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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2021

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.1936 & 1937 of 2015

and

M.P.Nos.1 & 1 of 2015

Manager,
M/s.United India Insurance Co. Ltd.,
Micro Office, Suriya Pushpam Complex,
(Opp to Maruthi Hotel),
Trichy Main Road,
Ariyalur - 621 704

...Appellant in both CMAs

..Vs..

1.A.Marimuthu ...1st respondent in CMA.No.1936 of 2015

1.M.Ananthi ...1st respondent in CMA.No.1937 of 2015

2.P.Vasuki ... 2nd respondent in both CMAs

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and decree dated 29.04.2015 made in M.C.O.P.Nos.187 & 188 of 2013 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Perambalur.

For Appellant in both CMAs. : Mr.D.Bhaskaran

For 1st Respondent in both CMAs. : Mr.T.Gobinath

For 2nd Respondent in both CMAs. : No appearance

COMMON JUDGMENT

These appeals have been filed by the insurance company challenging the common award dated 29.04.2015 passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate, Perambalur) in MCOP.Nos.187 & 188 of 2013.



2. Heard Mr.D.Bhaskaran, learned counsel for the Appellant Insurance Company and Mr.T.Gopinath, learned counsel appearing for the respective claimants. Since no adverse orders are going to be passed against the second respondent in both the appeals, notice to the second respondent is dispensed with by this Court.

3. The Appellant Insurance Company has challenged the impugned common award on the following grounds (a) the insured vehicle is not responsible for the cause of the accident (b) the quantum of compensation awarded by the Tribunal to the respective claimants is excessive. The details of the compensation awarded by the Tribunal under the impugned award to the respective claimants are as follows:

MCOP.No.187 of 2013 corresponds to CMA.No.1936 of 2015

Heads	Award Amount (Rs.)
Loss of future earning capacity	9,18,000/-
Medical Expenses	2,500/-
Transportation	3,000/-
Attender charges	3,000/-
Total	9,26,500/-

MCOP.No.188 of 2013 corresponds to CMA.No.1937 of 2015

Heads	Award Amount (Rs.)
Loss of income	16,000/-
Pain and suffering	15,000/-
Extra nourishment and Transportation	5,000/-
Disability	1,20,000/-
Medical expenses	2,500/-
Attender charges	3,000/-
Total	1,61,500/-

4. The Tribunal with regard to the Appellant's liability which is questioned in both the appeals, has rightly rejected



the stand of the Appellant. Though the FIR which was marked as Ex.A1 before the Tribunal indicates the involvement of another vehicle bearing registration No.TN46-L-3735, the respective claimants have impleaded the owner and insurer of the vehicle bearing registration No.TN46-L-5735. The Tribunal only after giving due consideration to the evidence of RW1, the police officer came to the conclusion that TN46-L-5735 which is insured with the Appellant was involved in the accident and not TN46-L-3735 which was indicated in the FIR. Hence, it is established that the vehicle insured with the Appellant is also responsible for the cause of the accident. The Tribunal has also given due consideration to the evidence of RW2, the witness from RTO as well as the oral evidence of RW3, the Insurance official and Exs.R1 to R7 and has come to the correct conclusion that the rider of the insured vehicle was not possessing the license at the time of the accident and therefore, the Appellant Insurance Company is entitled for pay and recovery rights ie., pay the compensation amount to the claimant and recover the same from the owner of the vehicle (insured). Therefore, the first contention of the Appellant Insurance Company is rejected by this Court.

5. With regard to the quantum of compensation awarded by the Tribunal to the respective claimants are concerned, this Court is of the considered view that insofar as the claimant in MCOP.No.188 of 2013 which corresponds to CMA.No.1937 of 2015 is concerned, the compensation awarded by the Tribunal to the said claimant cannot be considered to be excessive as alleged by the Appellant Insurance company. The Tribunal has awarded a compensation of Rs.1,61,500/- to the claimant in MCOP.No.188 of 2013 which corresponds to CMA.No.1937 of 2015. The accident happened on 02.02.2012. The Tribunal has fixed the notional monthly income of the claimant at Rs.4,000/-. The claimant in MCOP.No.188 of 2013 sustained multiple grievous injuries on right side head, both eyes, right and left hand and swelling & tenderness over in his right leg ankle and fracture bimalleolar bone in right leg ankle and fracture over lateral malleolus bone and sustained multiple injuries all over the body. After giving due consideration to the nature of injuries sustained by the claimant as well as the evidence placed on record before the Tribunal, this Court is of the considered view that the quantum of compensation awarded by the Tribunal to the claimant in MCOP.No.188 of 2013 cannot be considered to be excessive as alleged by the Appellant Insurance company.

