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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.Nos.3447 & 3454 of 2021
and
C.M.P.Nos.19875, 19900 & 19901 of 2021

ICICI Lombard General Insurance Company Limited
ICICI Lombard House
414, Veer Savarkar Marg
Near Siddhi Vinayak Temple
Prabhadevi, Mumbai-400025.
Maharashtra State.

... Appellant/2nd Respondent
in both the C.M.A's.

Vs.

1.Minor J.Sindhu
Represented by Father & Next Friend
S.Jaishankar

... 1st Respondent/Petitioner in
CMA.3447 of 2021

1.R.Saravanan

... 1st Respondent/Petitioner in
CMA.3454 of 2021

2.B.Raja

3.The Managing Director
Tamilnadu State Transport Corporation Limited
12, Ramakrishna Road, Salem-636 007.
Salem Taluk and District.
Branch Office-Oonjakoari
Sankari, Bhavani Main Road
Sankari Village and Taluk
Salem District.

... 2 & 3 Respondent/1 & 3 Respondent
in Both CMA's

COMMON PRAYER: Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 10.08.2019 made in M.C.O.P.Nos.211 and 222 of 2014 on the file of Sub Ordinate Judge cum Motor Accident Claims Tribunal, Subordinate Court, Sankagiri.



In both the CMA's:.

For Appellant : Mr.K.Poomalai
For Respondents : Mr.C.Kulanthaivel for R1

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COMMON JUDGMENT

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J.]

These appeals are arising out of the common order passed by the Sub Ordinate Judge cum Motor Accident Claims Tribunal, Subordinate Court, Sankari, in M.C.O.P. Nos.211 and 222 of 2014, dated 10.08.2019.

2.For the sake of convenience, parties are referred to as per their ranking in the claim petition.

3.M.C.O.P.No.211 of 2014 was filed by a minor girl-Sindhu, aged about 10 years, seeking compensation of Rs.25,00,000/-. M.C.O.P.No.222 of 2014 was filed by Saravanan, who sustained injuries in an accident taken place on 20.05.2014. According to the claimants, they were traveling as passenger in the bus belonging to the Tamilnadu State Transport Corporation Limited bearing Registration No.TN 30 N 1003. When the bus was proceeding from Salem to Harur Main Road, the driver of the Mahindra Maximo Plus light Goods Vehicle bearing Registration No.TN 29 AT 4847 drove in the opposite direction, in a rash and negligent manner with uncontrolled speed dashed on the right side of the Transport Corporation bus. Due to the accident both the claimants were sustained multiple injuries and they were immediately taken to hospital for treatment. In this regard a criminal case was registered in Cr.No.179 of 2014, under Sections 279, 337 and 338 of IPC, against the driver of the Mahindra Maximo Plus light Goods Vehicle. Alleging that the accident had taken place due to the rash and negligent driving of the driver of the Mahindra Maximo Plus light Goods Vehicle, the claimants laid petitions claiming compensation of Rs.25,00,000/- and Rs.50,00,000/- respectively before the Tribunal.

4.Resisting the claim petitions, the appellant Insurance Company filed their counter disputing the manner of accident, age, avocation and income of the claimants and its liability to pay the compensation. It was also contended that the compensation claimed by the claimants is excessive.

5. To substantiate the case, on the side of the claimants, P.Ws.1 to 3 were examined and Exs.P.1 to 29 were



marked. On the side of the respondents, R.Ws.1 to 4 were examined and Exs.R.1 to 7 were marked.

6.The Tribunal, after considering the oral and documentary evidence held that the 1st respondent/driver of the Mahindra Maximo Plus light Goods Vehicle was responsible for the accident and awarded compensation of Rs.30,00,000/- to the claimant in M.C.O.P.No.211 of 2014 and awarded compensation of Rs.20,00,000/- to the claimant in M.C.O.P.No.222 of 2014.

7.Assailing the award passed by the Tribunal, the appellant Insurance Company has filed these appeals.

8.The learned counsel for the appellant would submit that the Tribunal erred in fixing the entire negligence on the driver of the Mahindra Maximo Plus light Goods Vehicle. Further, the driver is not holding a valid driving license at the relevant point of time and the award of the Tribunal is on the higher side, which is not in consonance with the facts of this case.

9.Per contra, the learned counsel appearing for the claimants submitted that the minor claimant was a school going child at the time of the accident and her right hand was amputated from shoulder level. Though the award of the Tribunal under the head of 'Pain and suffering' and 'extra nourishment' are appear to be higher side, the Tribunal failed to take into account, the 'future medical expenses', 'loss of marital aspects', 'loss of amenities' and hence the award is reasonable and justifiable. In the case of the claimant in M.C.O.P.No.222 of 2014, the learned counsel submitted that the claimant was a conductor, working in the Transport Corporation and he sustained injuries at the age of 44 years and due to the right hand major crush injury, the claimant was not able to do his day to day activities and also totally lost his earning capacity. Thus the Tribunal has awarded a just and reasonable award, which does not require this Court's interference.

