

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2009 and 2010 of 2015
and M.P.No.1 of 2015

M/s.United India Insurance Co.Ltd.,
No.134, Silingi Buildings
Greams Road,
Chennai-6

...Appellant in both CMAs

VS

1.Minor M.Anil Kumar

..1st petitioner/1st respondent
in CMA.No.2009/2015

2.Minor M.Sujitha
Rep. By their father &NFS
Muralidharan

..1st petitioner/1st respondent
in CMA.No.2010/2015

3.S.Anifa

..2nd Respondent in both CMAs.

Civil Miscellaneous Appeals filed against the judgment and decree dated 19.01.2015 made in M.C.O.P.No.575 of 2013 and 576 of 2013 on the file of Motor Accident Claims Tribunal, Fast Track Court-III, Chennai.

For appellant

: : Mr.S.Arun Kumar

for Respondents

: : Mr.K.Suryanarayanan for R1 in both

J U D G M E N T

C.M.A.Nos.2009 of 2010 and 2010 of 2015 are filed by the

appellant-Insurance Company, challenging the quantum of award amount granted to the Minor Petitioner M.Anil Kumar, represented by his father Muralidharan, in M.C.O.P.No.575 of 2013 and Minor M.Sujitha, rep. by her father Muralidharan in M.C.O.P.No.576 of 2013 dated 19.01.2015 on the file of Motor Accident Claims Tribunal, Fast Track Court-III, Chennai.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of the Petitioners is that on 20.08.2012, at about 8.30 hours, while the minor petitioners were travelling as passengers in an auto bearing Reg.No.TN 07 AJ 6692 near Sairam School, Pudupakkam, due to rash and negligent driving by the driver of the said auto, the auto hit against the car and met with the accident, resulting in the minor petitioners suffering severe brain storm and multiple injuries all over their body. It is stated in the petition before the Tribunal that the driver of the said auto driver is responsible for the accident. At that time, the minor petitioners viz., M.Anil Kumar and M.Sujitha were the students aged 13 and 15 years respectively and due to severe head injury and other grievous injuries suffered by them, they are unable to concentrate on their studies. In M.C.O.P.No.575 of 2013(CMA.No.2009/2015), injured

M.Anil Kumar is stated to have suffered severe head injury, crush injuries in the left hand, loss of tooth, amputation of left hand little finger and multiple injuries all over the body and for the same, claimed compensation of Rs.10,00,000/-. M.Sujitha, petitioner in M.C.O.P.No.576 of 2013(CMA.No.2010/2015) is stated to have suffered severe head injury, Post OP grade II supra condylar fracture distal femur left with knee spanning, distal femur left with knee spanning ext, fix insidis with posttra medial and multiple injuries all over the body and seeks a sum of Rs.15,00,000/- as compensation from the respondents, who are the owner and insurer of the said vehicle.

3. On the other hand, opposing the petitions, the 2nd respondent-Insurance Company filed counter and contends that the auto bearing Reg.No.TN-07-AJ-6692 was not involved in the accident and the petitioners are to prove that the said vehicle was insured with the 2nd respondent herein. The claim of the petitioners about the manner in which the accident occurred and the injury suffered by them are denied. The driver of the auto was not having valid licence at the time of the accident. Thus, the 2nd respondent sought for dismissal of both the petitions.

4. Before the Tribunal, the Petitioners examined P.W.1 to P.W.3, produced documents Ex.P.1 to Ex.P.13 to prove their claim. On the side of the 2nd respondent, neither oral nor documentary evidence was let in. The Tribunal on the basis of available evidence, found that the negligence of the auto driver alone caused the accident and directed the 2nd respondent to pay a sum of Rs.8,42,500/- to the petitioner in M.C.O.P.No.575 of 2013 and a sum of Rs.9,77,200/- to the petitioner in M.C.O.P.No.576 of 2013.

5. Aggrieved over the said finding of the tribunal, the 2nd respondent/Insurance Company has come forward with the present two appeals.

6. The learned counsel for the Appellant/Insurance Company contends that the Tribunal failed to consider the evidence on record properly. The Tribunal, without considering the fact that the medical experts, who deposed as P.W.2 and P.W.3 did not enclose any calculation sheet with the disability certificate issued by them, awarded higher compensation. On the basis of unscientific assessment, experts

who deposed as P.W.2 and P.W.3 assessed the disability of the minor petitioners in M.C.O.P.Nos.575/13 and 576/13 as 25% and 45% respectively, without any basis. The amount awarded by the tribunal under various heads is highly excessive. Hence, the appellant/2nd respondent-insurance company seeks reduction of quantum of award amount by allowing the present appeals.

