

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.2789 & 2790 of 2011
and
M.P.Nos.1 & 1 of 2011

(Through Video Conferencing)

C.M.A.No.2789 of 2011

The Divisional Manager,
The United India Insurance Co., Ltd.,
No.46-51, T.K.M Complex, First Floor,
Katpadi Road, Vellore. ... Appellant /2nd Respondent

Vs.

- 1.Minor V.Chandran
(rep.by his father Vasu as next
friend and guardian)
- 2.The Proprietor,
Sri A.A.A.Bus Service,
No.51, Avalkara Street,
Kosapet, Vellore Taluk & District.
... Respondents/Petitioner/Ist Respondent

C.M.A.No.2790 of 2011

The Divisional Manager,
The United India Insurance Co., Ltd.,
No.46-51, T.K.M Complex, First Floor,
Katpadi Road, Vellore. ... Appellant /2nd Respondent

Vs.

- 1.Ausiya Bee
- 2.Jinna Mohammed
- 3.The Proprietor,
Sri A.A.A.Bus Service,
No.51, Avalkara Street,
Kosapet,
Vellore Taluk & District.
... Respondents /Petitioner/Ist Respondent

Prayer in Both CMAs : Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Common Judgment and Decrees dated 31.12.2010 made in M.C.O.P.Nos.125 & 131 of 2009 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) Vellore .

For Appellant : Mr. M.Krishnamoorthy
in both C.M.As.

For Respondents : R1-Mr.M.Sivakumar
in C.M.A.No.2789/2011

R1 & R2 - Mr.V.Jaganathan
in C.M.A.No.2790/2011

No Appearance for R2 in
C.M.A.No.2789/2011 and R3
in C.M.A.No.2790/2011

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

By this common Judgment, both the Civil Miscellaneous Appeals are being disposed.

2. These appeals have been filed by the appellant-insurance company against a common judgment and two separate decrees dated 31.12.2010 passed by the Motor Accidents Claims Tribunal ((Chief Judicial Magistrate) Vellore in M.C.O.P.Nos.125 & 131 of 2009.

3. By the impugned common judgement and two separate decrees dated 31.12.2010, the Tribunal has allowed the claim petitions and has awarded a sum of Rs.1,32,000 /- along with interest at 7.5% p.a. as compensation in M.C.O.P.No.125 of 2009 (impugned in C.M.A.No.2789 of 2011) and Rs.3,71,000/- along with interest at 7.5% p.a. as compensation in M.C.O.P.No.131 of 2009 (impugned in C.M.A.No.2790 of 2011).

4. The facts of the case as narrated in the claim petition were that on 08.10.2008 at about 6.30 p.m. when the 1st respondent in C.M.A.No.2789 of 2011 along with the deceased Samsudhin and others were travelling in an auto bearing Reg.No.TN.32-Q-2563, the insured bus bearing Reg.No.TN-49-L-9139 allegedly driven by its driver in a rash and negligent manner overtook another bus and hit the rear side of the auto, which was proceeding ahead as a result of which, the 1st respondent in C.M.A.No.2789 of 2011 sustained grievous injuries in his right and left leg and other injuries and all over his body. The deceased Samsudhin who was a co-passenger in the auto was thrown out from the auto and sustained grievous injury and died on the spot. Thus, his legal representative filed M.C.O.P.No.131 of 2009.

5. Both the appeals have filed by the appellant-Insurance Company. It has questioned the involvement of the insured vehicle in the accident. It is submitted that the quantum of compensation awarded to the first respondent/claimant in M.C.O.P.No.125/2009 (1st respondent in C.M.A.No.2789/2011) was also excessive.

6. Heard the learned counsel for the appellant-insurance company and the learned counsel for the 1st respondent in C.M.A.No.2789 o 2011 and 1st and 2nd respondents in C.M.A.No.2790 o 2011.

7. As far as the involvement of insured vehicle is concerned, it is submitted that though in the FIR lodged before the police station, the respondents did not mention the vehicle number. However, on perusal of other records, it is evident that charges were framed against the driver of the insured bus though the driver of the vehicle has disputed his involvement in the accident before the Tribunal. However, the appellant/Insurance Company has not produced any evidence to distance itself from the liability.

