IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2020

C O R A M

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.NOS.3319 TO 3324 OF 2017
&
C.M.A.NOS.848 TO 851 OF 2018
&
C.M.P.NOS.21041, 21042, 21043, 21045, 21046 OF 2017
&
C.M.P.NOS.7054, 7055, 7056 OF 2018

R.Alagu Sundaram ..Appellant in C.M.A.Nos.3319 to 3324/2017

1.A.Aravind
2.A.Aishwarya Shree ..Appellants in C.M.A.No.848/2018

(2nd Appellant declared as major and her Grand father Ramanathan discharged from Guardianship vide court order dated 11.07.2019 made in CMP.No.13808, 13810 13816 of 2019)

M.Rajasekar .. Appellant in C.M.No.849/2018

A.Aravind .. Appellant in C.M.No.850/2018

A.Aishwarya Shree .. Appellant in C.M.A.No.851/2018

(Appellant declared as major and her Next Friend and Grand father Ramanathan, discharged from Guardianship ride court order dated 11.07.2019 made in CMP.No.13201, 13203, 13205 of 2019)

Vs.

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1.The Divisional Manager,
ICICI Lombard General Insurance Company Ltd.,
ICICI Lombard House,
414, Veer Savarkar Marg,
Near Siddhi Vinayak Temple,
Prabhadevi,
Mumbai - 400 025.
..1st Respondent in C.M.A.Nos.3319 to 3324/2017

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2.P.Moorthy

3.Selvi ..Respondents 2 & 3 in C.M.A.No.3319/2017

2.Mohammed Basha @ Mahapoob Basha
..2nd Respondent in C.M.A.No.3320/2017

2.M.Rajasekar ..2nd Respondent in C.M.A.No.3321/2017

2.A.Aravind
3.Minor A.Aishwarya Shree
Rep by Next Friend/Guardian Ramanathan
..2nd Respondents in C.M.A.No.3322/2017

2.A.Aravind ..2nd Respondent in C.M.A.No.3323/2017

2.Minor A.Aishwarya Shree
Rep by Next Friend/Guardian Ramanathan
..2nd Respondent in C.M.A.No.3324/2017

1.R.Alagu Sundaram

2.The Divisional Manager,
ICICI Lombard General Insurance Company Ltd.,
ICICI Lombard House,
414, Veer Savarkar Marg,
Near Siddhi Vinayak Temple,
Prabhadevi, Mumbai - 400 025.
..Respondents in C.M.A.Nos.848 to 851/2018

Prayers in C.M.A.Nos.3319 to 3324 of 2017:

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 08.06.2017, passed in M.C.O.P.Nos.248, 571, 572, 674, 675 & 676 of 2015, on the file of the Motor Accident Claims Tribunal (Special District Court) Krishnagiri, by setting aside the permission granted to the 1st respondent herein/insurer to recover the compensation amount after making payment to the claimants.

In C.M.A.Nos.3319 to 3324 of 2017:

For Appellant : Mr.S.Ranjith Kumar

For R1 : M/s.R.Sreevidhya

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Prayer in C.M.A.No.848 of 2018:-

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 08.06.2017, passed in M.C.O.P.Nos.674 of 2015, on the file of the Motor Accident Claims Tribunal (Special District Court) Krishnagiri, on the file of the said tribunal by enhancing the compensation from Rs.13,82,000/- to Rs.1,50,00,000/- with interest from date of claim and costs.

Prayer in C.M.A.No.849 of 2018:-

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 08.06.2017, passed in M.C.O.P.No.572 of 2015, on the file of the Motor Accident Claims Tribunal (Special District Court) Krishnagiri, on the file of the said tribunal by enhancing the compensation from Rs.2,35,100/- to Rs.15,00,000/- with interest from date of claim and costs.

Prayer in C.M.A.No.850 of 2018:

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 08.06.2017, passed in M.C.O.P.No.675 of 2015, on the file of the Motor Accident Claims Tribunal (Special District Court) Krishnagiri, on the file of the said tribunal by enhancing the compensation from Rs.2,26,030 to Rs.5,00,000/- with interest from date of claim and costs.

