IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1591 to 1593 of 2016
and C.M.P.Nos.12021 to 12023 of 2016

M/s.New India Assurance Co. Ltd.,
C/o.Motor Third Party Claims Office,
No.45, Moore Street,
Chennai 600 002. .. Appellant/2nd Respondent in all C.M.As.

Vs.

1.T.Jayaraman .. 1st Respondent /Petitioner in C.M.A.No.1591/2016

1.R.Sivalingam .. 1st Respondent/Petitioner in C.M.A.No.1592/2016

1.J.Guna .. 1st Respondent/Petitioner in C.M.A.No.1593/2016

2.K.Vishnu Kumar .. 2nd Respondent/1st Respondent in all C.M.As.

(R2 set exparte before the Tribunal)

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 24.06.2015 made in M.C.O.P.Nos.4995, 5057 and 5058 of 2012 on the file of the Special Sub Court No.1, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.J.Chandran (in all C.M.As.)

For R1 : Mr.T.G.Balachander (in all C.M.As.)

For R2 : No appearance(in all C.M.As.)

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

These Civil Miscellaneous Appeals have been filed challenging the common award dated 24.06.2015 made in M.C.O.P.Nos.4995, 5057 and 5058 of 2012 on the file of the Special Sub Court No.1, (Motor Accident Claims Tribunal), Chennai.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2.All the appeals are arising out of the common award and same accident. Hence, they are disposed of by this common judgment. The parties are referred to as per their rank in the claim petitions.

3.The claimants/1st respondent herein filed M.C.O.P.Nos.4995, 5057 and 5058 of 2012 on the file of the Special Sub Court No.1, (Motor Accident Claims Tribunal), Chennai, claiming sum of Rs.6,00,000/-, Rs.6,00,000/- and Rs.1,50,000/- respectively as compensation for the injuries suffered by them in the accident that took place on 18.08.2012.

4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the 1st respondent and 2nd respondent, as the insurer of the vehicle is liable to pay the compensation and awarded a sum of Rs.3,25,000/-, Rs.2,60,000/- and Rs.25,000/- respectively as compensation to the claimants respectively.

5.Challenging the liability as well as the quantum of compensation granted by the award dated 24.06.2015 made in M.C.O.P.Nos.4995, 5057 and 5058 of 2012, the 2nd respondent has come out with these appeals.

6.Though the 2nd respondent/appellant has raised grounds with regard to liability and negligence, at the time of arguments, he has restricted his arguments with regard to quantum of compensation.

7.The learned counsel appearing for the 2nd respondent/appellant submitted that the Tribunal erred in accepting the evidence of P.W.4, Doctor and awarded compensation excessively in M.C.O.P.Nos.4995 and 5057 of 2012 [C.M.A.Nos.1591 and 1592 of 2016]. The amounts awarded by the Tribunal towards pain and suffering and transportation are excessive in the said claim petitions. The claimant in M.C.O.P.No.4995 of 2012 [C.M.A.No.1591 of 2016] was aged 67 years and the claimant in M.C.O.P.No.5057 of 2012 [C.M.A.No.1592 of 2016] was aged 72 years at the time of accident. Therefore, the amounts awarded under the head of loss of future prospects is excessive and prayed for reducing the compensation granted in all the claim petitions.

8.Per contra, the learned counsel appearing for the claimants/1st respondent in all the appeals contended that the claimants in all the claim petitions have examined the Doctor and proved the nature of injuries and disability suffered by them. The amounts awarded by the Tribunal are not excessive and it is only a just compensation and prayed for dismissal of all

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the appeals.

9.Heard the learned counsel for the 2nd respondent/appellant as well as the claimants/1st respondents and perused the materials available on record.

10.As far as the quantum of compensation awarded by the Tribunal in M.C.O.P.No.5058 of 2012 [C.M.A.No.1593 of 2016] is concerned, the Tribunal considering the evidence let in by the claimant in the said appeal, has awarded total compensation of Rs.25,000/- and the said amount is not excessive and there is no reason to interfere with the same.

