

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos. 2791 to 2794 of 2015
and M.P. Nos. 1 to 1 of 2015
and C.M.P. Nos. 23744 and 23745 of 2018
in Cross Objection SR. Nos. 114202 & 114206 of 2018

M/s. TATA AIG General Insurance Co. Ltd.,
Rep. By its Manager,
Jaya Enclave, 3rd Floor,
No.1057, Avinashi Road,
Coimbatore 18. ... Appellant /R2 in All CMAs

Vs.

1.S. Ramesh ...1st respondent/Petitioner
in C.M.A. No. 2791/2015

1.K.S. Shanmugam ...1st respondent/Petitioner
in C.M.A. No. 2792/2015

1.Mahalingam ...1st respondent/Petitioner
in C.M.A. No. 2793/2015

1.S.Arivazhagan ...1st respondent/Petitioner
in C.M.A. No. 2794/2015

2.The Correspondent,
Adhi Parasakthi Polytechnic & College,
Erumiyapatty Village,
Kokkarapatty Post,
Pappireddypatty Taluk,
Dharmapuri District. ... 2nd Respondent/R1
in all C.M.As.

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988 by the common award dated 29.11.2013, made in M.C.O.P. Nos. 498 to 500 and 507 of 2009, on the file of the Sub Court, (Motor Accident Claims Tribunal), Harur.

CMP.No.23744, 23745/18: Filed under Rule 24 of TN.A.C.T. Rules Partly to exempt the petitioner from paying the court fee of Rs.9,272 in the Cross objection filed in CMA.2792/2015 & Rs.2,283 in the Cross Objection filed in CMA.No.2791/2015

respectively.

Cross Objection SR. Nos. 114202 & 114206 of 2018

K.S. Shanmugam

.. Cross Objector
in Cross Obj. SR. 114206/2018 &
1st Respondent in CMA.2792/15

S. Ramesh

.. Cross Objector
in Cross Obj. SR. 114202/2018 &
1st Respondent in CMA.2791/15

Vs.

1.M/s. TATA AIG General Insurance Co. Ltd.,
Rep. By its Manager,
Jaya Enclave, 3rd Floor,
No.1057, Avinashi Road,
Coimbatore 18.

2.The Correspondent,
Adhi Parasakthi Polytechnic & College,
Erumiyapatty Village,
Kokkarapatty Post,
Pappireddypatty Taluk,
Dharmapuri District.

... Respondents in
both Cross Objections

Common Prayer: These Cross Objections are filed under Order
XLI Rule 22 of C.P.C to enhance the award granted by the
common Decree and Judgment dated 29.11.2013, made in M.C.O.P.
Nos. 498 & 499 of 2009, on the file of the Sub Court, (Motor
Accident Claims Tribunal), Harur.

(In all C.M.As)

For Appellant : Ms. C. Harini
for M/s. N. Vijayaraghavan

For Respondents: Mr. J. Pradeep
for M/s. P. Paramasiva Doss

Mr. R. Bharath Kumar (For R2)

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

Civil Miscellaneous Appeal Nos. 2791 to 2794 of 2015 have
been filed by the appellant-Insurance Company against the
common award dated 29.11.2013, made in M.C.O.P. Nos. 498 to
500 and 507 of 2009, on the file of the Sub Court, (Motor
Accident Claims Tribunal), Harur.

Cross Objection SR. Nos. 114202 & 114206 of 2018 have been filed by the Cross-Objectors/claimants to enhance the award amount granted by the Tribunal by the common award dated 29.11.2013, made in M.C.O.P. Nos. 498 & 499 of 2009, on the file of the Sub Court, (Motor Accident Claims Tribunal), Harur.

2.The appellant-Insurance Company is 2nd respondent in M.C.O.P. Nos. 498 to 500 and 507 of 2009, on the file of the Sub Court, (Motor Accident Claims Tribunal), Harur. The 1st respondent in all the appeals filed the said claim petitions, claiming a sum of Rs.5,00,000/-, Rs.10,00,000/-, Rs.1,00,000/- and Rs.50,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 14.09.2009.

3.According to the 1st respondents, on the date of accident, viz., on 14.09.2009, when the 1st respondents in C.M.A. Nos. 2791 to 2793 of 2015 were travelling in Maruti Car bearing Registration No. TN-24-Y-874, driven by the 1st respondent in C.M.A. No. 2794 of 2015 slowly, observing all the rules of the road, at about 19.00 hrs, while the said Car was proceeding in Harur to Uthangarai road near Kumarampatty bus stop, an Eicher Mini Bus bearing Registration No. TN-30-AE-T-3595 belonging to the 2nd respondent, driven by its driver in a rash and negligent manner, lost its control and dashed against the Maruti Car. In the said impact, the Maruti Car hit against a Lorry bearing Registration No. AP-03-V-1518 and caused the accident. In the accident, the occupants of the Maruti Car, who are the 1st respondents suffered grievous injuries and filed the claim petitions claiming compensation against the 2nd respondent as owner and appellant as insurer of the Eicher Mini Bus.