Prayer in C.M.A.No.851 of 2018:

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 08.06.2017, passed in M.C.O.P.No.676 of 2015, on the file of the Motor Accident Claims Tribunal (Special District Court) Krishnagiri, on the file of the said tribunal by enhancing the compensation from Rs.4,43,520/- to Rs.15,00,000/- with interest from date of claim and costs.

In C.M.A.Nos.848 to 851 of 2018:

For Appellants	:	Mr.V.Chandraprabhu
For R2	:	M/s.R.Sreevidhya

COMMON JUDGMENT

Judgement of the Court was delivered by Krishnan Ramasamy,J.

The owner of the vehicle has filed these six Civil Miscellaneous Appeals in C.M.A.Nos.3319 to 3324 of 2007. Challenging the pay and recovery ordered to the first respondent /Insurance Company to recover the entire compensation amount

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from the appellant after the payment of the said compensation to the claimant's are concerned. The Tribunal has passed a common order dated 08.06.2017, made in M.C.O.P.Nos. 248, 571, 572, 674, 675 & 676 of 2015 wherein the compensation was awarded by the Tribunal in the manner stated below:

S.No.	CMA & CMP No.	MCOP No.	CAUSE TITLE	AMOUNT AWARDED BY TRIBUNAL
1.	CMA 3319/2017 CMP 21041/2017	MCOP 248/2015	Alagusundaram Vs. 1.Divisional Manager 2.P.Moorthi 3.Selvi W/o. Moorthi	Rs.10,40,000/-
2.	CMA 3320/2017 CMP 21042/2017	MCOP 571/2015	Alagusundaram Vs. 1.Divisional Manager 2.Mohamed Basha	Rs.10,13,090/-
3.	CMA 3321/2017 CMP 21043/2017	MCOP 572/2015	Alagusundaram Vs. 1.Divisional Manager 2.M.Rajasekar	Rs.2,35,100/-
4.	CMA 3322/2017 CMP 21044/2017	MCOP 674/2015	Alagusundaram Vs. 1.Divisional Manager 2.Aravind 3.Aishwarya	Rs.13,82,000/-
5.	CMA 3323/2017 CMP 21045/2017	MCOP 675/2015	Alagusundaram Vs. 1.Divisional Manager 2.Aravind	Rs.2,26,030/-
6.	CMA 3324/2017 CMP 21046/2017	MCOP 676/2015	Alagusundaram Vs. 1.Divisional Manager 2.Aishwarya	Rs.4,43,520/-

2. The learned counsel appearing for the appellant would contend that all the above six appeals have been filed only challenging the pay and recovery ordered in the favour of the first respondent/insurance company.

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3. It is just and relevant to state the brief facts of the case as follows:

On 10.01.2015 the deceased Karpagam was travelling in the car bearing registration No.TN 24 P 0965 driven by her husband along with her children Aravind, Aishwarya Shree, the minor petitioner in MCOP No.676 of 2015 and along with one Mohammed Basha, Rajasekar and the deceased Mani who were working under the first respondent. At about 10.45 pm, when the car was proceeding on Hosur to Krishnagiri NH Road at Kundarapally fly over, the driver of the lorry, registration number not known which was proceeding ahead of the car applied sudden brake without giving proper signal or indication. Due to this, the driver of the car, the first respondent in order to avert the accident, immediately took diversion to the right side. But he lost his control over the car and dashed the same against the divider wall of the NH road and the accident has occurred. Due to this accident, the deceased Karpagam has sustained fatal injuries over her head. Immediately, she was taken to the government hospital, Krishnagiri for treatment. But inspite of the treatment given she succumbed to the injuries at 11.30 pm. The other inmates of the car Aravind, minor Aishwarya Shree, Rajashekar and Mohammed Basha were immediately taken to the Government Hosptial, Krishnagiri and given first aid and later shifted to Sparsh Hospital, Banglore. Therefore, the appellants herein filed respective statement in the above MCOPs.

