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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.03.2021

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA No.2563, 2564 of 2010 and  
M.P.No.1 , 1 of 2010

CMA 2563 of 2010

Divisional Manager, United India Insurance Co. Ltd.

Ranipet ...Appellant/2<sup>nd</sup> Respondent

Vs.

1. Amudha
2. Raman ... Respondents 1 and 2/ Claimants
3. Subramanian ...3rd Respondent/ first Respondent
4. Divisional Manager,  
National Insurance Co. Ltd.,  
Vellore. .. 4th Respondent/ Third Respondent

CMA No.2564 of 2010

Divisional Manager, United India Insurance Co. Ltd.

Ranipet ... Appellant/ 2nd Respondent

Vs.

1. Raman ... First Respondent/ Claimant
2. Subramanian ... Second Respondent/ First Respondent
3. Divisional Manager,  
National Insurance Co. Ltd.,  
Vellore. ..Third Respondent/ Third respondent

Prayer in CMA 2563 of 2010: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act to set aside the order dated 04.01.2010 made in MCOP No.25 of 2007 by the file of the Subordinate Judge, Motor Accident Claims Tribunal, Cheyyar.

Prayer in CMA 2564 of 2010: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act to set aside the order dated 04.01.2010 made in MCOP No.226 of 2006 by the file of the Subordinate Judge, Motor Accident Claims Tribunal, Cheyyar.



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In CMA 2563 of 2010  
For Appellant : Mr.S.Arunkumar  
For Respondents: Mr.K.G.Senthilkumar for R1

Mr.J.Chandran for R4.

R2 and R3- No appearance

In CMA 2564 of 2010

For Appellant : Mr.S.Arunkumar  
For Respondents : Mr.K.G.Senthilkumar for R1

Mr.J.Chandran for R3.

R2 - No appearance

#### COMMON JUDGMENT

Aggrieved over the common order passed by the Tribunal in MCOP No.226 of 2006 and MCOP No.25 of 2007 dated 04.01.2010, the Insurance company has filed the present appeals challenging the quantum of compensation.

2. The claimant in MCOP No.226 of 2006 has filed the claim petition before the Tribunal seeking compensation of Rs.7,000,000/- for the injuries sustained by him in a road accident that took place on 14.07.2006.

3. The the claimants in MCOP No.25 of 2007 have filed the above said appeal seeking compensation of Rs.15,00,000/- for the death of their daughter Lakshitha in the above said road accident.

4. The brief case of the claimant/s is as follows: On 14.07.2006, the claimant Raman was proceeded to his Village namely Vilaripattu along with his wife and children through his car bearing registration No.K-A-05-2760, driven by him and while nearing Enathavadi junction in Arcot-Cheyyar Road, a speedy bus bearing registration No.TN-25-W-0329 dashed against the car, thereby the claimant and his wife sustained grievous injuries and his younger daughter Lakshitha died. The contention of the claimant is that, he sustained grievous injuries all over his body and was admitted to Porur Hospital for first aid and thereafter, admitted in Nalam Clinic at Pondicherry and treated as inpatient for three years. According to the claimant, the rash and negligent driving of the driver of the bus was the cause of accident and since the first respondent insured his



vehicle with the second respondent and since the National Insurance Company Limited is the insurer of his car, which involved in the accident, the claim petitions were filed against them.

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5. The claim petitions were resisted by the respondents/ insurance companies by filing their respective counter affidavits.

6. Before Tribunal, the claimant Mr.Raman was examined as PW1 and Ex.A1 to Ex.A20 were marked. On the side of the respondents, no oral and documentary evidence was adduced.

7. After analysing the evidence on record, the Tribunal awarded a compensation of Rs.4,74,810/- in MCOP No.226 of 2006 and awarded a compensation of Rs.2,40,000/- in MCOP No.25 of 2007. The compensation awarded under various heads is extracted here under.

