

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2433 to 2436 of 2017
& Cross Objection No.51 of 2018
& C.M.P.Nos.13151, 13152 of 2017, 10749 of 2018,
13153 & 13154 of 2017

C.M.A.No.2433 of 2017:

M/s.United India Insurance Company Limited,
No.104-A, Peramanur Main Road,
Peramanur, Salem - 7. ... Appellant/ 2nd Respondent

Vs.

1.Pottu

2.Minor.Logapriyan

(Minor 2nd respondent represented by
his mother, 1st respondent herein)

3.Yashodha

4.M/s.Maltanb Constructions Engineering
Private Limited,
No.1, Nandha Nagar, Singanallur,
Coimbatore.

5.K.M.Ramesh

6.M/s.The Reliance General

Insurance Company Limited,
Sri Lakshmi Complex, 1st Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri, Salem - 4. ... Respondents/Petitioners 1 to 3&
Respondents 1,3, & 4

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.09.2016 made in M.C.O.P.No.706 of 2012 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellant : Ms.I.Malar
For RR 1 to 3 : Mr.A.Sathishkumar
for Mr.S.P.Yuvaraj
For R4 &5 : No appearance
For R6 : Ms.C.Bhuvanasundari

C.M.A.No.2434 of 2017:

M/s.United India Insurance Company Limited,
No.104-A, Peramanur Main Road,
Peramanur, Salem - 7. .. Appellant/ 2nd Respondent

Vs.

1.Karunanidhi

2.Minor.Gowtham
(Minor 2nd respondent represented
by his father, 1st respondent herein)

3.M/s.Maltanb Constructions Engineering
Private Limited,
No.1, Nandha Nagar, Singanallur,
Coimbatore. .. Respondents/ Petitioners 1 & 2 &
I Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section
173 of the Motor Vehicles Act, 1988, against the Judgment and
Decree dated 16.09.2016 made in M.C.O.P.No.1169 of 2012 on the
file of the Motor Accident Claims Tribunal, Special District
Court, Salem.

For Appellant : Ms.I.Malar
For RR 1 & 2 : Mr.M.R.Thangavel
For R3 : No appearance

C.M.A.No.2435 of 2017:

M/s.United India Insurance Company Limited,
No.104-A, Peramanur Main Road,
Peramanur, Salem - 7. .. Appellant/ 2nd Respondent

Vs.

1.Mala

2.M/s.Maltanb Constructions Engineering
Private Limited,
No.1, Nandha Nagar, Singanallur,
Coimbatore.

3.K.M.Ramesh

4.M/s.The Reliance General

Insurance Company Limited,
Sri Lakshmi Complex, 1st Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri, Salem - 4.

.. Respondents/Petitioner &
Respondents 1,3 & 4

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.09.2016 made in M.C.O.P.No.1353 of 2012 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellant : Ms.I.Malar
For R1 : Ms.T.Gayathri
for Mr.C.Kulanthaivel
For R2 & 3 : No appearance
For R4 : Ms.C.Bhuvanasundari

C.M.A.No.2436 of 2017:

M/s.United India Insurance Company Limited,
No.104-A, Peramanur Main Road,
Peramanur, Salem - 7.

.. Appellant/ 2nd Respondent

Vs.

1.Ambika

2.M/s.Maltanb Constructions Engineering
Private Limited,
No.1, Nandha Nagar, Singanallur,
Coimbatore - 641 005.

3.K.M.Ramesh

4.M/s.The Reliance General

Insurance Company Limited,
Sri Lakshmi Complex, 1st Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri, Salem - 4.

.. Respondents/ Petitioner and
Respondent 1,3, & 4

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.09.2016 made in M.C.O.P.No.1494 of 2012 on the

file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellant : Ms.I.Malar
For RR 1 to 3 : No appearance
For R4 : Ms.C.Bhuvanasundari

Cross Objection No.51 of 2018:

Mala

.. Cross Appellant

Vs.

1.M/s.United India Insurance Company Limited,
No.104-A, Peramanur Main Road,
Peramanur, Salem - 7.