4. The second respondent/Insurance Company filed the counter statement strongly opposing the entire narration of the accident and they further contended that the owner of the vehicle has violated the policy conditions that the sitting capacity of the car was only five whereas in the car there were seven persons travelled. Hence they would contended that they are not liable to pay the compensation and they have also denied negligence on part of the driver of the car.

5. In order to substantiate the contention of the claimants, they have examined PW.1 to PW.7 and also marked the documents Ex.P.1 to Ex.P32. On behalf of the Insurance company RW.1 and RW.2 were examined and Ex.R.1 was marked.

6. Heard both the parties and upon perusal of both the oral and documentary evidences, the Tribunal has awarded the compensation in MCOP 248 of 2015 a sum of Rs.10,40,000/-, MCOP 571 of 2015 a sum of Rs.10,13,090/-, MCOP 572 of 2015 a sum of Rs.2,35,100/-, MCOP 674 of 2015 a sum of Rs.13,82,000/-, MCOP 675 of 2015 a sum of Rs.2,26,030/-, MCOP 676 of 2015 a sum of Rs.4,43,520/-. Accordingly, this Court found that the accident was occurred due to the rash and negligence driving of the car driver bearing registration No. TN 24 P 0965. Further the Tribunal also directed the owner of the insurer to pay the

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compensation amount to the claimants and recover the same from the owner of the car who is the appellant in all the above six Civil Miscellaneous Appeals.

7. When the matter was taken up for hearing, the learned counsel appearing for the first respondent/Insurance Company M/s.R.Sreevidhya, fairly submits that in the present case, only five persons are permitted to travel but there were seven persons travelled in the car. Therefore, she fairly contended that they are only liable to pay the compensation for five persons and for other persons they are not liable to pay any compensation. In the present case, the appellant preferred the appeal against the six cases and therefore, she fairly submits that the lowest amount of compensation awarded by the Tribunal can be treated as 6th person and therefore, the said the appellant may be directed to pay the award amount to the claimants.

8. The learned counsel appearing for the appellant in all the above Civil Miscellaneous Appeals fairly submits the fact that the appellant is ready to pay the compensation awarded in MCOP No.675 of 2015, wherein the Tribunal awarded a sum of Rs.2,26,030/- as compensation against which C.M.A.No.3323 of 2017 has been filed, challenging the pay and recovery.

9. This Court also perused the oral and documentary evidences and heard the submissions of the learned counsels appearing for the appellants and as well as the first respondent. On perusal of the records, it appears that there were seven persons travelled in the car, which is no doubt violation of the terms and conditions of the Insurance Policy. However, in the car up to five persons are permitted to travel.

10. Therefore, this Court is of the view that the Insurance Company is liable to pay the compensation to the five claims. However, the Tribunal while passing a common order, wrongly permitted the first respondent/Insurance Company to pay the entire compensation amount in all these six MCOPs as stated above and recover the same from the appellant. As contended by the first respondent/Insurance Company, the Tribunal would have directed to recover from the 6th person who travelled in the car. The Tribunal has wrongly ordered pay and recovery against all the six claimants.

11. Therefore, we are of the considered view that the pay and recovery ordered in M.C.O.P.Nos. 248, 571, 572, 674 & 676 of 2015 is set aside. Consequently, C.M.A.Nos. 3319, 3320, 3321, 3322 & 3324 of 2017 are allowed. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

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12. However, we are of the view that as contended by both the counsels, in the car five persons can be travelled. In the present case, there were six claims filed by the respective counsels, the Insurance Company is liable to pay the only five claims as stated above. In the present case, appellant preferred the appeal against six cases, as contended by the counsel appeared for the Insurance Company, the lowest amount of compensation awarded by the Tribunal can be treated as sixth person. Therefore, as contended by the counsel appearing for the Insurance, the award passed in MCOP No.675 of 2015 a sum of Rs.2,26,030/-, we uphold that the appellant is liable to pay the same to the claimant as directed by the Tribunal. Hence, C.M.A.No.3323 of 2017 filed against M.C.O.P.No.675 of 2015 is dismissed.

