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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18-09-2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

Civil Miscellaneous Appeal Nos. 787 and 978 of 2016

Seethalakshmi .. Appellant in CMA 787 of 2016
1. Seethalakshmi
2. Muthu Kumar
3. Sujithra .. Appellants in CMA 978 of 2016

Versus

1. Sathish
2. The Divisional Manager
The New India Assurance Company Limited
No.1, Officers Line
Vellore
3. S. Jayaraman
4. The Branch Manager
The Oriental Insurance Company Limited
No.75, Krishnan Street
Thiruvannamalai Town .. Respondents in both Appeals

CMA No. 787 of 2016:- Appeal filed under Section 173 of The Motor Vehicles Act against the Order and Decree dated 30th October 2015 made in MCOP No. 454 of 2011 on the file of Motor Accident Claims Tribunal/Principal Subordinate Judge, Tiruvannamalai, Tiruvannamalai District.

CMA No. 978 of 2016:- Appeal filed under Section 173 of The Motor Vehicles Act against the Order and Decree dated 30th October 2015 made in MCOP No. 455 of 2011 on the file of Motor Accident Claims Tribunal/Principal Subordinate Judge, Tiruvannamalai, Tiruvannamalai District.



For Appellant : Mr. S. Silambu Selvan
in both the appeals

For Respondents : R-1 died in both the appeals

Mr. J. Chandran for R2
in both the appeals

R-3 - notice sent in both the appeals,
returned with endorsement
"vacated from the address"

Mr. K. Vinod for R4
in both the appeals

COMMON JUDGMENT

(The Common Judgment of the Court was delivered by R.Subbiah, J)

The appeals are heard through video-conferencing.

2(a). Both these appeals arise out of a common order dated 30.10.2015 passed in M.C.O.P.Nos.454 and 455 of 2011 by the Motor Accidents Claims Tribunal-cum-Principal Subordinate Court, Tiruvannamalai. By the said order, the Tribunal allowed M.C.O.P.No.454 of 2011 filed by the injured claimant and directed the second respondent/Insurance Company, which is the insurer of the Ford Car bearing Registration No.TN-25-B-6333, to pay a sum of Rs.1,65,000/- to her as compensation, together with interest at the rate of 7.5% per annum.

(b) By the same order, the Tribunal, dismissed another claim petition in M.C.O.P.No.455 of 2011 filed by the legal heirs of the deceased Ramakrishnan, who had died in the same accident on the ground that the accident had occurred only due to the rash and negligent driving of the Ford Car and since the deceased Ramakrishnan himself was the owner of the said Car, he cannot be construed as a third party to the accident. Hence, the insurer of the Ford Car is not liable to be pay the compensation amount. Aggrieved by the aforesaid common order dated 30.10.2015, the claimants in the Original Petitions are before us with these appeals.

(c) C.M.A.No.787 of 2016 (M.C.O.P.No.454 of 2011) had been filed by the injured-victim for enhancement of the compensation amount. C.M.A.No.978 of 2016 (M.C.O.P.No.455 of 2011) had been filed by the legal heirs of the deceased Ramakrishnan, questioning the finding rendered by the Tribunal in dismissing the claim petition.



(d) The averments made in both the claim petitions are common. In the claim petitions, the driver of the Car was arrayed as the first respondent. The second respondent is the insurer of the Car. The third respondent is the owner of the lorry and the fourth respondent is the insurer of the lorry.

3. In the above background, we will deal with the case projected by the claimants in the respective claim petitions.

C.M.A.No.787 of 2016 (pertaining to M.C.O.P.No.454 of 2011 (originally filed as M.C.O.P.No.175 of 2003) :