4.The 2nd respondent filed counter statement in all the claim petitions and denied all the averments made in the claim petitions. According to the 2nd respondent, the Eicher Mini Bus is a college bus and hence, the same was driven in a careful manner and the accident did not occur due to rash and negligent driving by the Driver of the Eicher Mini Bus belonging to them. The 2nd respondent denied age, avocation and income of the 1st respondents and prayed for dismissal of the claim petitions.

5.The appellant filed separate counter statement in all the claim petitions and denied all the averments made in the claim petitions. According to the appellant, when the Driver of the Eicher Mini Bus belonging to the 2nd respondent was driving the vehicle in the extreme left side of the road observing all the rules, the Maruti Car bearing Registration No. AP-03-V-1518 driven by the 1st respondent in C.M.A. No.

2794 of 2015 in a rash and negligent manner, lost control and dashed against the Eicher Mini Bus and caused the accident. The 2nd respondent's vehicle was temporarily registered at the time of the accident. Hence, permit was not obtained to ply the vehicle at the time of accident. For the breach of policy condition, the appellant-Insurance Company is not liable to indemnify the 2nd respondent, owner of the Eicher Mini Bus. The appellant also denied the age, avocation, income, injuries suffered, disabilities and medical expenses incurred by the 1st respondents and prayed for dismissal of the claim petitions.

6. Before the Tribunal,

(i) the 1st respondent in C.M.A. No. 2791 of 2015 examined himself as P.W.1, examined one Doctor as P.W.2 and marked 9 documents as Exs.P1 to P9.

(ii) the 1st respondent in C.M.A. No. 2792 of 2015 examined himself as P.W.1, examined two Doctors as P.W.2 and P.W.3 and marked 11 documents as Exs.P1 to P11. The appellant examined 4 witnesses as R.W.1 to R.W.4 and marked 4 documents as Exs.R1 to R4.

(iii) the 1st respondent in C.M.A. Nos. 2793 and 2794 of 2015 examined themselves as P.W.1 and marked 3 documents as Exs.P1 to P3 and 1 one document as Ex.P1 respectively. The appellant examined 4 witnesses as R.W.1 to R.W.4 and marked 4 documents as Exs.R1 to R4.

7. 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 Eicher Mini Bus belonging to the 2nd respondent and directed the appellant-Insurance Company to pay a sum of Rs.1,45,000/-, Rs.4,72,500/-, Rs.26,800/- and Rs.10,000/- as compensation to the 1st respondent in all the appeals respectively.

8. Against the said award dated 29.11.2013, made in M.C.O.P. Nos. 498 to 500 and 507 of 2009, the appellant-Insurance Company has come out with the present appeals.

9. Learned counsel appearing for the appellant-Insurance Company in all the appeals contended that the Tribunal erred in fastening liability on the appellant when the offending vehicle was plied without any valid permit on the date of accident. The Tribunal, in a mechanical manner, fastened the liability on them. The Tribunal ought to have accepted the evidence let in by the appellant and exonerated the appellant from its liability. The learned counsel appearing for the appellant in C.M.A. No. 2792 of 2015 submitted that the Tribunal, without any basis applied multiplier method in awarding compensation towards loss of earning capacity and prayed for dismissal of all the claim petitions.

10. Per contra, the learned counsel appearing for the 1st respondent contended that the 1st respondent in all the appeals suffered grievous injuries in the accident. The Tribunal considering the evidence and documents filed by the 2nd respondent, owner of the vehicle, held that the vehicle was registered and was having valid permit. The Tribunal considering the nature of treatment taken by the 1st respondents as in-patient, the disability assessed by the Doctors, granted compensation.

11(i) Learned counsel appearing for the 1st respondent further contended that the 1st respondent in C.M.A. No. 2791 of 2015 suffered fracture in the shoulder and has undergone operation. The Tribunal without considering the functional disability suffered by him, fixed only 10% towards disability and awarded meagre amount as compensation. The Tribunal has fixed meagre amount as income and ought to have followed the Minimum Wages Act to fix the compensation. The Tribunal has not awarded any amount towards future medical expenses. The learned counsel appearing for the 1st respondent in C.M.A. No. 2791 of 2015 further submitted that the 1st respondent has filed Cross-Objection for enhancement of the compensation granted by the Tribunal and the same is pending in SR stage. The learned counsel prayed for dismissal of the appeal in C.M.A. No. 2791 of 2015 and enhancement of the compensation.

