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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos.1668 & 1669 of 2020
and C.M.P.Nos.12300 & 12302 of 2020

The Branch Manager,
Cholamandalam MS General
Insurance Co. Ltd.,
Branch Office,
No.46, Ground Floor,
Pudhupettai Main Road,
Thirupattur.

.. Appellant in
both the appeals/2nd Respondent
in both MCOP

Vs.

1.Gowri .. 1st Respondent in
C.M.A.No.1668/2020/ Petitioner in MCOP.447/2018

1.Suresh .. 1st Respondent in
C.M.A.No.1669/2020/ Petitioner in MCOP.459/2018

2.P.Murugan .. 2nd Respondent in
both the appeals/ 1st Respondent in both MCOP

Common Prayer: These Civil Miscellaneous Appeals are filed under
Section 173 of Motor Vehicles Act, 1988, against the common
award dated 11.11.2019, made in M.C.O.P. Nos.447 & 459 of 2018,
on the file of the Special Sub Court, (Motor Accident Claims
Tribunal), Krishnagiri.

In both the appeals)

For Appellant : Mrs.R.Sree Vidhya

For Respondents: Mr.S.Viswanathan (For R1)
for M/s.Dass and Viswa Associates

No appearance (For R2)



C O M M O N J U D G M E N T

The matter is heard through "Video Conferencing".

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These appeals have been filed against the against the common award dated 11.11.2019, made in M.C.O.P. Nos.447 & 459 of 2018, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Krishnagiri.

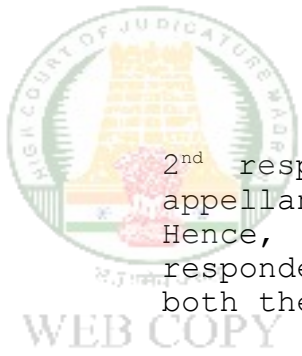
2.Both the appeals arise out of the same accident and common award. Hence, they are disposed of by this common judgment.

3.The appellant in both the appeals is the 2nd respondent-Insurance Company in M.C.O.P. Nos.447 & 459 of 2018, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Krishnagiri. The 1st respondent in both the appeals filed the above said claim petitions, claiming a sum of Rs.25,00,000/- and Rs.50,00,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 23.08.2017.

4.According to the 1st respondent in both the appeals, on the date of accident, the 1st respondent in C.M.A.No.1669 of 2020 was riding the Motorcycle bearing Registration No.TN-83-X-8222, along with the 1st respondent in C.M.A.No.1668 of 2020 as pillion rider, towards Kalabairavar Temple situated at Adhiyamankottai, Dharmapuri, on the left side of the road, slowly and cautiously, observing the traffic rules. While proceeding near the coconut thope of Govindan situated near Muthukampatti in Pochampalli to Dharmapuri road, the driver of the Tata Ace bearing Registration No.TN-23-BT-3595 belonging to the 2nd respondent, drove the same in a rash and negligent manner at uncontrollable speed, without sounding horn and without minding the rules of the road, came in opposite direction and dashed on the Motorcycle and caused the accident. In the said impact, both the 1st respondent sustained severe injuries and thus, filed the above said claim petitions, claiming compensation against the 2nd respondent as owner and appellant as insurer of the offending vehicle.

5.The 2nd respondent remained exparte before the Tribunal.

6.The appellant, insurer of the Tata Ace, filed separate counter statements and denied all the averments made by the 1st respondent in their respective claim petitions. According to the appellant-Insurance Company, the accident occurred when the 1st respondent in C.M.A.No.1669 of 2020 rode the Motorcycle in a rash and negligent manner and suddenly crossed the road and invited the accident. The 1st respondent in both the appeals have to prove that the rider of the Motorcycle possessed valid driving license to ply the vehicle at the time of accident. The



2nd respondent, owner of the Tata Ace did not intimate the appellant about the accident and violated the policy conditions. Hence, the appellant is not liable to indemnify the 2nd respondent, owner of the Tata Ace and prayed for dismissal of both the claim petitions.