According to the claimants, on 04.06.2002 at about 2.30 pm, the deceased Ramakrishnan, along with his wife (injured-claimant Seethalakshmi) were coming to Chennai from Thiruvannamalai in a Ford Car bearing Registration No. TN 25 B 6333. The said Car was owned by the deceased himself and it was insured with the second respondent, namely New India Assurance Company Limited. The said car was driven by the first respondent, who is the driver engaged by the deceased. While the car was nearing New Perungalathur Lake, it is stated that the lorry bearing Registration No. TAV- 5755 owned by the third respondent and insured with the fourth respondent/Insurance Company, was parked on the middle of the road, without indicating any warning signal or caution board. As a result of such negligent parking of the lorry, the driver of the car rammed into the stationary lorry. In the impact, the deceased Ramakrishnan died on the spot itself. The driver of the car/first respondent as well as the injured- claimant-Seethalakshmi were taken for treatment to the Government General Hospital at Chromepet. In connection with this accident, the driver of the lorry had given a complaint to the Inspector of Police, C-7 Peerkankaranai Police Station, based on which, a case in Crime No.140/2002 was registered for the offences punishable under Sections 279, 337 and 304 (A) of IPC.

4. According to the claimants, since the driver of the car as well as the injured victim, were hospitalised, they could not prefer any complaint against the driver of the lorry immediately. It is stated that the injured claimant had sustained grievous injuries on her nose, head, leg and left eye. It is further stated that the injured claimant was subsequently taken to Apollo Hospital for treatment. According to the injured claimant, due to the injuries she sustained in the accident, she lost her vision in her left eye, besides, fracture injuries. At the time of accident, the injured claimant was 46 years old. By reason of the injuries sustained in the accident, she could not do any house hold chores and she is dependant on others. Therefore, the injured claimant had earlier filed the



claim petition in MCOP.No.175 of 2003, which was subsequently numbered as MCOP No.454 of 2011 before the Motor Accidents Claims Tribunal / Principal Subordinate Court, Tiruvannamalai, seeking compensation of Rs.10 lakhs.

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5. Opposing the claim petition, the second respondent/Insurance Company, which is the insurer of the Car, filed counter statement and denied the entire allegations made in the claim petition with respect to age and nature of injuries suffered by the claimant. The second respondent also repudiated the allegation that the injured claimant had spent Rs.1 lakh for medical treatment. It is also stated that the accident had occurred owing to the negligence on the part of the driver of the lorry, who had parked it on the middle of the road without indicating any warning signal or sign board. In any event, the claimant has not filed any documentary evidence to show the loss of earning and therefore, the second respondent/Insurance Company prayed for dismissal of the claim petition.

6. The fourth respondent-Insurance Company, which is the insurer of the lorry, has also filed a counter statement before the Tribunal repudiating the various averments relating to negligence on the part of the driver of the lorry. According to the fourth respondent/Insurance Company, the lorry was parked on the extreme left side of the road and it was the driver of the car who had driven the vehicle in a negligent manner and rammed the car into the lorry. Had the driver of the car exercised caution, the accident could have been averted. In fact, soon after the accident, it was the driver of the lorry who had given a complaint to C-7 Peerkankaranai Police Station against the driver of the car. In such view of the matter, no negligence can be attributed on the part of the driver of the lorry for the accident and consequently, the claimant is not entitled for any compensation from the fourth respondent/Insurance Company. The fourth respondent also contended that the compensation claimed at Rs.10 lakhs is onerous and it is not befitting to the nature of injuries or loss of avocation suffered by the claimant. Therefore, the fourth respondent/Insurance Company prayed for dismissal of the claim petition.

C.M.A.No.978 of 2016 (pertaining to MCOP No.455 of 2011 - originally filed as MCOP No.176 of 2003):

7. The legal heirs of the deceased Ramakrishnan have filed the claim petition in MCOP.No.455 of 2011. According to the claimants in MCOP No. 455 of 2011, the deceased Ramakrishnan was aged 53 at the time of accident. He was the Proprietor of a Hotel and was also having shares in other hotel business. It is stated that the deceased was earning Rs.50,000/- per month and on his death, the family had lost the only bread winner. After



the death of the deceased, his legal heirs - wife and two children, are finding it extremely difficult to maintain themselves without any financial support. It is specifically contended that the accident had occurred due to the negligent parking of the lorry owned by the third respondent and insured with the fourth respondent-Insurance Company. It is the further case of the claimants that the lorry was parked on the middle of the road, without any warning signal or caution board and therefore, the driver of the lorry is solely responsible for the accident. In such circumstances, the claim petition was filed claiming compensation of Rs.75 lakhs for the death of the deceased Ramakrishnan.