11(ii) Learned counsel appearing for the 1st respondent further contended that the 1st respondent in C.M.A. No. 2792 of 2015 was working as a Police Constable and in the accident, he suffered right hip fracture and dislocation of disc and introducing of new plate was found. The Tribunal without considering the functional disability suffered by him, fixed only 15% towards disability and awarded meagre amount as compensation. The Tribunal ought to have awarded compensation towards loss of earning during the treatment period and future medical expenses. The compensation granted by the Tribunal towards pain and suffering is meagre. The learned counsel appearing for the 1st respondent in C.M.A. No. 2792 of 2015 further submitted that the 1st respondent has filed Cross-Objection for enhancement of the compensation granted by the Tribunal and the same is pending in SR stage. The learned counsel prayed for dismissal of the appeal in C.M.A. No. 2792 of 2015 and enhancement of the compensation.

12. Learned counsel appearing for the 2nd respondent contended that at the time of accident, the Bus belonging to the 2nd respondent was registered with valid permit and the insurance policy issued by the appellant was in force. Therefore, only the appellant is liable to pay compensation as awarded by the Tribunal and prayed for dismissal of all the appeals against the 2nd respondent.

13. Heard the learned counsel appearing for the appellants, 1st respondents as well as the 2nd respondent and perused the materials available on record.

14. In all the appeals, the appellant is not challenging the negligence fixed on the part of the driver of the Eicher Mini Bus belonging to the 2nd respondent. The appellant is challenging the liability fixed on them. According to the learned counsel appearing for the appellant, on the date of accident, the Eicher Mini Bus belonging to the 2nd respondent did not have permit, the 2nd respondent committed breach of policy condition by plying the Eicher Mini Bus without permit and therefore, the appellant is not liable to pay compensation and the Tribunal ought to have exonerated the appellant-Insurance Company. The said contention is contrary to the evidence on record and without merits. From the materials available on record, it is seen that the Tribunal considering the evidence of R.W.1 - Assistant of Road Transport Office, R.W.4 - Road Transport Officer, Exs.R1 to R5, has held that the offending vehicle belonging to the 2nd respondent was temporarily registered, having permit, having insurance policy and fastened the liability on the appellant. There is no error in the said finding of the Tribunal warranting interference by this Court.

15. As far as the contention of the learned counsel appearing for the appellant in C.M.A. No. 2792 of 2015 that the Tribunal erred in applying the multiplier method is concerned, the 1st respondent was working as Police Constable and he suffered continuous failure in right eye sight and hip fracture. P.W.2 - Doctor assessed that he suffered 45% disability for hip fracture and 20% disability for eye sight, totalling to 65% disability. The 1st respondent failed to prove that he suffered functional disability. From the award of the Tribunal, it is seen that the 1st respondent has not filed any document to show that he is not working now and he is not continuing his job as Police Constable and lost his earning capacity. Considering the above oral and documentary evidence with regard to future loss of earning, the multiplier method adopted by the Tribunal is not correct and the amount awarded by the Tribunal towards loss of future earning is set aside. The 1st respondent is entitled to compensation only by percentage method. The accident is of the year 2009. The 1st respondent is entitled to Rs.3,000/- per percentage for 65% disability suffered by him. Hence, a sum of Rs.1,95,000/- (Rs.3,000/- x 65%) is awarded towards disability. The 1st respondent has taken first aid treatment at Government Hospital, Harur and at Sri Gokulam Hospital and subsequently, has taken treatment at Ganga Medical Centre & Hospital (P) Ltd., Coimbatore from 15.09.2009 to 28.09.2009. The Tribunal has not awarded any amount towards attendant charges, extra

nourishment and loss of amenities. Considering the nature of injuries and the period of treatment taken, a sum of Rs.10,000/- each is awarded towards attendant charges and extra nourishment and a sum of Rs.25,000/- towards loss of amenities. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are confirmed. Thus, the compensation 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 future earning	2,95,680/-	-	Set aside
2.	Transportation	8,000/-	8,000/-	Confirmed
3.	Extra nourishment	-	10,000/-	Granted
4.	Pain and suffering	25,000/-	25,000/-	Confirmed
5.	Medical expenses as per Ex.P6	1,15,000/-	1,15,000/-	Confirmed
6.	Medical expenses as per Ex.P8	28,741/-	28,741/-	Confirmed
7.	Attendant charges	-	10,000/-	Granted
8.	Loss of amenities	-	25,000/-	Granted
9.	Disability	-	1,95,000/-	Granted
	Total	4,72,421/- rounded off to 4,72,500/-	4,16,741/- rounded off to 4,16,800/-	Reduced by Rs.55,700/-

16.(i) In the result, C.M.A. No. 2792 of 2015 is partly allowed and the compensation awarded by the Tribunal at Rs.4,72,500/- is modified to Rs.4,16,800/- together with interest and costs. The appellant-Insurance Company is directed to deposit the award amount now determined by this Court 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 judgment, to the credit of

M.C.O.P. No. 499 of 2009. On such deposit, the 1st respondent is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, less the amount already withdrawn if any, by filing necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw excess amount, if any, lying in the credit of M.C.O.P. No. 499 of 2009, if the entire award amount has already been deposited. Consequently, connected Miscellaneous Petition is closed. No costs.