7. Per contra, the learned counsel for the Petitioners/claimants/respondents in both petitions contends that the Tribunal on appreciation of available evidence on record awarded just and fair compensation. The same need not be interfered with and no ground is made out by the 2nd respondent/appellant/insurance company to interfere with the award passed by the Tribunal. Hence, the petitioners/claimants/respondents in both CMAs sought for dismissal of the appeals.

8. The petitioners' claim is that while they were travelling in the autorickshaw bearing Reg.No.TN-07-AJ-6692 in Pudupakkam, near Sairam School, the minor petitioners suffered injuries due to the accident caused because of the negligence of the driver of the said

auto. The Police registered the case against the driver of the auto as per Ex.P.1. The father of the petitioners who deposed as P.W.1 stated that due to rash and negligent driving by the driver of the said auto, the accident occurred. There is no contra evidence adduced to disprove the claim of the petitioners. Further Ex.P.1-FIR is registered against the driver of the auto only. As such, it is clear that the rash and negligent driving of the 1st respondent auto driver alone caused the accident. According to P.W.1, in M.C.O.P.No.575 of 2013, the injured M.Anil Kumar is stated to have suffered sever head injury, crush injury in the left hand, loss of tooth, amputation of left hand little finger and multiple injuries all over the body. M.Sujitha, petitioner in M.C.O.P.No.576 of 2013 is stated to have suffered severe head injury, Post OP grade II supra condylar fracture distal femur left with knee spanning, distal femur left with knee spanning ext, fix insidis with postra medial and multiple injuries all over the body. It is also stated that they underwent treatment as inpatient in the Chettinad Hospital, Chennai, from 20.08.2012 to 01.09.2012; thereafter again admitted on 10.09.2012 and discharged on 08.10.2012 and again admitted on 19.11.2012 and discharged on 28.11.2012 and continued treatment in the above said hospital. It is evident from Ex.P.4 to Ex.P.6-Discharge

summary issued by the said hospital that they underwent treatment during the above said period. The doctors who deposed as P.W.2 and P.W.3 stated that the injuries suffered by the minor petitioners are treated by them and they issued disability certificate Ex.P.10 and Ex.P.11. According to P.W.2, the petitioner Anil Kumar suffered 15% + 15% = 30% permanent disability. The Tribunal while considering the disability certificate given by P.W.2 fixed the disability as 25%. This the appellant/insurance company submits that is on the higher side and sought to reduce the same.

9. The learned counsel for the petitioner in M.C.O.P.No.575 of 2013 claims that the doctor personally examined the petitioner and fixed the disability and in the absence of any contra evidence, there is no reason to reduce the disability. The Tribunal has fixed the disability suffered by the petitioner in M.C.O.P. No.575 of 2013 at 25% instead of 30% fixed by the doctor, even though there is no contra evidence. Hence, considering the fact that the petitioner suffered grievous injury and fracture, it will be appropriate to fix disability at 30% for the petitioner in MCOP.575 of 2013.

10. In M.C.O.P.No.576 of 2013, P.W.3 doctor fixed 45% disability and the tribunal, while considering the case, fixed 40% disability and the Tribunal awarded Rs.3,00,000/- and Rs.4,00,000/- as lumpsum compensation towards disability for the petitioners in MCOP.Nos.575 and 576 of 2013 respectively. This the appellant/2nd respondent/Insurance company contends that the lumpsum compensation awarded is totally erroneous and sought reduction.

11. Considering the nature of injuries suffered and the petitioner being students, it will be appropriate to apply percentage method to calculate loss of income due to disability. Hence, considering the fact that the petitioners suffered grievous injury and fracture, it is appropriate to fix disability at 30% for the petitioner in MCOP.575 of 2013 and 45% for the petitioner in MCOP.No.576 of 2013. The calculation of compensation is as under:-

Towards disability

MCOP.No.575 of 2013 :- $30\% \times 3000 = \text{Rs.}90,000/-$

MCOP.No.576 of 2013 :- $45\% \times 3000 = \text{Rs.}1,35,000/-$

12. Considering the nature of injury suffered by the petitioners

and that the petitioners would have undergone severe pain and suffering, it will be appropriate to allow 40,000/- towards pain and suffering.