7. Before the Tribunal, the 1st respondent in both the appeals examined themselves as P.W.2 and P.W.1 respectively and marked 16 documents as Exs.P1 to P16. The appellant did not let in any oral and documentary evidence. Two documents were marked as Exs.C1 and C2.

8. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by driver of the Tata Ace belonging to the 2nd respondent and directed the appellant as insurer of the said vehicle to pay a sum of Rs.8,67,657/- and Rs.12,78,217/- as compensation to the 1st respondent in both the appeals respectively.

9. Challenging the quantum of compensation granted by the Tribunal in the common award dated 11.11.2019, made in M.C.O.P. Nos.447 & 459 of 2018, the appellant-Insurance Company has come out with the present appeals.

10. The learned counsel appearing for the appellant, insurer of the Tata Ace, contended that the Medical Board assessed and certified that the 1st respondent in both the appeals suffered 50% and 65% partial permanent disability respectively, only for a particular part of the body. The said assessment of disability by the Medical Board is not in accordance with Schedule I of the Workmen Compensation Act and is not assessed for the whole body. For the injuries sustained in the accident, the 1st respondent in C.M.A.No.1668 of 2020 has taken treatment at Dharmapuri Government Hospital from 23.08.2017 to 08.09.2017, for a period of 15 days and 1st respondent in C.M.A.No1669 of 2020 has taken treatment as in-patient at Ganga Hospital from 24.08.2017 to 10.09.2017, for a period of 16 days. The 1st respondent in both the appeals have not examined any Doctor to prove their loss of earning capacity and loss of income. The Tribunal without any basis, fixed the functional disability of the 1st respondent in both the appeals as 30% and 40% respectively and adopted multiplier method. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the common award of the Tribunal.

11. Per contra, the learned counsel appearing for the 1st respondent in both the appeals contended that in the accident, the 1st respondent in both the appeals sustained grievous injuries and fractures and they were referred to the Medical



Board, Krishnagiri. The Medical Board at Krishnagiri, examined the 1st respondent in both the appeals and certified that the 1st respondent in both the appeals suffered 50% and 65% partial permanent disability respectively. The Tribunal observed the 1st respondent in both the appeals in the open Court while giving evidence and held that their loss of earning capacity has been reduced, fixed the functional disability and adopted multiplier method in awarding compensation. The total compensation granted by the Tribunal is not excessive and prayed for dismissal of both the appeals.

12. Heard the learned counsel appearing for the appellant-Insurance Company as well as the 1st respondent in both the appeals and perused the materials available on record.

13. It is the case of the 1st respondent in both the appeals that in the accident, they suffered grievous injuries and have taken treatment as in-patient for a period of 15 days and 16 days respectively. They were referred to the Medical Board, Krishnagiri. The Medical Board, Krishnagiri, after examining the 1st respondent, certified that the 1st respondent in both the appeals suffered 50% and 65% partial permanent disability. The Medical Board has not assessed the disability for whole body and has not stated that the 1st respondent in both the appeals have suffered functional disability. When the 1st respondent came to the Court to give evidence, the learned Judge observed that the 1st respondent in C.M.A.No.1668 of 2020 faced difficulty in standing and gave evidence sitting in the chair and the 1st respondent in C.M.A.No.1669 of 2020 was limping, finding it difficult to stand and do his daily work. In view of the same, the learned Judge held that the earning capacity of 1st respondent in both the appeals have reduced and hence, fixed 30% and 40% disability as their functional disability and loss of earning capacity respectively. The 1st respondent in both the appeals have not examined any Doctor to prove that they suffered functional disability and lost their earning capacity. In the absence of any evidence, the Tribunal observing the 1st respondent in both the appeal in the open Court, held that their loss of earning capacity has reduced. At the same time, the Tribunal without converting the disability assessed by the Medical Board for a particular part of the body to whole body, fixed functional disability and loss of earning capacity. The percentage of disability fixed by the Tribunal is excessive and the same is converted to whole body as 16.6% [50/3] and 21.6% [65/3] respectively. The accident is of the year 2017. The notional income of Rs.8,500/- fixed by the Tribunal to the 1st respondent in both the appeals is not excessive. The 1st respondent in both the appeals were aged 36 years and 34 years respectively at the time of accident. The Tribunal considering the age of the 1st respondent in both the appeals, rightly



granted 40% enhancement towards future prospects and applied multiplier '15' and '16' respectively. By fixing functional disability, the amounts granted by the Tribunal towards loss of earning capacity is modified as follows in:

C.M.A.No.1668 of 2020:

Rs.3,55,572/-{[Rs.8,500/- + Rs.3,400/- (40% of Rs.8,500/-)] x 12 x 15 x 16.6%} and

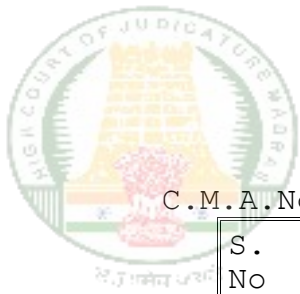
C.M.A.No.1669 of 2020:

Rs.4,93,517/-{[Rs.8,500/- + Rs.3,400/- (40% of Rs.8,500/-)] x 12 x 16 x 21.6%}

The amounts granted by the Tribunal under other heads are just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

C.M.A.No.1668 of 2020

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning capacity	6,42,600/-	3,55,572/-	Reduced
2.	Medical expenses	1,19,057/-	1,19,057/-	Confirmed
3.	Transportation	10,000/-	10,000/-	Confirmed
4.	Extra nourishment and attendant charges	15,000/-	15,000/-	Confirmed
5.	Pain and sufferings	40,000/-	40,000/-	Confirmed
6.	Social amenities	40,000/-	40,000/-	Confirmed
7.	Damage to clothes	1,000/-	1,000/-	Confirmed
	Total	8,67,657/-	5,80,629/- rounded off to 5,80,630/-	Reduced by Rs.2,87,027/-

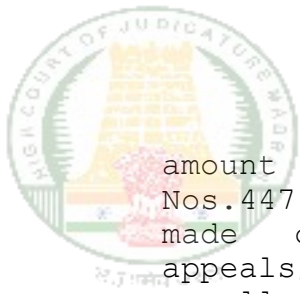


C.M.A.No.1669 of 2020

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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning capacity	9,13,920/-	4,93,517/-	Reduced
2.	Medical expenses	2,34,297/-	2,34,297/-	Confirmed
3.	Transportation	10,000/-	10,000/-	Confirmed
4.	Extra nourishment and attendant charges	15,000/-	15,000/-	Confirmed
5.	Pain and sufferings	52,000/-	52,000/-	Confirmed
6.	Social amenities	52,000/-	52,000/-	Confirmed
7.	Damage to clothes	1,000/-	1,000/-	Confirmed
	Total	12,78,217/-	8,57,814/-	Reduced by Rs.4,20,403/-

14. In the result, these Civil Miscellaneous Appeals are partly allowed and the amounts awarded by the Tribunal at Rs.8,67,657/- and Rs.12,78,217/- are modified to Rs.5,80,630/- and Rs.8,57,814/- respectively together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. Nos.447 and 459 of 2018. On such deposit, the 1st respondent in both the appeals are permitted to withdraw the award amount now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the excess



amount available in the deposit to the credit of M.C.O.P. Nos.447 and 459 of 2018, if any already deposited by them. It is made clear that if the 1st respondent in both the appeals/claimants have already withdrawn the award amount, the appellant/Insurance Company is not entitled to recover the same from the 1st respondent in both the appeals/claimants. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Deputy Registrar(cs)

//True Copy//

Sub Assistant Registrar

gsa
To

1.The Special Subordinate Judge,
(Motor Accident Claims Tribunal),
Krishnagiri.

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

+2ccs to M/s.Dass and Viswa , Advocate SR.No. 6121

+1cc to Mrs.R.Sree Vidhya , Advocate SR.No. 6858

C.M.A. Nos.1668 & 1669 of 2020

A.SK(31.08.2021)