8. Considering the same, I am inclined to upheld involvement of the insured bus in the accident. As far as the appeal against the Judgment and decree dated 31.12.2010 in C.M.A.No.2790 of 2011 (M.C.O.P.No.131 of 2009) is concerned, pertains to compensation awarded R1 and R2 due to the death arising out of the said accident. I am therefore inclined to confirm the amount awarded by the Tribunal in absence of appeal (M.C.O.P.No.131 of 2009).

9. Accordingly, the compensation amount awarded by the Tribunal in M.C.O.P.No.131 of 2009 is confirmed. C.M.A.No.2790/2011 is therefore liable to be dismissed.

10. As far as amount of compensation awarded by the Tribunal in C.M.A.No.2789/2011 (in M.C.O.P.No.125 of 2009) is concerned , I am of the view that the amount awarded under the heads of permanent disability Rs.70,000, a sum of Rs.10,000/- towards loss of expectation of life and Rs.17,000/- towards pain and suffering are required to be modified.

11. Considering the nature of injury suffered by the first respondent /claimant in C.M.A.No.2789 of 2011, the amount awarded by the Tribunal towards pain and suffering is enhanced to Rs.25,000/-. The Tribunal has awarded a sum of Rs.10,000/- towards loss of amenities. It is reduced to Rs.4,000/-. Further, the Tribunal has awarded a sum of Rs.12,000/- towards

loss of earning and a sum of Rs.10,000/- towards loss of expectation of life. Both heads are to be disallowed. Thus, the compensation awarded by the Tribunal (in M.C.O.P.No.125 of 2009) impugned in C.M.A.No.2789 of 2011 is re-quantified as follows:-

Heads	Award of the Tribunal	Re-quantified amount by this Court	Status (Enhanced or Reduced or Confirmed or granted)
Loss of earning	Rs. 12,000/-	-	Deleted
Transportation	Rs. 4,000/-	Rs. 4,000/-	Confirmed
Extra nourishment	Rs. 4,000/-	Rs. 4,000/-	Confirmed
Damage to cloth and articles	Rs. 1,000/-	Rs. 1,000/-	Confirmed
Medical expenses	Rs. 4,000/-	Rs. 4,000/-	Confirmed
Permanent disability	Rs. 70,000/-	Rs. 70,000/-	Confirmed
Pain and suffering	Rs. 17,000/-	Rs. 25,000/-	Enhanced
Loss of amenities	Rs. 10,000/-	Rs. 4,000/-	Reduced
Loss of expectation of life	Rs. 10,000/-	-	Deleted
Total	Rs.1,32,000/-	Rs.1,12,000/-	Reduced to Rs.20,000/-

12. In fine, C.M.A.No.2789 of 2011 is partly allowed and C.M.A.No.2790 of 2011 is dismissed.

C.M.A.No.2789 of 2011

13. The appellant-Insurance Company is therefore directed to deposit the aforesaid sum of Rs.1,12,000/- together with interest at 7.5% per annum from the date of numbering of the claim petition till the date of such deposit, less the amount already deposited if any in M.C.O.P.No.125 of 2009 impugned in CMA.No.2789 of 2011, within a period of six weeks from the date of receipt of a copy of this Judgment.

14. Since the 1st respondent is a minor, the said award amount shall be deposited by the Tribunal in anyone of the nationalised Bank under re-investment scheme till he attains majority.

15. The father of the 1st respondent/minor, who is guardian, is permitted to withdraw the accrued interest from the deposit of the minor once in three months directly from the said Bank. On attaining the age of majority, the 1st respondent may be permitted to withdraw the award amount by filing suitable application before the Tribunal. No cost. Consequently, connected miscellaneous petition is closed.

C.M.A.No.2790 of 2011

16. The appellant-Insurance Company is directed to deposit a sum of Rs.3,71,000/- awarded by the Tribunal together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit and cost if any as was directed by the Tribunal in the impugned Judgment and Decree, less amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this Judgment.

17. On such deposit, the 1st and 2nd respondents/claimants in M.C.O.P.No.131 of 2009 are permitted to withdraw the award amount equally along with proportionate interest and costs, by filing suitable application before the Tribunal, less the amount if any, already withdrawn. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To:

1.The Motor Accident Claims Tribunal
(Chief Judicial Magistrate) Vellore .

2.The Section Officer,
VR Section, High Court, Madras.

+2cc to Mr.V.Jaganathan, Advocate Sr.27613, 27614

C.M.A.Nos.2789 & 2790 of 2011 and
and M.P.Nos.1 & 1 of 2011

ak[co]
srg 03/11/2020