13. The claimants also filed the following appeals challenging the quantum of compensation awarded by the Tribunal. The following four appeals have been filed challenging the quantum of compensation awarded by the Tribunal:

S. No.	CMA & CMP No.	MCOP No.	Causte Title	Amount Claimed	Amount Rewarded
1.	CMA 848/2018 (Mother Deceased)	MCOP 674/2015	1.Aravind 2.Aishwarya Vs. 1.Alagu Sundaram 2.Divisional Manager	Rs.1,50,00,000/-	Rs.13,82,000/-
2.	CMA 849/2018 CMP 7054/2018 (dispense with) Injured - 30% Disability	MCOP 572/2015	M.Rajasekar Vs. 1.Alagu Sundaram 2.Divisional Manager	Rs.1,50,00,000/-	Rs.2,35,100/-
3.	CMA 850/2018 CMP 7055/2018 (dispense with) Injured-25% Disability	MCOP 675/2015	Aravind Vs. 1.Alagu Sundaram 2.Divisional Manager	Rs.5,00,000/-	Rs.2,26,030/-

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S. No.	CMA & CMP No.	MCOP No.	Causte Title	Amount Claimed	Amount Rewarded
4.	CMA 851/2018 CMP 7056/2018 (dispense with) Injured - 50% Disability	MCOP 676/2015	Aishwarya Vs. 1.Alagu Sundaram 2.Divisional Manager	Rs.15,00,000/-	Rs.4,43,520/-

C.M.A.No.848 of 2018:

14. The learned counsel appearing for the appellant submitted that the deceased Karpagam was a Sales Tax Consultant at the time of accident. The learned counsel further submitted that she was earning a considerable amount out of the Sales Tax Practice. According to the appellant, the deceased was earning a sum of Rs.70,000/- per month at the time of accident. However, the Tribunal without considering all these facts, has fixed a sum of Rs.9,000/- as Notional Income. The accident was occurred in the year 2015, at the time of accident the deceased was aged about 40 years. In support of his contention, the counsel referred the income tax returns filed for the financial year 2014 - 2015, 2015 - 2016. By referring the above income tax returns, he contended that the deceased was earning a sum of Rs.70,000/- per month. Apart from the earning from her Sales Tax practice, the deceased was earning a considerable amount towards interest on investment and the rental income. Therefore, he would contend that the Notional Income fixed by the Tribunal is very meager amount and therefore, he pleaded to refix the Notional Income at least to an extent of Rs.70,000/- per month.

15. On the other hand, the learned counsel appearing for the Insurance Company would contend that no doubt the claimants have filed the income tax returns for the financial year 2014 - 2015 and 2015 - 2016, but the income tax returns reflect that the deceased was earning from different sources i.e., by way of rental income, interest and income from her profession as a Sales Tax Practitioner.

16. However, he would contend that nothing was received towards the salary but the income only from her Sales Tax through her firm. However, it is not certain that the income earned through her practice is permanent one. If it is a salary income, it can be considered as a permanent income and the Notional Income can be fixed based on her last drawn salary. Apart from the income from her Sales Tax Practitioner, the

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interest income and rental income will not stop due to her death. Even after death, the LR's of the deceased will continue to receive the rental as well as the interest income. Therefore, considering all these factors, the Tribunal has rightly fixed the Notional Income of a sum of Rs.9,000/- and therefore, there is no need for this Court to interfere with the Notional Income fixed by the Tribunal.

17. Heard the submissions of the learned counsels appearing for the appellants and the Insurance Company and perused the records. We have perused the income tax returns filed by the appellant. On perusal of the income tax returns, it appears that the deceased was earned from different sources i.e., by way of rent, interest and professional income. No doubt, as contended by the learned counsel appearing for the respondent, the income earned from interest and the rent would continue even after her death. So therefore, the said income cannot be taken for the purpose of fixing the Notional Income of the deceased to determine the compensation to the claimants. Apart from that, she was earning through agriculture also. Similarly, the agriculture also will continue even after her death. Therefore, the said income also cannot be taken into consideration for determining the Notional Income of the deceased. She was earning considerable amount through her Sales Tax Practice for the financial year 2013 - 2014 she earned a sum of Rs.7,59,585/- as her income through Sales Tax Practice. For the assessment years 2014 - 2015, she earned a sum of Rs.6,91,832/-. Therefore, it appears the income has come out from Rs.7,59,585/- to 6,91,832/-. It reveals that the deceased has no fixed income and it will vary from year to year. In these circumstances, we are of the view that it would be appropriate to fix a sum of Rs.12,000/- as Notional Income.