11.As far as compensation granted in M.C.O.P.Nos.4995 and 5057 of 2012 [C.M.A.Nos.1591 and 1592 of 2016] are concerned, the Doctor fixed the disability at 65% partial and permanent disability for the claimant in M.C.O.P.No.4995 of 2012 and 40% disability of elbow and 10% disability of chest for the claimant in M.C.O.P.No.5057 of 2012. The Tribunal after considering the evidence of P.W.4/Doctor, reduced the same to 50% and 30% respectively and awarded compensation towards disability, which is not excessive. As far as the compensation granted in M.C.O.P.No.4995 of 2012 [C.M.A.No.1591 of 2016] under other heads are concerned, the amounts granted towards pain and suffering, transportation, loss of amenities and loss of future prospects are excessive and the same are reduced to Rs.50,000/-, Rs.9,500/-, Rs.25,000/- and Rs.25,000/- respectively. As far as the compensation granted in M.C.O.P.No.5057 of 2012 [C.M.A.No.1592 of 2016] under other heads are concerned, the amounts granted towards transportation, loss of amenities and loss of future prospects are excessive and the same are reduced to Rs.50,000/- Rs.9,500/-, Rs.25,000/- and Rs.25,000/- respectively. The amounts awarded by the Tribunal under all other heads are just and reasonable and the same are hereby confirmed. Thus, the compensation awarded by the Tribunal are modified as follows:

(i)C.M.A.No.1591 of 2016 [M.C.O.P.No.4995 of 2012]

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	1,00,000	1,00,000	confirmed
2.	Pain and suffering	60,000	50,000	reduced
3.	Extra nourishment	10,000	10,000	confirmed
4.	Transportation	14,000	9,500	reduced

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

5.	Medical expenses	5,000	5,000	confirmed
6.	Attendant charges	10,000	10,000	confirmed
7.	Loss of amenities	50,000	25,000	reduced
8.	Loss of future prospects	50,000	25,000	reduced
9.	Loss of income	26,000	26,000	confirmed
	Total	3,25,000	2,60,500	reduced by Rs.64,500/-

(ii)C.M.A.No.1592 of 2016 [M.C.O.P.No.5057 of 2012]

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	60,000	60,000	confirmed
2.	Pain and suffering	50,000	50,000	confirmed
3.	Extra nourishment	10,000	10,000	confirmed
4.	Transportation	14,000	9,000	reduced
5.	Attendant charges	10,000	10,000	confirmed
6.	Loss of amenities	50,000	25,000	reduced
7.	Loss of future prospects	40,000	20,000	reduced
8.	Loss of income	26,000	26,000	confirmed
	Total	2,60,000	2,10,000	reduced by Rs.50,000/-

12.In the result, C.M.A.Nos.1591 and 1592 of 2016 are partly allowed and the compensation awarded by the Tribunal at Rs.3,25,000/- and Rs.2,60,000/- are hereby reduced to Rs.2,60,500/- and Rs.2,10,000/-, respectively with interest and costs. The 2nd respondent-Insurance Company/appellant is directed

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

to deposit the modified award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order to the credit of M.C.O.P.Nos.4995 and 5057 of 2012 respectively. On such deposit, the claimants are permitted to withdraw the award amount along with interest and costs, after adjusting the amount already withdrawn, if any, by filing necessary applications before the Tribunal. No costs.

13.C.M.A.No.1593 of 2016 is dismissed and the amount of Rs.25,000/- awarded by the Tribunal as compensation is confirmed.

The 2nd respondent-Insurance Company/appellant is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order to the credit of M.C.O.P.Nos.5058 of 2012. On such deposit, the claimant/1st respondent is permitted to withdraw the award amount along with interest and costs, after adjusting the amount already withdrawn, if any, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

gsa

To

The Special Subordinate Judge No.1,
(Motor Accident Claims Tribunal), Chennai.

+1cc to Mr. J.Chandran, Advocate, S.R.No. 85825
+2cc to Mr. T.G.Balachandran, Advocate, S.R.No. 86334,86332

WEB COPY

C.M.A.Nos.1591 to 1593 of 2016
and C.M.P.Nos.12021 to 12023 of 2016

CNR(CO)
GN(28/03/2019)

https://hcservices.ecourts.gov.in/hcservices/