8. The Claim Petition was resisted by the second respondent/insurer of the car stating that the accident had occurred only due to the negligence on the part of the driver of the lorry bearing Registration No.TAV-5755, which was parked in a negligent manner on the National Highways, without indicating any warning signal or sign-board. The car was driven by its driver who is the first respondent in the claim petition, in a rash and negligent manner, as a result of which, the said car dashed on the rear side of the lorry, which was parked without any concern for the vehicles plying on the road. In any event, since the deceased Ramakrishnan is the owner of the car, his legal heirs are not entitled for a huge compensation of Rs.75 lakhs, as claimed, and therefore, they are entitled only for the personal accident coverage. The first claimant herein, namely Seethalakshmi is the wife of the deceased Ramakrishnan and she has filed a separate Claim Petition for the injuries sustained in the very same accident and therefore, she is not entitled for any compensation as a legal heir of the deceased. The second respondent/Insurance Company therefore prayed for dismissal of the claim petition.

9. The fourth respondent/Insurance Company, which is the insurer of the lorry, has filed a counter statement contending that the claimants are not entitled for the sum of Rs.75 lakhs as compensation. The fourth respondent denied the age, avocation and earning capacity of the deceased Ramakrishnan. It is also stated that the lorry insured with the fourth respondent/Insurance Company was parked on the left side of the road, but the driver of the car alone had driven the vehicle in a negligent manner and hit the stationary lorry. Therefore, it is contended that no negligence could be attributed on the driver of the lorry and consequently, the fourth respondent/Insurance Company cannot be mulcted with any liability to pay compensation to the claimants. Therefore, the fourth respondent/Insurance Company prayed for dismissal of the claim petition.



10. Before the Tribunal, common evidence was let in both the claim petitions. The deposition of injured claimant Seethalakshmi was treated as PW1 in M.C.O.P.No.454 of 2011 and PW2 in M.C.O.P.No.455 of 2011. That apart, Dr.Chandramohan was examined as PW3 on the side of the claimants. Exs.P-1 to P-9 were also marked by the claimants. On the side of the fourth respondent-Insurance Comapany, one Balaji was examined as RW1 and Photograph with negative was marked as Ex.R1.

11. The Tribunal, on a consideration of the oral and documentary evidence, has concluded that the negligence is attributable only as against the driver of the car. It was specifically pointed out by the Tribunal by placing reliance on Ex.R1, photograph that the accident had occurred in the four lane GST National Highway, where enough space is available for plying of the vehicles. Further, the lorry was parked on the extreme left side end of the National Highway, leaving abundant space for free flow of vehicles. Only a portion of the wheel on the rear side is seen to have been parked on the four lane road. Therefore, the Tribunal refused to accept the claim of the claimants that due to the negligent parking of the lorry the accident had occurred. Thus, the Tribunal has come to the conclusion that the accident had occurred only due to the rash and negligent driving of the Ford Car bearing Reg.No.TN-25-B-6333, insured with the second respondent-Insurance Company. The Tribunal also concluded that since the deceased Ramakrishnan was the owner-cum-occupier of the car, for the death of the deceased Ramakrishnan, the Insurance Company cannot be mulcted with the liability to pay compensation, since he is not a third party to the accident. By holding so, the Tribunal dismissed M.C.O.P. No.455 of 2011 filed by the legal heirs of the deceased Ramakrishnan. As against the same, C.M.A.No.978 of 2016 had been filed by the legal heirs of the deceased Ramakrishnan.

12. As far as M.C.O.P.No.454 of 2011 filed by injured Victim Seethalakshmi is concerned, Tribunal has come to the conclusion that since she had travelled only as an occupant, she is entitled for compensation. Further, the Tribunal, by placing reliance on Ex.P6, discharge summary and Ex.P9 disability certificate issued to her, taken the disability of the injured claimant at 20% as assessed by the Doctor. Therefore, for 20% of the disability, the Tribunal awarded Rs.40,000/- as compensation towards disability. Taking into account that the injured claimant sustained multiple fracture injuries on the left side of her face, upper and lower lip, nose and face, the Tribunal awarded Rs.25,000/- towards pain and suffering. Further, based on Ex.P7, medical bills, the Tribunal awarded Rs.60,000/- towards medical bills. That apart, a sum of Rs.5,000/- was awarded towards Extra Nourishment and Rs.10,000/-



towards attendant charges. Further, a sum of Rs.15,000/- was awarded towards loss of income during the period of treatment. In all, the Tribunal awarded a sum of Rs.1,65,000/- towards compensation for the injuries sustained by the claimant. The compensation amount of Rs.1,65,000/- was directed to be paid by the second respondent/Insurance company, being the insurer of the car. As against the same, C.M.A.No.787 of 2016 had been filed by the wife of the deceased Ramakrishnan.