13. In all, the modified compensation granted by this court in M.C.O.P.No.575 of 2013 is as under:-

Sl. No	Heads	Amount awarded by the tribunal	Amount awarded by this Court
1.	Disability	3,00,000.00	90,000/-
2.	Pain and suffering	1,00,000.00	40,000/-
3.	Extra nourishment	1,00,000.00	25,000/-
4.	Transport to Hospital	75,000.00	15,000/-
5.	Damages to clothes	3,000.00	3,000/-
6.	Attender charges	50,000.00	20,000/-
7.	Medical expenses	14,457.00	14,457/-
8.	Loss of Amenities	1,00,000.00	50,000/-
9.	Loss of marital status	1,00,000.00	---
10.	Towards future medical expenses	---	50,000/-
	Total	Rs.8,42,457.00 rounded off to Rs.8,42,500/-	Rs.3,07,457

14. In M.C.O.P.No.576 of 2013, the modified compensation granted by this court is as under:-

Sl. No	Heads	Amount awarded by the tribunal	Amount awarded by this Court
1.	Disability	4,00,000.00	1,35,000/-
2.	Pain and suffering	1,00,000.00	50,000/-
3.	Extra nourishment	1,00,000.00	25,000/-
4.	Transport to Hospital	75,000.00	20,000/-
5.	Damages to clothes	3,000.00	3,000/-
6.	Attender charges	50,000.00	25,000/-
7.	Medical expenses	49,151.00	49,151/-
8.	Loss of Amenities	1,00,000.00	50,000/-
9.	Loss of marital status	1,00,000.00	---
10.	Towards future medical expenses	---	50,000/-
	Total	Rs.9,77,151.00 rounded to Rs.9,77,200/-	Rs.4,07,151/-

15. In the result, the Civil Miscellaneous Appeals are Partly allowed. The amount awarded by the Tribunal in MCOP.Nos.575 of 2013 and 576 of 2013 viz., 8,42,500/- and 9,77,200/- are reduced to Rs. 3,07,457/- and Rs.4,07,151/- respectively. The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The Appellant –Insurance Company is entitled to withdraw the excess amount lying in deposit and the Tribunal shall refund the same, after satisfying the award passed by this court. The award amount of the 1st Respondent/minor petitioner in both CMAs

shall be invested in fixed deposit in a Nationalised bank until they attain majority and the interest accrued therein shall be withdrawn by the father of the petitioners once in 3 months. No costs. Consequently, connected MP is closed.

Index:Yes/No
Internet:Yes/No
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To

20.03.2018

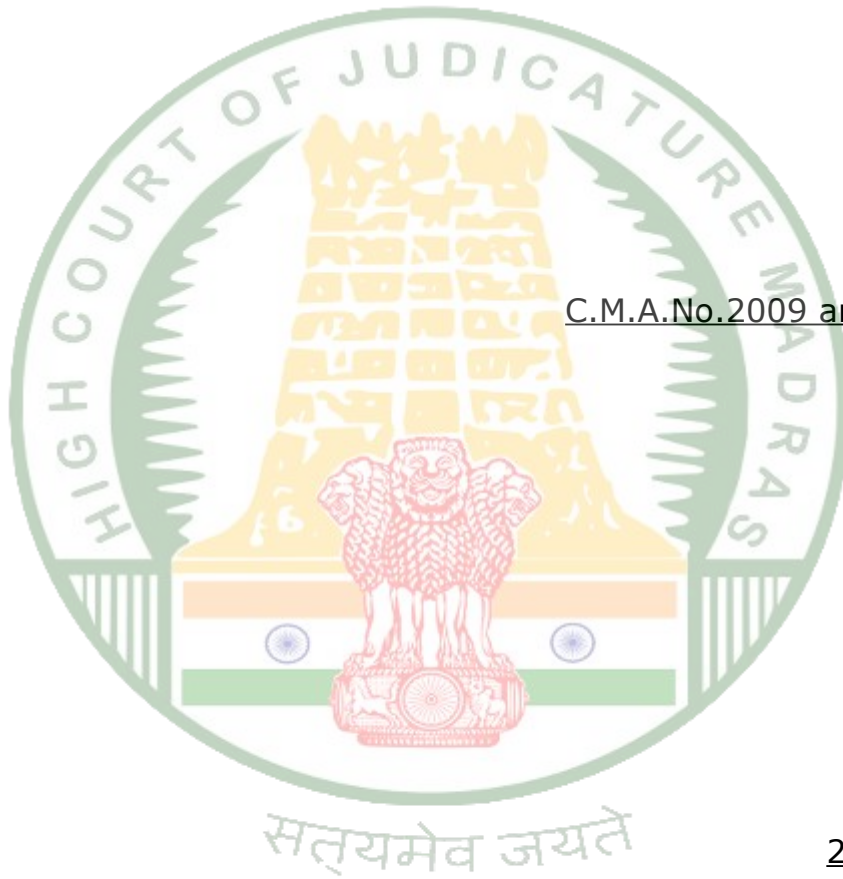
- 1.The Motor Accident Claims Tribunal,
Fast Track Court-III, Chennai.
- 2.The Section Officer,
V.R.Section, High Court, Madras.



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S.BASKARAN, J.

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2015

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