

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.Nos.409 to 417 of 2015

M/s.New India Assurance Co. Ltd.,
No.45, Moore Street, 5th Floor,
Chennai - 600 001.

... Appellant/Respondent II
in all C.M.As.

Vs.

S.Vasantha Kumar (Minor)

Rep.by his M & N.F.S.Shanthi ... 1st Respondent/Petitioner in
CMA.No.409/2015

Tmt.B.Kuppammal

... 1st Respondent/Petitioner in
CMA.No.410/2015

V.Boopathy

... 1st Respondent/Petitioner in
CMA.No.411/2015

V.Dhanasekar

... 1st Respondent/Petitioner in
CMA.No.412/2015

Tmt.Nirmala

... 1st Respondent/Petitioner in
CMA.No.413/2015

Tmt.S.Santhi

... 1st Respondent/Petitioner in
CMA.No.414/2015

Tmt.D.Jaya

... 1st Respondent/Petitioner in
CMA No.415/2015

B.Santhosh Kumar

... 1st Respondent/Petitioner in
CMA.No.416/2015

Minor D.Lakshmi Priya

Rep.by her mother D.Jaya

... 1st Respondent/Petitioner in
CMA No.417/2015

K.Vishnu Kumar

... 2nd Respondent/Respondent I in
all C.M.A.s

Common Prayer:

Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988 against the common judgment and decree dated 05.11.2014 made in M.C.O.P.Nos.6084, 6088, 6089, 6090, 6091, 6095, 6096, 6097 and 6098 of 2012 on the file of the IV Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

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

For R-1 : Mr.A.A.Venkatesan
(in all C.M.As.)

For R-2 : Not ready in notice

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

These Civil Miscellaneous Appeals have been filed against the common award and decree dated 05.11.2014 made in M.C.O.P.Nos.6084, 6088, 6089, 6090, 6091, 6095, 6096, 6097 and 6098 of 2012 on the file of the IV Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

2. Since all the appeals are arising out of the same accident, they are disposed of by this common judgment.

3. The parties are referred to as per their rank in the respective claim petitions for the sake of convenience.

4. All the appeals are filed by the second respondent / Insurance company challenging the common award of the Tribunal made in M.C.O.P.Nos.6084, 6088, 6089, 6090, 6091, 6095, 6096, 6097 and 6098 of 2012 on the file of the IV Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

5. The claimants in all the appeals filed the claim petitions, claiming various amounts as compensation for the injuries sustained by them in the accident that took place on 18.08.2012.

6. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the bus belonging to the second respondent and directed the appellant/insurance company to pay the compensation to the first respondent in all the appeals and awarded various amounts as compensation.

7. Though the second respondent / insurance company filed the appeal challenging the liability as well as the quantum of compensation awarded by the Tribunal, when the appeals are taken up for hearing, the learned counsel for the second respondent/insurance company contended that they are not seeking to set aside the award of the Tribunal with regard to negligence fixed on the part of the driver of the first respondent and that they are questioning the award only with regard to quantum of compensation awarded by the Tribunal and prayed for deciding the appeal with regard to the same.

8. The learned counsel appearing for the second respondent/insurance company contended that the Tribunal erred in granting a sum of Rs.30,000/- based on the OP chit - Ex.P24 and the same is excessive. In MCOP No.6095/2012 (CMA No.414/2015), the Tribunal erred in applying multiplier method for awarding compensation for the injuries sustained by the claimant. All the claimants have stated that they have taken treatment in KVT Health Care Physiotherapy Hospital which is not a registered hospital and the contention of the claimants in all the claim petitions cannot be accepted. The Tribunal has fixed excessive notional income in MCOP No.6095/2012 (CMA No.414/2015), without any basis and adopted multiplier method. The learned counsel further contended that the amounts awarded by the Tribunal under different heads are exorbitant and prayed for setting aside the award of the Tribunal in all the appeals.

9. Per contra, the learned counsel appearing for the claimants contended that the claimants have proved that the accident occurred due to the negligence on the part of the driver of the bus belonging to the first respondent and insured with the second respondent/insurance company. The Tribunal, considered the oral and documentary evidence let in by the claimants in each and every case and awarded compensation under different heads which are not excessive and prayed for dismissal of all the appeals.

10. Heard the learned counsel for the parties and perused the materials available on record.

11. The contention of the learned counsel for the second respondent / insurance company that the amounts awarded by the Tribunal under various heads to all the claimants are excessive has considerable force. It is seen from the records that the Tribunal has awarded Rs.30,000/- as compensation in MCOP Nos.6088/2012 (CMA No.410/2015), 6090/2012 (CMA No.412/2015), 6096/2012 (CMA No.415/2015), 6097/2012 (CMA No.416/2015) & 6098/2012 (CMA No.417/2015) 2012, based on the OP chits. Considering the nature of injuries sustained by the claimants in

the said claim petitions, the amounts awarded by the Tribunal is excessive and hence the same is reduced to Rs.10,000/- in each of the claim petitions.