13. As against the common award passed in the respective M.C.O.Ps., both the present appeals have been filed by the claimants in the respective claim petitions, one is to enhance the quantum of compensation awarded to the injured-victim and another is to fix the liability on the part of the Insurance Company to pay the compensation as well as to calculate the compensation amount.

14. With regard to the rash and negligent aspect is concerned, it is contended by the learned counsel for the appellant/claimant that the Tribunal has come to an erroneous conclusion as if the driver of the car alone is responsible for the accident. In this regard, for arriving at such a conclusion, the Tribunal has placed reliance on the FIR registered on the basis of the complaint given by the driver of the lorry. Since the driver of the car, namely the first respondent had sustained grievous injuries in the accident, he was not in a position to lodge a Police complaint. Further, out of two occupants of the car, one of the occupant Ramakrishnan died and the injured claimant suffered bleeding injuries. The complaint could not be given by any one of the occupants of the car also.

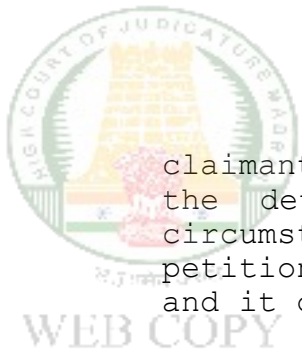
15. The learned counsel appearing for the appellants further contended that the Tribunal erred in dismissing the Claim Petition in MCOP.No.455 of 2011 solely on the basis of the First Information Report, registered on the basis of the complaint given by the driver of the lorry. The car was driven by the first respondent herein and he sustained grievous injuries in the accident. Out of the two occupants of the car, one of the occupants - Ramakrishnan died and the other occupant - injured-claimant (wife of the deceased Ramakrishnan) suffered severe bleeding injuries. It is in those circumstances, the complaint could not be given by any one of the occupants of the car. Further, during the pendency of the Claim Petition itself, the first respondent - driver of the car also died. The Tribunal did not give credence to this aspect of the matter and solely relied on the First Information Report registered against the driver of the car/first respondent herein. The Tribunal also did not take note of the fact that the deceased Ramakrishnan is the owner of the car, but he did not drive the car at the time of accident. The car was only driven by the driver - first respondent and in



such event, as an occupant of the car, the deceased Ramakrishnan could not have contributed for the accident in any manner and consequently, his legal heirs are entitled for payment of compensation. Further, the Tribunal concluded in Para No.16 of the order that only a portion of the rear side wheel of the lorry protruded into the National Highway, as per Ex.R-1. This only indicates that the driver of the lorry was negligent in parking the vehicle, but it was simply brushed aside by the Tribunal. In such circumstances, the learned counsel for the appellants prayed for setting aside the order passed by the Tribunal and to allow the appeal in C.M.A.No.978 of 2016 by awarding compensation as claimed for in the claim petition filed by the legal heirs of the deceased Ramakrishnan.