(ii) C.M.A. Nos. 2791, 2793 and 2794 of 2015 are dismissed and the compensation awarded by the Tribunal at Rs.1,45,000/-, Rs.26,800/- and Rs.10,000/- are hereby confirmed. The appellant-Insurance Company 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 judgment, to the credit of M.C.O.P. Nos. 498, 500 & 507 of 2009. On such deposit, the 1st respondents are permitted to withdraw the award amount, along with interest and costs, less the amount already withdrawn if any, by filing necessary applications before the Tribunal. Consequently, connected Miscellaneous Petitions are closed. No costs.

(iii) The 1st respondents in C.M.A. Nos. 2791 and 2792 of 2015 who filed Cross Objection SR Nos. 114202 & 114206 of 2018, seeking enhancement of the compensation granted, have not made out any case for enhancement and hence, they are not entitled to enhancement of the compensation awarded by the Tribunal and the said Cross Objections are rejected at the SR stage itself. In view of the judgment passed in the Cross Objections, C.M.P. Nos. 23744 and 23745 of 2018 are dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

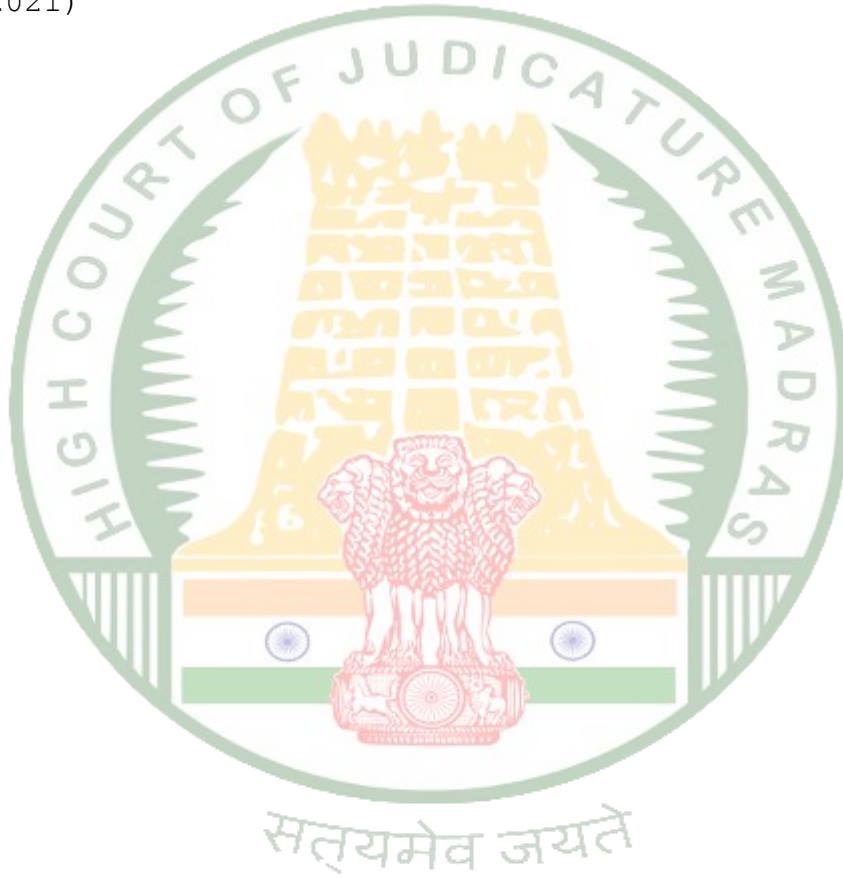
1.The Motor Accident Claims Tribunal,
The Subordinate Judge,
Harur.

Copy to: The Section Officer,
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High Court, Madras.

+4cc to Mr.N.Vijayaraghavan, Advocate SR.16918
+1cc to Mr.R.Bharath Kumar, Advocate SR.16883
+1cc to Mr.J.Pradeep, Advocate SR.15920

C.M.A. Nos. 2791 to 2794 of 2015
and M.P. Nos. 1 to 1 of 2015
and C.M.P. Nos. 23744 and 23745 of 2018
in Cross Objection SR. Nos. 114202 & 114206 of 2018

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