2.M/s.Maltanb Constructions Engineering
Private Limited,
No.1, Nandha Nagar, Singanallur,
Coimbatore.

3.K.M.Ramesh

4.M/s.The Reliance General
Insurance Company Limited,
Sri Lakshmi Complex, 1st Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri, Salem - 4.

.. Respondents

Prayer: This Cross Appeal is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 16.09.2016 made in M.C.O.P.No.1353 of 2012 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Cross Objector : Ms.I.Gayathri
For Mr.C.Kulanthaivel

For R1 : Ms.I.Malar
For R4 : Ms.C.Bhuvanasundari

For R2 & 3 : No appearance

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 dated 16.09.2016 made in M.C.O.P.Nos.706, 1169, 1353 and 1494 of 2012 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

2.The Cross-Objection has been filed by the claimant in M.C.O.P.No.1353 of 2012, seeking enhancement of compensation granted by the Tribunal in the common award dated 16.09.2016 made in M.C.O.P.No.1353 of 2012 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

3.All the appeals and the cross objection arise out of the same accident and common award. Hence, they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petitions for the sake of convenience.

4.The appellant-Insurance Company in all the appeals is the 2nd respondent in M.C.O.P.Nos.706, 1169, 1353 and 1494 of 2012 and the cross objector is the claimant in M.C.O.P.No.1353 of 2012 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem. The claimants in M.C.O.P.No.706 of 2012 filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Murugesan, the claimants in M.C.O.P.No.1169 of 2012 filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one Punitha, the claimant in M.C.O.P.No.1353 of 2012 filed the said claim petition claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by her and the claimant in M.C.O.P.No.1494 of 2012 filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by her in the accident that took place on 19.04.2012.

5.According to the claimants, on 19.04.2012 at about 08.45 hours on Attayampatty main road near Ettimaram bus stop, when the deceased Murugesan, deceased Punitha and the claimants in M.C.O.P.Nos.1353 and 1494 of 2012 were travelling in a van belonging to the 1st respondent, the driver of the van drove the same in a rash and negligent manner and dashed against the bus belonging to the 3rd respondent in M.C.O.P.Nos.706, 1353 and 1494 of 2012 and caused the accident. Due to the said accident, the said Murugesan died on the spot and the said Punitha died on the way to hospital and the claimants in M.C.O.P.Nos.1353 and 1494 of 2012 sustained multiple injuries all over their body. Therefore, the claimants filed the above said claim petitions claiming compensation against the respondents, being the owner and insurer of the van and bus respectively.

6.The first respondent in all the M.C.O.Ps and the 3rd respondent in M.C.O.P.Nos.706, 1353 & 1494 of 2012 being the owner of the van and bus respectively remained exparte before the Tribunal.

7.The second respondent-Insurance Company filed counter statement and denied all the averments made by the claimants. According to the second respondent, the accident happened only due to rash and negligent driving by the driver of the bus belonging to the 3rd respondent. Hence, the second respondent-Insurance Company is not liable to pay any compensation to the claimants. On the date of accident, the van belonging to the 1st respondent had no permit. The permit issued by RTO Coimbatore has expired on 29.11.2011, while the accident took place on 19.04.2012. The said permit was issued to run the passenger van within Coimbatore District, whereas it was plied in Namakkal District by violating the permit conditions. Since, there is no permit on the date of accident, the 2nd respondent is not liable to pay any compensation to the claimants. In any event, the total compensation claimed by the claimants are highly excessive. The claimants are not entitled to any amounts as they claimed for and prayed for dismissal of the claim petitions.

8.Before the Tribunal, on behalf of the claimants, 8 witnesses were examined as P.W.1 to P.W.8 and 26 documents were marked as Exs.P1 to P26 and Ex.X1/salary details and M.Os.1 to 5 were marked. On behalf of the respondents, two witnesses were examined as R.W.1 and R.W.2 and Insurance Policy was marked as Ex.R1 and Exs.X2 and X3 were marked.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent driving by the driver of the van belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.8,67,180/-, Rs.7,82,890/-, Rs.1,35,130 and Rs.60,400/- as compensation to the claimants in M.C.O.P.Nos.706, 1169, 1353 and 1494 of 2012 respectively and dismissed the claim petitions as against the respondents 3 and 4 in M.C.O.P.Nos.706, 1353 and 1494 of 2012.