16. So far as the appeal filed by the injured-claimant in C.M.A.No.787 of 2016 for enhancement of the compensation amount is concerned, it is contended by the learned counsel for the appellant/claimant that the injured-claimant is a home-maker and she was aged 48 years at the time of accident. Immediately after the accident, the claimant was admitted in Government General Hospital at Chromepet and subsequently, she had taken treatment in Apollo Hospital, Chennai. The injured claimant had sustained injuries on her left side of the face, upper and lower lip, nose, face and other injuries all over her body. The injured claimant also sustained fracture injuries and she had taken treatment in the hospital for a prolonged period. Even after her discharge from the hospital, she had taken treatment periodically for the injuries she had sustained in the accident. As the injured claimant was a home-maker, after the accident, she could not do her normal household chores and could not take care of her children. The Doctor had assessed the disability of the injured claimant at 20%. However, the Tribunal awarded a meagre sum of Rs.40,000/- at the rate of Rs.2,000/- per percentage of disability instead of awarding at least Rs.1,00,000/- towards disability. It is also stated that the amount awarded towards pain and suffering, attendant charges and transportation, are very low and they warrant enhancement. Further, the deceased Ramakrishnan, husband of the injured claimant, was the sole bread winner of the family and on his death, the family was made to starve without any financial support. The learned counsel for the appellant/claimant therefore prayed for modification of the award passed by the Tribunal and to enhance the compensation awarded in favour of the injured claimant adequately.

17. Opposing the arguments advanced by the learned counsel for the appellant, the learned counsel for the second respondent, insurer of the car contended that the deceased Ramakrishnan himself was the owner of the car and he cannot be construed as a third party to the Insurance Policy. The



claimants did not file the copy of the Insurance Policy and also the details with respect to the premium paid. In such circumstances, the Tribunal is right in dismissing the claim petition filed by the legal heirs of the deceased Ramakrishnan and it does not call for any interference.

18. The learned counsel appearing for the fourth respondent/Insurer of the lorry contended that the accident had occurred in the day time at 2.30 pm. While so, it was the driver of the Car who, due to his negligence, had hit the stationary lorry on the rear side. When the lorry was parked on the road side, during day time, the driver of the lorry cannot be expected to either ignite the indicator lamp or to place any warning signal. Further, the driver of the lorry had given the complaint against the driver of the car for having caused damage to the lorry, based on which, a case in Crime No. 140 of 2002 was registered against the driver of the car. In any event, when the lorry was stationary, the driver of the car ought to have exercised caution and prudence in driving the car. The accident was as a result of the negligence solely attributable on the driver of the car. The Tribunal, by considering the above, has rightly dismissed the claim petition and therefore, he prayed for confirmation of the order passed by the Tribunal.

19. With regard to the quantum of compensation awarded by the Tribunal in respect of the claim made by the injured-victim is concerned, it is contended by the learned counsel appearing for the fourth respondent- Insurance Company that the Tribunal has passed a reasonable award and it calls for no interference by this Court. It is stated that the Tribunal reimbursed the entire medical expenses incurred by the claimant on the basis of Ex.P7 produced by her. Further, the amount awarded towards pain and suffering, extra nourishment, transportation and loss of income during the period of treatment are befitting to the nature of injuries sustained by the claimant as well as the period of treatment. Therefore, the learned counsel for the respondents 2 and 4 prayed for dismissal of the appeal filed by the injured claimant.

20. We have given our anxious consideration to the rival submissions. Out of the two appeals preferred by the claimants, we will first deal with C.M.A.No.978 of 2016, corresponding to M.C.O.P.No.455 of 2011, filed by the claimants seeking compensation for the death of the deceased Ramakrishnan.

21. Admittedly, the accident occurred in the day time at 2.30 pm. It is also an admitted fact that at the time of accident, the lorry bearing Registration No. TAV 5756 belonged to the third respondent and insured with the fourth respondent, was stationary. According to the claimants, the lorry was



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parked on the middle of the road and therefore, it was the driver of the lorry and the insurer of the lorry, who are liable to pay compensation to the claimants for the death of the deceased Ramakrishnan. The Tribunal dismissed the claim petition filed by the legal heirs of the deceased Ramakrishnan, by placing reliance on Ex.R-1, photograph, which reflected the manner in which the lorry was parked. Admittedly, the Insurance Company did not file the Motor Vehicle Inspector's report or any other document to show the manner in which the lorry was parked. At the same time, the Tribunal, in para No.16 of the order, had rendered a specific finding that "only a portion of the wheel on the rear side is seen to be parked in the 4 lane." This finding of the Tribunal only indicates that the lorry was not parked properly and a portion of the rear side wheel had protruded onto the road. Such parking of the lorry, in our opinion, endangers the safety of other motorists plying on the road. The accident had taken place at the day time in a four lane road, where there was enough and sufficient space for plying the vehicles. While so, the driver of the car ought to have exercised prudence and caution. But it cannot be gainsaid that the entire negligence is attributable on the part of the driver of the car alone. Therefore, we are of the view that some negligence is attributable towards the driver of the lorry. In such view of the matter, we are of the view that the Tribunal is not correct in fixing the entire liability on the part of the driver of the car alone, instead it ought to have fixed the negligence to some extent on the driver of the lorry. Having regard to our above conclusion, we fix 40% negligence on the driver of the lorry and the remaining 60% negligence on the part of the driver of the car.

