs.2,000/- for transportation; Rs.3,000/- for extra-nourishment; Rs.4,000/- for pain and suffering and Rs.1,300/- towards medical expenses. Since the compensation of Rs.10,300/- awarded by the Tribunal is reasonable, the same is confirmed.

56. C.M.A.No.1157 of 2018 (M.C.O.P.No.433 of 2007) - The claimant was examined as P.W.7. In his evidence, P.W.7 deposed that in the accident, he sustained fracture and surgery was also done. He further deposed that he had taken treatment as inpatient from 28.7.2007 to 6.8.2007. The claimant had produced Ex.P25-medical bills to show that he had incurred a sum of Rs.90,600/- towards medical expenses. Since no contra evidence was produced, a sum of Rs.90,600/- awarded by the Tribunal towards medical expenses is maintained.

57. P.W.12-Doctor examined P.W.7 and assessed the disability. Ex.P57 is the disability certificate issued by P.W.12. In his evidence, P.W.12-Doctor deposed that P.W.7 was having deformity of the lumbar spine and obliteration of the lumbar lordosis and tenderness over the vertebra. According to P.W.12-Doctor, P.W.7 was having chronic intense pain in and around the back and the pain was radiating to both thighs. P.W.12 further stated that due to injuries P.W.7 finds difficulty in doing manual work, climbing ups and downs and also driving heavy vehicle. On examination, P.W.12-Doctor assessed

the disability at 55% and issued Ex.P57-disability certificate.

58. Taking the disability at 55%, the Tribunal awarded Rs.1,10,000/- towards disability. Considering the nature injuries sustained by the claimant, a sum of Rs.1,10,000/- awarded by the Tribunal for disability is maintained.

59. The Tribunal awarded Rs.7,500/- for transportation; Rs.5,000/- for extra-nourishment; Rs.20,000/- for pain and suffering and Rs.13,500/- for loss of income. Thus, the Tribunal awarded total compensation of Rs.2,46,600/-. Considering the nature of injuries sustained by the claimant in the accident and also for the injuries sustained by him, a surgery was done and taking note of the period of treatment undergone by the claimant, the total compensation of Rs.2,46,600/- awarded by the Tribunal is confirmed.

60. C.M.A.No.1158 of 2018 (M.C.O.P.No.434 of 2007) - In the accident, the claimant had sustained fracture in both pubic rami bilateral, fracture left sacral ala + L5 left in process. After the accident, the claimant was admitted in Vadamalaiyan Hospital, Madurai, where she had taken treatment from 28.7.2007 to 4.8.2007.

61. P.W.12-Doctor examined the claimant and issued Ex.P59-disability certificate. In his evidence, P.W.12-Doctor deposed that the claimant had sustained bilateral fracture of both pubic rami and fracture in her left sacral ala and fracture in the fifth vertebra left side. He further deposed that as a portion of the pelvic bone was deformed and tenderness was found over it and the pain in the front of the pelvic bone was radiating to both bones, and claimant was unable to touch the floor by bending forward. Therefore, P.W.12-Doctor assessed the disability at 35%.

62. Considering the nature of injuries sustained by the claimant, the Tribunal awarded Rs.5,000/- for transportation; Rs.5,000/- for extra-nourishment; Rs.20,000/- for pain and suffering; Rs.5,000/- for medical expenses; Rs.52,500/- for disability and Rs.13,500/- for loss of income. Thus, the Tribunal awarded total compensation of Rs.1,10,000/-. Since the total compensation of Rs.1,10,000/- awarded by the Tribunal is just and reasonable, the same is confirmed.

63. C.M.A.No.1159 of 2018 (M.C.O.P.No.435 of 2007) - The claimant was examined as P.W.9. In his evidence, P.W.9 deposed that in the accident she sustained laceration on her left fore head and laceration on her left parietal region. After the accident, she was admitted in Vadamalaiyan Hospital, Madurai and she had taken treatment for only one day i.e., on 28.7.2007. In

her evidence, P.W.9 deposed that she had incurred a sum of Rs.1,970/- towards medical expenses and produced the medical bills.