10.We have considered the rival submissions and perused the materials available on record.

11.With regard to negligence, it is an admitted fact that a criminal case was registered against the driver of Mahendra Maximo Plus and after investigation a final report was filed against him. He pleaded guilty and paid the fine amount. That apart, the Tribunal based on the reports of the Motor Vehicle Inspector-Exs.P.7 and P8 came to the conclusion that the accident occurred due to the negligence of the driver of the



Mahendra Maximo Plus Vehicle. Therefore, we confirm the finding of the Tribunal.

12.Minor J.Sindhu, who met with an accident on 20.05.2014 was 10 years old and she was a student in Corporation Middle School at Thiruppur. She was admitted as an in-patient at Ganga Hospital, Coimbatore. Her father gave evidence as P.W.1 and he narrated the injuries sustained by the minor child and the nature of treatment given to her. It is evident from the records that the right hand of the minor child was amputated. The Tribunal fixing notional income at Rs.5,000/- per month has awarded Rs.9,72,000/- towards 'loss of earning capacity'. Based on Ex.P.6-Medical Bills, the Tribunal has awarded Rs.1,70,000/- towards 'medical expenses'. Taking note of the fact that the minor child met with an accident, her hands were amputated and for her further treatment, the Tribunal has awarded Rs.15,00,000/- as 'pain and sufferings'. Rs.50,000/- was awarded towards 'transportation' and Rs.3,00,000/- was awarded for 'Extra nourishment'. Further an amount of Rs.8,000/- was awarded towards 'Attender charges'. As rightly pointed out by the learned counsel for the claimants, the Tribunal failed to award compensation for loss of amenities and loss of marital aspects and future medical expenses. Therefore, in our considered view, the amount awarded towards pain and sufferings and extra nourishment can be adjusted with other heads. Amounts awarded under other heads are just and reasonable.

13.In so far as the claimant in M.C.O.P.No.222 of 2014, he was working as a Conductor and his right hand was crushed in the accident. The medical board assessed his disability as 55 %. He was provided with alternative employment. Taking into consideration that the injuries sustained by him and the period of treatment, Rs.5,00,000/- awarded under the head of pain and suffering appears to be on higher side. Hence it is reduced to Rs.2,00,000/- and the amounts awarded under the other heads cannot be said to be exorbitant or bonanza, therefore, there are confirmed.

14.In the result,

(i) the C.M.A.No.3447 of 2021 stands dismissed. The appellant/Insurance Company is directed to deposit the award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the father of the minor child, Mr.S.Jaishankar is permitted to withdraw 50 % of the amount, less the amount already withdrawn. Remaining



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50% of the amount shall be deposited in any Fixed Deposit Scheme in any one of the Nationalized Bank and it shall be renewed periodically till the minor child attains majority and the interest accrued thereon shall be withdrawn by the father of the minor child, once in three months.

(ii) the C.M.A.No.3454 of 2021 stands partly allowed and the thus, the total compensation payable to the claimant is re-calculated and tabulated below:

1.	Loss of earning capacity	Rs.9,24,000/-
2.	Medical Expenses	Rs.4,53,000/-
3.	Pain and Sufferings	Rs.2,00,000/-
4.	Transportation Expenses	Rs.50,000/-
5.	Nutrition Food	Rs.50,000/-
6.	Future Medical Expenses	Rs.20,000/-
7.	Damages	Rs.3,000/-
	Total	Rs.17,00,000/-

15.The appellant in C.M.A.No.3454 of 2021 is directed to deposit the modified award amount of Rs.17,00,000/- to the credit of the claim petition within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs.

16.The Tribunal having analyzed the evidence found that the driver of the offending vehicle was not holding an effective and valid driving license at the time of accident and hence directed the appellant in both the C.M.A's., to satisfy the award amount and thereafter recover the same from the owner of the offending vehicle, such finding of the Tribunal is confirmed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar

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To

1.The Sub Ordinate Judge cum Motor Accident Claims Tribunal
Subordinate Court, Sankari.

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Copy To

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

2.The Managing Director
Tamilnadu State Transport Corporation Limited
12, Ramakrishna Road, Salem-636 007.
Salem Taluk and District.
Branch Office-Oonjakoari
Sankari, Bhavani Main Road
Sankari Village and Taluk
Salem District.

+2cc to Mr.C.Kulanthaivel, Advocate SR.No.66319, 66318

+1cc to Mr.K.Poomalai, Advocate SR.No.66002

C.M.A.No.3447 and 3454 of 2021

SPD(CO)
GN(09/02/2022)