22. In the light of our above finding, we proceed to determine the compensation payable to the claimants in MCOP No. 455 of 2011 corresponding to CMA No. 978 of 2016. The deceased Ramakrishnan, it is claimed, was aged 53 years at the time of accident. It is also claimed that the deceased was the Proprietor of a Hotel and also invested in other similar hotel business. However, to prove the avocation of the deceased or his income, there was no evidence produced by the claimants. At the same time, we take note of the fact that the deceased was admittedly the owner of the Ford Car bearing Registration No.TN.25.B.6333. This only indicates the wherewithal and resourcefulness of the deceased to purchase a car. Further, at the time of accident, the deceased had engaged the first respondent to drive the car. Therefore, we could easily discern that the deceased was having sufficient income to purchase a car and to engage a driver thereof. However, in the absence of any proof to show the exact income of the deceased, we have to fix his income notionally.



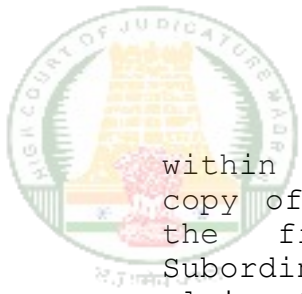
23. The accident had occurred on 04.06.2002. During such period, the deceased, in our view, could have atleast earned a sum of Rs.7,500/- per month. The deceased was 53 years old at the time of accident and therefore, 10% of the notional income of Rs.7,500/- can be taken as future prospects taking the total income of the deceased to Rs.8,250/- (Rs.7500 + Rs.750/-) per month. Applying multiplier 11, the total yearly income of the deceased could be determined at Rs.10,89,000/-. Out of this amount, 1/3rd of the amount has to be deducted towards the personal expenses of the deceased and it works out to Rs.7,26,000/- (Rs.10,89,000 - 3,63,000/-). Therefore, we fix a sum of Rs.7,26,000/- as the loss of income of the deceased.

24. The deceased left behind the injured claimant Seethalakshmi, who was aged 46 at the time of accident and two children as his legal heirs. Therefore, we are of the view that a sum of Rs.10,000/- shall be fixed towards Loss of Consortium to the first claimant and Rs.10,000/- each to the claimant Nos.2 and 3 towards loss of parental care and consortium. For loss of estate and funeral expenses, we deem it fit to award a sum of Rs.10,000/- each. In all, the claimants in CMA No. 978 of 2016 are entitled to a total sum of Rs.7,76,000/- as tabulated below:-

Loss of income	Rs.7,26,000.00
Loss of consortium to 1st claimant	Rs. 10,000.00
Loss of parental care and consortium to claimants 2 and 3 (Rs.10,000/- each)	Rs. 20,000.00
Loss of Estate	Rs. 10,000.00
Funeral expenses	Rs. 10,000.00

Total	Rs.7,76,000.00

25. Out of this amount of Rs.7,76,000/- the claimants in CMA No. 978 of 2016 are only entitled for 40% which was fixed by us towards contributory negligence on the part of the driver of the lorry. Accordingly, the appellants in CMA No. 978 of 2016 are entitled for Rs.3,10,400/-, which is payable by the fourth respondent/Insurer of the lorry. The appellants are not entitled for the remaining 60% of the compensation amount as the deceased Ramakrishnan himself was the owner and occupant of the car and consequently, the second respondent/Insurance Company cannot be mulcted with payment of any compensation in favour of the claimants. In other words, the second respondent/Insurance Company is not required to pay any amount as compensation to the appellants in CMA No. 978 of 2016. The sum of Rs.3,10,400/- is payable by the fourth respondent/Insurance Company, with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of payment. The fourth respondent/Insurance Company is directed to deposit the compensation amount of Rs.3,10,400/- with accrued interest,



within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of MCOP.No.455 of 2011 on the file of Motor Accidents Claims Tribunal/Principal Subordinate Judge, Thiruvannamalai. On such deposit, all the claimants are permitted to withdraw the compensation amount in equal proportion.