18. At the time of accident, the deceased was aged about 40 years. Therefore, as held by the Hon'ble Supreme Court in the case of National Insurance Co.Ltd., Vs. Pranay Sethi and others reported in 2017 2 TNMAC 609 (SC), 25% to be added towards the future prospects. There are two claimants, therefore, 1/3rd requires to be deducted towards the personal expenses of the deceased. Therefore, the loss of income after adding 25% towards the future prospects and deducting 1/3rd towards the personal expenses of the deceased is as follows:

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12,000/- + 25% of 12000 X 2/3 = 10,000

Loss of income per month would be Rs.10,000/-

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19. The Tribunal wrongly applied the multiplier of 16. For the completed years of 40, the multiplier applicable in the present case is 15 as held in Sarlavarma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Therefore, we are inclined to apply the multiplier of 15 for determining the compensation. Therefore, the loss of income is determined as follows:

10,000/- x 12 x 15 = 18,00,000/-

20. The Tribunal awarded a sum of Rs.2,00,000/- towards love and affection, the said amount is on the higher side. In the present case, there are two claimants husband and the minor daughter, as held by the Hon'ble Apex Court, the spouse is entitled for a sum of Rs.40,000/- towards loss of consortium for the loss of his wife. The daughter will get a sum of Rs.40,000/- towards the parental consortium for the loss of her mother as held by the Hon'ble Apex Court in the case of Magma General Insurance Company Vs. Nanu Ram alias CHURU RAM and others reported in [(2018) II SCC 892]. Accordingly, the husband is entitled for Rs.40,000/- towards the loss of consortium and the daughter is entitled for Rs.40,000/- towards the loss of parental consortium and a sum of Rs.2,00,000/- awarded towards the love and affection to the claimants is set aside.

21. The Tribunal awarded a sum of Rs.25,000/- towards the funeral expenses and the said amount is on the higher side. As held by the Hon'ble Supreme Court of India in the case of Pranay Sethi's (Supra), the claimants are entitled a sum of Rs.15,000/- towards funeral expenses. The Tribunal awarded a sum of Rs.5,000/- , towards transportation which is just and fair and the same stands confirmed. According, Rs.13,82,000/- awarded as a compensation by the Tribunal to the claimants is hereby redetermined in the manner stated below:

1.Loss of earnings	-	18,00,000/-
2.Loss of consortium (Husband)	-	40,000/-
3.Parental Consortium (Son)	-	40,000/-
4.Funeral Expenses	-	15,000/-
5.Transportation	-	5,000/-
		19,00,000/-

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22. The amount awarded by the Tribunal a sum of Rs.13,82,000/- enhanced to Rs.19,00,000/-. The first claimant A.Aravind is entitled to a sum of Rs.9,00,000/- and the second claimant Minor A.Aishwarya is entitled for Rs.10,00,000/- along with interest @ 7.5 % per annum.

23. Accordingly, we direct the Insurance Company to deposit the entire amount, along with 7.5% interest, by deducting the amount, if any already deposited, from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of a copy of this order.

24. We also direct the Tribunal to transfer the entire amount to the claimants by way of RTGS to their respective Bank accounts within a period of three weeks from the date of deposit made by the Insurance Company by deducting the amount, if any already disbursed by the Tribunal along with 7.5% interest. In the case of minor, till she attains majority, her share shall be deposited in interest bearing fixed deposit. The claimants are entitled to Lawyers fees and costs as ordered by the Tribunal. Accordingly, the C.M.A.No.848 of 2014 is partly allowed. No costs.