6. However, in the case of claimant in MCOP.No.187 of 2013 which corresponds to CMA.No.1936 of 2015 is concerned, the Tribunal has awarded a total compensation of Rs.9,26,500/- as indicated supra. The claimant in MCOP.No.187 of 2013 sustained multiple grievous injuries on head, deep lacerated wound over



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forehead, commuted fracture over his left side frontal bone extending to left orbital roof of frontal Sinus, shaft of right leg femur bone fracture and shaft of right hand radius bone fracture and tenderness & swelling over his right hand and sustained multiple grievous injuries all over the body. The Doctor PW3 has assessed the disability of the claimant in MCOP.No.187 of 2013 at 51%. The Tribunal has adopted the multiplier method for awarding compensation towards loss of future earning capacity which is a correct assessment as the nature of injuries sustained by the claimant would have reduced his loss of future earning capacity. However, the Doctor has not assessed the whole body disability of the claimant. The Tribunal has erroneously accepted 51% disability fixed by the Doctor as the whole body disability and has assessed the compensation towards loss of earning power to the claimant at a huge sum of Rs.9,18,000/- which has to be necessarily reduced by this Court. This Court after giving due consideration to the disability certificate issued by the Doctor (PW3) and other evidence placed on record by the claimant before the Tribunal is of the considered view that the claimant's whole body disability has to be assessed at 25% instead of 51% fixed by the Tribunal. The claimant in MCOP.No.187 of 2013 was aged 35 years at the time of the accident and the correct multiplier to be adopted for the said age is 16 and not 17 as fixed by the Tribunal. Accordingly, the same is also modified by this Court. Therefore, the disability compensation fixed by the Tribunal to the claimant in MCOP.No.187 of 2013 is reduced to Rs.2,88,000/- from Rs.9,18,000/- fixed by the Tribunal.

7. Insofar as the compensation awarded to the claimant in MCOP.No.187 of 2013 for the other heads are concerned, the same also requires modifications by this Court. The Tribunal has awarded a lesser compensation towards medical expenses, transportation and attender charges. This court enhances the same to Rs.10,000/-, Rs.10,000/- and Rs.15,000/- respectively.

8. The Tribunal has also erroneously failed to award any compensation towards extra nourishment, pain and suffering, loss of amenities, future medical expenses and damage to clothing which the claimant is legally entitled to as per the settled law. This Court therefore, awards a compensation of Rs.15,000/- towards extra nourishment, Rs.25,000/- towards pain and suffering, Rs.25,000/- towards loss of amenities, Rs.10,000/- towards future medical expenses and Rs.2,000/- towards damage to clothing.

9. For the foregoing reasons, the compensation awarded by the Tribunal to the claimant in MCOP.No.187 of 2013 which corresponds to CMA.No.1936 of 2015 is reduced from Rs.9,26,500/- to Rs.4,00,000/- by this Court in the following manner:



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Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of future earning capacity	9,18,000/-	2,88,000/-
Medical Expenses	2,500/-	10,000/-
Transportation	3,000/-	10,000/-
Attender charges	3,000/-	15,000/-
Extra nourishment	--	15,000/-
Pain and suffering	--	25,000/-
Loss of amenities	--	25,000/-
Future medical expenses	--	10,000/-
Damages to clothing	--	2,000/-
Total	9,26,500/-	4,00,000/-

However, the interest at the rate of 7.5% per annum awarded by the Tribunal is confirmed by this Court.

10. In the result, CMA.No.1937 of 2015 shall stand dismissed and CMA.No.1936 of 2015 shall stand partly allowed by reducing the compensation awarded by the Tribunal from Rs.9,26,500/- to Rs.4,00,000/-.

11. It is represented by the learned counsel for the Appellant Insurance Company that the Appellant has already deposited the entire amount awarded by the Tribunal. Since this Court has reduced the award amount from Rs.9,26,500/- to Rs.4,00,000/- in MCOP.No.187 of 2013, the Appellant Insurance Company is permitted to withdraw the excess amount deposited by them before the Tribunal by filing an appropriate application and also permitted to recover the compensation amount from the owner of the vehicle namely the second respondent herein.

12. The Tribunal shall transfer the amount lying to the credit of MCOP.No.187 of 2013 to the bank account of the claimant in MCOP.No.187 of 2013 who is the Appellant in CMA.No.1936 of 2015 and also transfer the amount lying to the credit of MCOP.No.188 of 2013 to the bank account of the claimant in MCOP.No.188 of 2013 who is the Appellant in CMA.No.1937 of 2015 through RTGS within a period of one week



thereafter. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS-IX)

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Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
The Chief Judicial Magistrate Court,
Perambalur.

Copy To

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

+1cc to Mr.Gobinath, Advocate, S.R.No.26172

C.M.A.Nos.1936 & 1937 of 2015

MG(CO)
RGA(28/10/2021)