26. So far as the appeal filed by the injured-victim Seethalakshmi is concerned, namely C.M.A.No.78 of 2016, she is one of the occupants of the car owned by her husband - the deceased Ramakrishnan, at the time of accident. In the accident, she sustained grievous fracture injuries in her left side face, lower and upper lip, nose, face and all over her body. The injured claimant was admitted as in-patient in the hospital for a period of ten days and thereafter, she was discharged. The Doctor, PW3 examined before the Tribunal, assessed her disability at 20%. The Tribunal, taking into account the percentage of disability assessed by PW3, has awarded a sum of Rs.2,000/- per percentage of disability and consequently, Rs.40,000/- was awarded under the head of disability. The Tribunal also awarded a sum of Rs.25,000/- towards pain and suffering. That apart, the Tribunal ordered to reimburse the entire hospitalisation expenses incurred for treatment of the injured claimant to the tune of Rs.60,000/- as they are supported by Ex.P7, medical bills. The Tribunal also awarded Rs.5,000/- towards extra nourishment, Rs.10,000/- towards attendant charges, Rs.15,000/- towards loss of income during the period of treatment. Even though the claimant was a home maker, the Tribunal, in our opinion, had rightly assumed the income of the injured claimant for the purpose of awarding compensation under the head loss of income during the period of income and awarded Rs.15,000/- at the rate of Rs.5,000/- per month. The amount so awarded by the Tribunal, in our opinion, is befitting the nature of injuries sustained by the claimant and the period of her hospitalisation. In such circumstances, we do not find any reason to enhance the compensation awarded by the Tribunal in favour of the injured claimant. Accordingly, we confirm the Judgment and Decree dated 30th October 2015 made in MCOP No. 454 of 2011 on the file of Motor Accident Claims Tribunal/Additional Subordinate Judge, Tiruvannamalai, Tiruvannamalai District.

27. In the result:

(i) C.M.A.No.787 of 2016 filed by the injured-victim, is dismissed by confirming the Judgment and Decree dated 30th October 2015 made in MCOP No. 454 of 2011 on the file of Motor Accident Claims Tribunal/Principal Subordinate Judge, Tiruvannamalai, Tiruvannamalai District. However, in view of the findings arrived at by us, the second respondent-Insurance



Company (of the car) is liable to pay 60% of the compensation amount, and 40% of the compensation amount has to be paid by the fourth respondent-Insurance Company (of the lorry). In case the entire amount is deposited by the second respondent-Insurance Company, and the same is withdrawn by the claimant(s), the fourth respondent-Insurance Company is directed to pay 40% of the deposited amount to the second respondent-Insurance Company.

(ii) CMA No. 978 of 2016 is allowed by awarding a sum of Rs.3,10,400/- to the claimants, who are the legal heirs of the deceased Ramakrishnan. This amount of Rs.3,10,400/- is to be deposited by the fourth respondent/insurer of the lorry with interest at the rate of 7.5% per annum from the date of claim petition in MCOP No. 455 of 2011 till the date of deposit, to the credit of MCOP No. 455 of 2011 on the file of Motor Accident Claims Tribunal /Principal Subordinate Judge, Tiruvannamalai, Tiruvannamalai District within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the entire compensation amount with accrued interest, more-fully set out in the preceding paragraphs of this judgment. All the claimants are entitled to equal share in the compensation amount with interest.

No costs.

Sd/-

Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

rsh/cs

To

The Motor Accident Claims Tribunal,
Principal Subordinate Judge,
Tiruvannamalai, Tiruvannamalai District.

Copy To

The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.J. Chandran, Advocate SR.No.30544

+2cc to Mr.Elveera Ravindran, Advocate SR.No.30444, 30445

CMA Nos.787 & 978 of 2016

SRA(CO)
GMY(17/08/2021)