10.Questioning the liability fixed by the Tribunal the common order dated 16.09.2016 made in M.C.O.P.Nos.706, 1169, 1353 and 1494 of 2012 the 2nd respondent-Insurance Company has come out with the present appeals.

11.The learned counsel appearing for the 2nd respondent-Insurance Company contended that there is no evidence to fix negligence on the part of the driver of the van belonging to the 1st respondent. There are two vehicles involved in the accident. The Tribunal ought to have fixed contributory negligence on the part of the driver of the bus belonging to the 3rd respondent in M.C.O.P.Nos.706, 1353 and 1494 of 2012. The Tribunal failed to see that the permit issued to the van expired on 29.11.2011,

whereas, the accident occurred on 19.04.2012. In any event, the permit was issued to the van to ply within the Coimbatore District and in violation of permit condition, the owner of the van plied the van in Namakkal District and prayed for setting aside the common award passed by the Tribunal and for allowing all these appeals.

12.The learned counsel appearing for the claimant in M.C.O.P.No.1353 of 2012 contended that the claimant was aged 26 years and was working as supervisor in Meenatchi Exports Company, Attayampatti and was earning a sum of Rs.8,000/- per month. The Tribunal has not awarded any amount towards loss of income. She suffered multiple fractures and P.W.7/Doctor assessed that the claimant suffered 41% disability and P.W.8/Doctor assessed 35% disability totalling 76% disability. The compensation awarded by the Tribunal towards disability is meagre. The claimant has taken treatment in the hospital as in-patient for 19 days from 19.04.2012 to 07.05.2012 and the compensation awarded by the Tribunal towards attendant charges and extra nourishment are meagre. The Tribunal has not awarded any amount towards loss of amenities and pain and sufferings and prayed for enhancement of compensation.

13.The learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal has awarded a sum of Rs.82,000/- towards 41% disability by fixing a sum of Rs.2,000/- per percentage of disability and also a sum of Rs.35,000/- towards 35% disability at the rate of Rs.1,000/- per percentage of disability for the claimant in M.C.O.P.No.1353 of 2012. In view of the same, the claimant is not entitled to any enhancement towards disability. The claimant has not produced any material evidence with regard to her avocation and income and any other documents to show that she lost her income due to the injuries sustained by her in the accident. In view of the same, she is not entitled to any amount towards loss of income. The claimant is not entitled to any amount towards loss of amenities. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the cross objection.

14.The 1st respondent/owner of the van remained exparte before the Tribunal and hence, notice to the 1st respondent is dispensed with.

15.Heard the learned counsel appearing for the 2nd respondent-United India Insurance Company as well as the learned counsel appearing for the claimants in C.M.A.Nos.2433, 2434 & 2436 of 2017, learned counsel appearing for the 4th respondent-

Reliance General Insurance Company and the learned counsel appearing for the claimant in C.M.A.No.2435 of 2017 and perused the entire materials on record.

16.From the materials available on record, it is seen that M.C.O.P.Nos.706 and 1169 of 2012 were filed by the legal heirs of the persons who died in the accident and M.C.O.P.Nos.1353 and 1494 of 2012 were filed for compensation for the injuries sustained by the persons travelled in the van belonging to the 1st respondent at the time of accident. One Mala, the claimant in M.C.O.P.No.1353 of 2012 was examined as P.W.2 and she is an eye-witness to the accident. She deposed that accident has occurred only due to rash and negligent driving by the driver of the van belonging to the 1st respondent. The Tribunal considering the evidence of P.W.2, pleadings and Ex.P1/F.I.R., held that accident has occurred only due to rash and negligent driving by the driver of the van belonging to the 1st respondent. There is no evidence on record to show that the driver of the bus belonging to the 3rd respondent in M.C.O.P.Nos.706, 1353 and 1494 of 2012 was also negligent and contributed for the accident. Contributory negligence cannot be fixed mechanically when two vehicles were involved in the accident. Evidence must be let in to prove the contributory negligence on the part of the drivers of both the vehicles. In the absence of evidence, the Tribunal considering the evidence of P.W.2, fixed entire negligence on the part of the driver of the van, appreciating the evidence let in before the Tribunal. There is no error in the said finding of the Tribunal warranting interference by this Court.