C.M.A.No.849 of 2018:

25. The Tribunal awarded a sum of Rs.2,35,100/-. The learned counsel appearing for the appellant would contended that the amount awarded by the Tribunal is low. The appellant sustained the following injuries:

- Laceration right forehead of 5x3x2 cm as in size.
- Swelling over the right supra 1/3rd of the thigh both bone fracture.

Though they have substantiated the case, the Tribunal still awarded a sum of Rs.2,35,100/- in M.C.O.P.No.572 of 2015.

26. The learned counsel appearing for the appellants would contended that the Medical Board on perusal of the medical records and on examining the appellant has issued Ex.P.31, the permanent disability certificate assessing the percentage of disability sustained by the appellant at 30%. The Tribunal however, fixed a sum of Rs.2,500/- per percentage of disability and accordingly awarded a sum of Rs.75,000/- for permanent disability. The said amount is too low, though the other seven heads also low, which requires reconsideration by this Court.

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27. We also perused the records and the exhibits particularly Ex.P.31 disability certificate issued by the Medical Board, the Medical Board assessed 30 % disability. The accident was occurred in the year 2015. The Tribunal awarded a sum of Rs.75,000/- by providing a sum of Rs.2,500/- per percentage of disability. Apart from the said amount a sum of Rs.54,000/- was awarded towards partial loss of earnings, a sum of Rs.10,000/- was awarded towards pain and sufferings, a sum of Rs.5,000/- was awarded towards mental agony and shock, a sum of Rs.5,000/- was awarded towards transport to hospital, a sum of Rs.5,000/- was awarded towards extra nourishment, a sum of Rs.5,000/- was awarded towards attender charges and a sum of Rs.76,100/- was awarded towards medical expenses. Therefore, totally a sum of Rs.2,35,100/- for the nature of the injury sustained and the percentage of disability. The amount awarded by the Tribunal is just and reasonable. Therefore, we are of the considered view that the compensation awarded by the Tribunal requires no reconsideration by this Court. Accordingly, we are concurred with the finding of the Tribunal and upheld the award amount of a sum of Rs.2,35,100/- as awarded by the Tribunal.

28. Accordingly, the Civil Miscellaneous Appeal stands dismissed. No costs.

C.M.A.No.850 of 2018:

29. This Civil Miscellaneous Appeal was filed by the son of the first respondent and the deceased Karpagam. In the present case, the counsel contended that the appellants sustained the following injuries:

- Abrasion over the foot of closed of 4x2 cm in size
- Bleeding from nose
- Abrasion over the right forearm of 4x2 cm in size
- left ear bleeding.

As per discharge summary the following injuries:

- Left mandibular angle fracture and right parasymphysis fracture,
- Soft tissue injury forehead

The disability percentage assessed by the Medical Board to an accident was 25%. The Tribunal awarded a sum of Rs.2,500/- per percentage of disability and therefore, fixed a sum of Rs.5,00,000/- for the disability sustained by the appellant. The amount awarded by the Tribunal towards permanent disability requires reconsideration. Further he contended that the award amount awarded in other heads also too low.

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30. The learned counsel appearing for the Insurance company would contend that the amount is just and fair. The appellant sustained only simple fractures. He was only five days in the hospital. Taking consideration of the injuries, the Tribunal awarded just and fair compensation.

31. We also perused the Ex.P.28 disability certificate, the said certificate was issued by the Medical Board and assessed the disability of 25%. The Tribunal awarded a sum of Rs.25,000/- for each towards the permanent disability

32. Considering the nature of injuries sustained by the appellant, we are of the considered view that the compensation a sum of Rs.2,26,030/- awarded by the Tribunal is just and fair and therefore, we upheld the compensation awarded Rs.2,26,030/- to the appellant. Accordingly, the Civil Miscellaneous Appeal stands dismissed.