MCOP No.6084 of 2012 (CMA No.409/2015)

As far as compensation awarded by the Tribunal in this case is concerned, the injured is a minor student, aged 11 years at the time of accident. Based on the guidelines issued by the Hon'ble Apex Court, the Tribunal had applied multiplier method for awarding compensation towards continuing permanent disability by adopting multiplier 18, since the claimant was aged 11 years, by giving valid reasons and the same is in order. However, the Tribunal has taken notional income of the claimant as Rs.7,000/- per month and the same is excessive. Hence, the notional income of the minor claimant is fixed as Rs.45,000/- per annum and the amount awarded by the Tribunal towards continuing permanent disability is reduced to Rs.1,62,000/- [45000 x 18 x 20%]. The amount awarded by the Tribunal under the heads of deprivation of pleasure and enjoyment, transportation, attender charges and damages to clothes are excessive and hence they are reduced to Rs.50,000/-, Rs.10,000/-, 15,000/- and Rs.1,000/- respectively. The amounts awarded by the Tribunal towards pain and suffering, extra nourishment, loss of amenities and medical expenses are reasonable and hence they are confirmed. The amount of Rs.40,000/- awarded by the Tribunal towards loss of income to parents is not proper and hence the same is set aside. Thus, the amount awarded by the Tribunal is modified as follows -

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Continuing permanent Disability	3,02,400/-	1,62,000/-	Reduced
2.	Deprivation of pleasure and enjoyment	1,00,000/-	50,000/-	Reduced
3.	Transportation	30,000/-	10,000/-	Reduced
4.	Extra Nourishment	50,000/-	50,000/-	confirmed
5.	Pain and Suffering	75,000/-	75,000/-	confirmed

6.	Attender charges	50,000/-	15,000/-	Reduced
7.	Loss of income to parents	40,000/-	-	Set aside
8.	Loss of amenities	20,000/-	20,000/-	Confirmed
9.	Medical expenses	33,428/-	33,428/-	Confirmed
10.	Damages to clothes	3,000/-	1,000/-	Reduced
	Total	7,03,826/-	4,16,428/-	Reduced by Rs.2,87,398/-

Rounded off to Rs.4,16,500/-

MCOP No.6089 of 2012 (CMA No.411/2015)

The learned counsel for the appellant contended that as far as a claimant in this case is concerned, he is the complainant. On his complaint, case was registered in FIR No.1358/2012. In the FIR, he has stated that he is not admitted in the hospital since he has not suffered any injuries. He only attended the other injured persons. From the records, it is seen that in the evidence, the claimant, as P.W.3 has deposed that he has not taken treatment as inpatient and he was treated only as outpatient. In view of the above, the entire award amount granted by the Tribunal is set aside and he is entitled only to a sum of Rs.15,000/- as compensation.

MCOP No.6091 of 2012 (CMA No.413/2015)

As far as compensation awarded by the Tribunal in this case is concerned, it is seen from the records, that P.W.8-Doctor has certified the percentage of disability with regard to the disability suffered by the claimant and nature of injuries. Since the claimant has not suffered any fracture, the Tribunal has reduced the disability to 15% and awarded a sum of Rs.30,000/- by granting Rs.2,000/- per percentage of disability. The said amount is reasonable and hence the same is confirmed. The amount awarded by the Tribunal under the heads of Pain & Suffering, Extra nourishment, transportation, attender charges and damages to clothes are excessive and hence they are reduced to Rs.20,000/-, Rs.10,000/-, 5,000/-, Rs.5,000/- and Rs.1,000/- respectively. The amounts awarded by the Tribunal under other heads are reasonable and hence they are confirmed. Thus, the amount awarded by the Tribunal is modified as follows -

S.No	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Continuing disability	30,000/-	30,000/-	Confirmed
2.	Pain and suffering	40,000/-	20,000/-	Reduced
3.	Extra Nourishment	30,000/-	10,000/-	Reduced
4.	Transportation	25,000/-	5,000/-	Reduced
5.	Medical bills	22,948/-	22,948/-	Confirmed
6.	Loss of income	32,500/-	32,500/-	Confirmed
7.	Loss of amenities	15,000/-	15,000/-	Confirmed
8.	Attender charges	30,000/-	5,000/-	Reduced
9.	Damages to clothes	3,000/-	1,000/-	Reduced
	Total	2,28,448/-	1,41,448/-	Reduced by Rs.87,000/-

Rounded off to Rs.1,41,500/-

MCOP No.6095 of 2012 (CMA No.414/2015)