17.From the award passed by the Tribunal, it is seen that the permit of the van has expired on 29.11.2011 but the accident occurred on 19.04.2012. Admittedly on the date of accident, there was no valid permit for the van belonging to the 1st respondent. The permit was issued to the van only to ply within the Coimbatore District and the owner of the van plied the van in Namakkal District. The 1st respondent permitted to ply the van without permit and violated the permit condition. In view of the same, the portion of the award directing the 2nd respondent to pay the compensation to the claimants is modified directing the 2nd respondent to pay the compensation to the claimants at the first instance and then recover the same from the 1st respondent/owner of the van.

18.From the materials available on record, it is seen that P.W.7/Doctor assessed that the claimant in C.M.A.No.2435 of 2017 cross objector suffered 41% disability and the same was marked as Ex.P23 and P.W.8/Doctor assessed 35% disability, which was marked as Ex.P25. If two disability certificates are produced,

then the percentage of disability can be calculated by the following formula:

$$\frac{a + b (90-a)}{90} = \begin{matrix} \text{'a' is higher value,} \\ \text{value} \end{matrix} \begin{matrix} \text{'b' is lesser} \\ \text{value} \end{matrix}$$

Here 'a' is 41 and 'b' is 35. Therefore, the percentage of disability comes to:

$$\begin{aligned} &= \frac{41 + 35 (90-41)}{90} \\ &= \frac{41 + 19.05}{90} \\ &= 60.05\% \end{aligned}$$

19. The accident occurred in the year 2012 and the Tribunal has awarded meagre sum of Rs.2,000/- per percentage of disability. The claimant is entitled to compensation for 60% disability at the rate of Rs.3,000/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,80,000/- (Rs.3,000/- X 60% of disability). The claimant has contended that she was working as supervisor in Meenatchi Exports Company, Attayampatti and was earning a sum of Rs.8,000/- per month. The Tribunal has not awarded any amount towards loss of income. The claimant has not produced any material evidence with regard to her avocation and income. The accident occurred in the year 2012 and hence a sum of Rs.6,000/- per month is fixed as notional income of the claimant. Due to the injuries and period of treatment taken by the claimant, she would not have worked atleast for a period of three months. Therefore, the claimant is entitled to a sum of Rs.18,000/- (Rs.6,000/- X 3 months) towards loss of income. The claimant has taken treatment in the hospital as in-patient for 19 days from 19.04.2012 to 07.05.2012. The compensation awarded by the Tribunal towards attendant charges and extra nourishment are meagre and the same are enhanced to Rs.15,000/- each. The Tribunal has not awarded any amount towards pain and sufferings and loss of amenities. Therefore, a sum of Rs.20,000/- towards pain and sufferings and Rs.10,000/- towards loss of amenities are awarded by this Court. The amounts awarded by the Tribunal towards medical bills is just and reasonable and hence, the same is 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.	41% of disability	82,000/-	1,80,000/-	Enhanced
2.	35% of disability	35,000/-		
3.	Extra nourishment	10,000/-	15,000/-	Enhanced
4.	Attendant charges	5,000/-	15,000/-	Enhanced
5.	Medical expenses	2,230/-	2,230/-	Confirmed
6.	X-Ray	900/-	900/-	Confirmed
7.	Pain and suffering	-	20,000/-	Granted
8.	Loss of income	-	18,000/-	Granted
9.	Loss of amenities	-	10,000/-	Granted
	Total	Rs.1,35,130/-	Rs.2,61,130/-	enhanced by Rs.1,26,000/-

The Tribunal has awarded a sum of Rs.900/- towards X-Ray, but the same was not mentioned in the tabular column in the award and hence, the said amount is included in the award.