64.Ex.P31 is the scan report. On a perusal of Ex.P31, it is seen that the claimant had sustained haematoma in her left orbital preseptal space and linear fracture in the parietal bone.

65.P.W.12-Doctor examined P.W.9 and issued Ex.P61 disability certificate assessing the disability at 25%. In his evidence, P.W.12 deposed that the claimant had sustained head injuries due to which she was having chronic intense pain in and around the eye and the pain was radiating to the back from the head and also she was having frequent giddiness.

66.Considering the injuries sustained by the claimant, the Tribunal awarded Rs.5,000/- each for transportation and extra-nourishment; Rs.15,000/- for pain and suffering; Rs.1,970/- for medical expenses; Rs.25,000/- for disability and Rs.4,500/- for loss of income. Thus, the Tribunal awarded total compensation of Rs.56,470/-. Since the compensation of Rs.56,470/- awarded by the Tribunal is reasonable, the same is confirmed.

67. C.M.A.No.1160 of 2018 (M.C.O.P.No.437 of 2007) - The claimant had claimed compensation of Rs.3,00,000/- for the injuries sustained by her in the accident. The claimant was examined as P.W.10. In her evidence, P.W.10 deposed that she had sustained injury over her left upper limb and swelling over the left wrist joint. P.W.10 was admitted on 28.7.2007 and discharged on 30.7.2007. As per Exs.P33 and P34, the injuries sustained by P.W.10 are simple in nature.

68.Considering the nature of injuries sustained by P.W.10 and also the period of treatment undergone by her, the Tribunal has awarded Rs.2,000/- for transportation; Rs.3,000/- each for extra-nourishment and pain and suffering; Rs.1,160/- for medical expenses and Rs.4,500/- for loss of income. Thus, the Tribunal awarded total compensation of Rs.13,660/-. Since the compensation of Rs.13,660/- awarded by the Tribunal is just and reasonable, the same is confirmed.

69. For the foregoing discussions, this Court is of the view that the compensation awarded by the Tribunal in all these cases are just and reasonable and the same are confirmed. Thus, Point No.2 is answered accordingly.

70. In the result:

- (i)The Civil Miscellaneous Appeals are partly allowed.
- (ii)The apportionment of negligence fastened by the Tribunal on the offending van bearing

registration No.TN-45 AH 1651 and the lorry bearing registration No.KA-01 AE 8887 in equal manner is modified as the insurer of the offending van and the insurer of the lorry are liable to pay the compensation in the ratio 65 : 35 i.e., the fourth respondent insurer of the van is liable to pay 65% and the second respondent insurer of the lorry is liable to pay 35% with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit with proportionate costs.

(iii) The fourth respondent insurer of the offending van bearing registration No.TN-45 AH 1651 is to pay their 65% of compensation to the claimants at the first instance and then recover the same from the owner of the van i.e., the third respondent.

(iv) In respect of the quantum, the compensation awarded by the Tribunal in M.C.O.P.Nos.436 of 2007; 65, 67, 203 of 2010; 247 of 2008; 428, 429, 430, 431, 432, 433, 434, 435 and 437 of 2007 dated 23.7.2012 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Salem is confirmed.

(v) The appellant/second respondent is directed to deposit 35% of the compensation amount with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit with proportionate costs within a period of eight weeks from the date of receipt of a copy of this judgment, less if any amount deposited by them into Court.

(vi) The fourth respondent is directed to deposit 65% of the compensation amount with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within the same period of eight weeks from the date of receipt of a copy of this judgment.

(vii) There will be no order as to costs in these appeals. Consequently, all connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

1.The Chief Judicial Magistrate Court
The Motor Accident Claims Tribunal,
Salem.

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

+1cc to Mr.C.Prabakaran, Advocate, S.R.No. 60084

+1cc to Mr.C.R.Krishnamoorthy, Advocate, S.R.No. 59745

+1cc to Mr.R.Sreevidhya, Advocate, S.R.No. 60232

C.M.A.Nos.1147 to 1160 of 2018 and
CMP.Nos.9527 to 9540 of 2018

KJI (CO)
GN(20/12/2018)



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