C.M.A.No.851 of 2018:

33. The Tribunal awarded a sum of Rs. 4,43,520/-. The appellant herein is the minor daughter of the first respondent and deceased Karpagam. The disability was assessed by the Medical Board to the appellant is 50%. She was in the hospital about 15 days and sustained the following injuries:

- Laceration over the right knee and by fracture of 5x4x2 cm
- Laceration over the left knee of 4x3x2 cm on the size of fracture
- Swelling left thigh and fracture of femur
- Laceration left leg bone fracture libia of 3x2x1 cm injury.

34. The Tribunal awarded a sum of Rs.3,500/- per percentage of disability accordingly 1,75,000/- has been awarded towards permanent disability of 50% as assessed by the Medical Board and the said disability certificate also marked as Ex.P.21. Therefore, the amount awarded by the Tribunal is too low, though they have awarded Rs.3,500/- per percentage of disability and reimburse Medical Expenses a sum of Rs.1,88,520/- and awarded a sum of Rs.50,000/- towards the pain and suffering and also passed an award under various other heads. The award passed by the Tribunal requires reconsideration by this Court.

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35. However, the counsel appearing for the first respondent/Insurance Company would contend that the accident was occurred due to the negligence on the part of the first respondent father. The appellant is the daughter of the first respondent. The compensation awarded would go to the same family, though the appellant is legally entitled for the present compensation. Further taking into the age of the appellant, the Tribunal fixed a sum of Rs.3,500/- per percentage of disability and awarded a sum of Rs.4,43,500/- was awarded as total compensation for the injuries sustained by the appellant. It would be just and proper and requires no reconsideration by this Court.

36. We also perused the Ex.P.21 disability certificate issued by the Medical Board that the appellant was inpatient about 15 days and thereafter, she was discharged. She was sustained fractures. So considering the disability, the Tribunal awarded a sum of Rs.4,43,520/- , which appears to be reasonable and therefore, we upheld the award passed by the Tribunal. Accordingly, the Civil Miscellaneous Appeal stands dismissed. No costs.

37. In fine, we pass the following order:

(i) The order passed by the Tribunal in M.C.O.P.Nos.248, 571, 572, 674 and 676 of 2015 granting permission to the first respondent/Insurance Company to recover the same from owner of the car is set aside. Consequently, C.M.A.Nos.3319, 3320, 3321, 3322 and 3324 of 2017 are allowed by setting aside the pay and recovery ordered by the Tribunal.

(ii) The C.M.A.No.3323 of 2017 filed against the pay and recovery ordered in M.C.O.P.No.675 of 2015 by the Tribunal as we found above, in the car only five persons are permitted to travel and since more than five persons are traveled, for the six person the insurance company is not liable to pay the compensation as awarded in the M.C.O.P.No.675 of 2015 to an extent of a sum of Rs.2,26,030/-.

(iii) In the present case, the claimant is the only son of the appellant herein, therefore, we are of the view that there would not be any difficulty for the said Alagu Sundaram, who is the owner of the car, to pay to his son/claimant directly. According to the facts and circumstances of the case, we are inclined to direct the appellant in C.M.A.No.3323 of 2017, to pay the compensation amount awarded by the Tribunal, directly to the claimant. As a special case, we would like to state that the insurance company need not pay those award amount and recover the same from the owner of the vehicle as ordered by the Tribunal. Accordingly, we direct the appellant to pay entire award amount of Rs.2,26,030/- to the claimant directly. With the

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above direction, the present Civil Miscellaneous Appeal No.3323 of 2017 is disposed of.

38. The C.M.A.No.848 of 2018 is Partly Allowed and C.M.A.Nos.849, 850 & 851 of 2018 are dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Pns

To

The Motor Accident Claims Tribunal
(Special District Court),
Krishnagiri.

Copy To
The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.V.Chandra Prabu, Advocate, S.R.No.6145
+4cc to Mr.S.Ranjith Kumar, Advocate, S.R.No.6142 to 6144 & 6146

C.M.A.Nos.3319 to 3324 of 2017
&
C.M.A.Nos.848 to 851 of 2018
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&
C.M.P.Nos.7054, 7055, 7056 of 2018

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CS/09/11/2020

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