20.The compensation awarded by the Tribunal at Rs.1,35,130/- is hereby enhanced to Rs.2,61,130/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

21. In the result,

(i)C.M.A.No.2433 of 2017 is partly allowed and the amount of Rs.8,67,180/- awarded by the Tribunal as compensation to the claimants, along with interest and costs is confirmed. The 2nd respondent-Insurance Company is directed to deposit the amount awarded by the Tribunal along with proportionate interest and costs, less the amount, if any already deposited within a period of six weeks from the date of receipt of a copy of this common judgment to the credit of M.C.O.P.No.706 of 2012 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem, at the first instance and then recover the same from the 1st respondent-owner of the van. On such deposit, the claimants 1 and 3 are permitted to withdraw their respective share of the award amount, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the

amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor 2nd claimant is directed to be deposited in any one of the Nationalized Bank, till the minor 2nd claimant attain majority. On such deposit, the 1st claimant being the mother of the minor 2nd claimant is permitted to withdraw the accrued interest once in three months for the welfare of the minor 2nd claimant. This appeal is dismissed as against the respondents 3 and 4. No costs.

(ii) C.M.A.No.2434 of 2017 is partly allowed and the amount of Rs.7,82,890/- awarded by the Tribunal as compensation to the claimants, along with interest and costs is confirmed. The 2nd respondent-Insurance Company is directed to deposit the amount awarded by the Tribunal along with proportionate interest and costs, less the amount, if any already deposited within a period of six weeks from the date of receipt of a copy of this common judgment to the credit of M.C.O.P.No.1169 of 2012 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem, at the first instance and then recover the same from the 1st respondent-owner of the van. On such deposit, the 1st claimant is permitted to withdraw her share of the award amount along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor 2nd claimant is directed to be deposited in any one of the Nationalized Bank, till the minor 2nd claimant attains majority. On such deposit, the 1st claimant being the father of the minor 2nd claimant is permitted to withdraw the accrued interest once in three months for the welfare of the minor 2nd claimant. This appeal is dismissed as against respondents 3 and 4. No costs.

(iii) C.M.A.No.2435 of 2017 and Cross Objection No.51 of 2018 are partly allowed and the compensation awarded by the Tribunal at Rs.1,35,130/- is hereby enhanced to Rs.2,04,130/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the enhanced 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 common judgment to the credit of M.C.O.P.No.1353 of 2012 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem, at the first instance and then recover the same from the 1st respondent-owner of the van. On such deposit, the claimant is permitted to withdraw the enhanced award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal.

This appeal and cross objection are dismissed as against the respondents 3 and 4. No costs.

(iv) C.M.A.No.2436 of 2017 is partly allowed and the amount of Rs.60,400/- awarded by the Tribunal as compensation to the claimants, along with interest and costs is confirmed. The 2nd respondent-Insurance Company is directed to deposit the amount awarded by the Tribunal along with proportionate interest and costs, less the amount, if any already deposited within a period of six weeks from the date of receipt of a copy of this common judgment to the credit of M.C.O.P.No.1494 of 2012 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem, at the first instance and then recover the same from the 1st respondent-owner of the van. On such deposit, the claimant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. This appeal is dismissed as against the respondents 3 and 4. No costs. Consequently the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

krk

To

1.The Special District Judge,
Motor Accident Claims Tribunal,
Salem.

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

1 cc to Mr.T. Ravichandran, Advocate, Sr. 4794
1 cc to Mr.S.P.Yuvaraj, Advocate, Sr. 4223
1 cc to Mr.C. Anbu, Advocate, Sr. 4266
1 cc to Mr.C. Kulanthaivel, Advocate, Sr. 4443

C.M.A.Nos.2433 to 2436 of 2017
& Cross Objection No.51 of 2018

PA (CO)

kk 6/1