As far as compensation awarded by the Tribunal in this case is concerned, the claimant is a house wife. However, the Tribunal has applied multiplier method on assumption with regard to the disability suffered by the claimant. The claimant is a house wife and she has not let in any evidence to prove that she has suffered functional disability and she is totally immobilized and is unable to do any work as done earlier. The Tribunal, in such circumstances, erred in adopting multiplier method for granting compensation. Hence, the claimant is entitled to compensation only by granting Rs.2000/- per percentage of disability for 60% disability suffered by her. Thus, the amount awarded by the Tribunal under the head loss of earning power at Rs.7,95,600/- is reduced to Rs.1,20,000/- [60 x 2,000/-]. Similarly, the amounts awarded by the Tribunal under various heads are excessive. The claimant has not filed any document with regard to transport charges. Hence, the

amount awarded by the Tribunal at Rs.50,000/- is modified to Rs.5,000/-. The amount awarded under the head extra nourishment is reduced from Rs.75,000/- to Rs.25,000/-. The claimant has taken treatment as inpatient from 19.08.2012 to 19.09.2012, i.e. for 20 days. The Tribunal has awarded a sum of Rs.1,00,000/- towards attender charges which is excessive and the same is reduced to Rs.10,000/-. The amount awarded under the head pain & suffering is reduced to Rs.25,000/-. The amount awarded under the medical expenses are confirmed. The amounts awarded under the heads loss of amenities and damages to clothes are reduced to Rs.25,000/- and Rs.1,000/- respectively. With regard to future medical expenses, the claimant has not filed any document to show that she has to undergo future treatment or she requires further treatment. Hence, the amount of Rs.1,00,000/- awarded by the Tribunal is reduced to Rs.10,000/-. Thus, the amount awarded by the Tribunal is modified as follows -

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning power	7,95,600/-	1,20,000/-	Reduced
2.	Transport to hospital	50,000/-	5,000/-	Reduced
3.	Extra Nourishment	75,000/-	25,000/-	Reduced
4.	Pain and suffering	1,00,000/-	25,000/-	Reduced
5.	Medical expenses	1,28,208/-	1,28,208/-	Confirmed
6.	Attender charges	1,00,000/-	10,000/-	Reduced
7.	Damages to clothes	3,000/-	1,000/-	Reduced
8.	Loss of amenities	1,00,000/-	25,000/-	Reduced
9.	Future medical expenses	1,00,000/-	10,000/-	Reduced
	Total	14,51,808/-	3,49,208/-	Reduced by Rs.11,02,600/-

Rounded off to Rs.3,49,200/-

In the result -

(i) All the Civil Miscellaneous Appeals are partly allowed, modifying the award of the Tribunal, details as follows -

MCOP / CMA Nos.	Amount Awarded by the Tribunal	Amount Awarded by this Court
6084 of 2012 / 409 of 2015	Rs.7,03,900/-	Rs.4,16,500/-
6088 of 2012 / 410 of 2015	Rs.30,000/-	Rs.10,000/-
6089 of 2012 / 411 of 2015	Rs.2,37,376/-	Rs.15,000/-
6090 of 2012 / 412 of 2015	Rs.30,000/-	Rs.10,000/-
6091 of 2012 / 413 of 2015	Rs.2,28,449/-	Rs.1,41,500/-
6095 of 2012 / 414 of 2015	Rs.14,51,808/-	Rs.3,49,200/-
6096 of 2012 / 415 of 2015	Rs.30,000/-	Rs.10,000/-
6097 of 2012 / 416 of 2015	Rs.30,000/-	Rs.10,000/-
6098 of 2012 / 417 of 2015	Rs.30,000/-	Rs.10,000/-

(ii) The second respondent/insurance company is directed to deposit the modified award amount in all the claim petitions/CMAs, less the amount already deposited, if any, along with interest and costs to the credit of the respective claim petitions, on the file of the IV Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai, within a period of six weeks from the date of receipt of copy of this judgment;

(iii) On such deposit being made, the claimants are permitted to withdraw the modified award amount, less the amount already withdrawn, if any, alongwith accrued interest and costs by making necessary applications before the Tribunal. No costs.

(iv) The second respondent / insurance company is permitted

to withdraw the excess amount, if any lying to the credit of the claim petitions alongwith proportionate interest and costs.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

1. The IV Judge,
Small Causes Court,
(Motor Accidents Claims Tribunal),
Chennai,
2. The Section Officer,
VR Section, High Court,
Madras. (2 Copies)

+1cc to Mr.A.A.Venkatesan, Advocate, S.R.No.80691

+1cc to Mr.J.Chandran, Advocate, S.R.No.80984

CMA.Nos.409 to 417 of 2015

NMI (CO)
CS/01/02/2019



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