In MCOP No.226 of 2006 (CMA No.2564 of 2010)

| SL No | Heads                            | Amount   |
|-------|----------------------------------|----------|
| 1     | Medical bills<br>(4977+4927+292) | 10,196   |
| 2     | Pain and sufferings              | 10,000   |
| 3     | Attender's charges               | 1,000    |
| 4     | Extra nourishment                | 1,000    |
| 5     | Transportation charges           | 2,000    |
| 6     | Damages to vehicles              | 4,50,614 |
|       | Total                            | 4,74,810 |

In MCOP No.25 of 2007 (CMA No.2563 of 2010)

| SL No | Heads                         | Amount   |
|-------|-------------------------------|----------|
| 1     | Loss of income<br>(15,000x15) | 2,25,000 |
| 2     | Loss of love and affection    | 10,000   |
| 3     | Funeral expenses              | 5,000    |
|       | Total                         | 2,40,000 |



8. Aggrieved over the orders passed by the Tribunal, the insurance company has filed the present appeals, challenging the quantum of compensation.

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9. Heard the learned counsels for the parties and I have perused the materials on record.

10. The learned counsel appearing for the appellant/insurance company submitted that the compensation awarded by the Tribunal is highly excessive, especially, in MCOP No.226 of 2006, a sum of Rs.4,50,614/- was awarded towards "repair expenses", despite the claimant has not produced any bill for making repair work in his car. He further submitted, in the absence of surveyor report, the Tribunal ought not to have granted such huge amount. It is submitted by him that the deceased Lakshitha was an infant and was aged 1 1/2 years only at the time of accident, and therefore, earning capacity cannot be assumed, but, in MCOP No.25 of 2007, the Tribunal has awarded a sum of Rs.2,25,000/- towards loss of income, which is contrary to the judgment of the Honourable Supreme Court in 1995 AIR S 755 and 2002 AIR SCW 3797. Therefore, he prayed to set aside the orders passed by the Tribunal.

11. The learned counsel appearing for the respondents/claimants submitted that during the accident, the claimant Raman had sustained grievous injuries and his car was completely damaged. He further submitted that the daughter of the claimants was also died during the accident and hence, after analysing the evidence on record and also considering the facts and circumstances of the case and the nature of injuries sustained by the claimant, the Tribunal has awarded a just and reasonable compensation, and it does not warrant any interference by this court.

12. Now the point for determination is whether the Award passed by the Tribunal in MCOP No.226 of 2006 and MCOP NO.25 of 2007 is excessive?

13. Point No

There is no dispute with regard to the negligence on the part of the driver of the offending vehicle/bus and it was insured with the United India Insurance company, the appellant herein. The only argument advanced by the counsel for the insurance company is with regard to the quantum of compensation awarded by the Tribunal.

14. As far as the appeal in CMA No.2564 of 2010 is concerned, it is the contention of the appellant/insurance company that the claimant has not produced any bills for making



repair works in the vehicle, except Ex.P16, however, based on that document alone, the Tribunal has awarded a sum of Rs.4,50,614/- as compensation towards " Damages to the vehicle". According to the appellant, the said Ex.P16 is only an estimation bill and it is not a bill for doing the repair works. Further, the claimant has not produced any bill for doing such repair work and therefore, the Tribunal ought to have rejected the Ex.P16.

15. To reply the above submission, the learned counsel appearing for the respondent/ claimant submitted that the car of the claimant was highly damaged during the accident, and therefore, the above said bill was marked as Ex.P16 before the Tribunal and hence, the claimant is entitled to get a sum of Rs.4,50,614/-.

16. A perusal of Ex.P16 shows that, it is only an estimation bill for the damages caused to the vehicle. As rightly pointed out by the learned counsel appearing for the insurance company, the claimant has not produced the original bills for repairing his car, even during the examination, he had fairly admitted that, he has not repaired the vehicle. However, a perusal of the Ex.P13 photographs shows that the vehicle was completely damaged. The above said car was insured with the National Insurance Company for a sum of Rs.1,00,000/- under the policy model 1986. Considering the model of the vehicle and the value of the car, and also taking into account the fact that the claimant has insured his car for a sum of Rs.1,00,000/-, he is entitled only to a sum of Rs.1,00,000/- towards " damages to vehicle."

17. It is submitted by the learned counsel appearing for the respondent/claimant that the claimant has not claimed any amount from his insurer namely National Insurance Company Limited, Vellore for his damaged car. Recording the above said submission, the claimant is entitled to get Rs.1,00,000/- towards " Damages to vehicle".

18. In so far as the compensation awarded under the other heads are concerned, after considering the nature of injuries sustained by the claimant and also considering the evidence and materials on record, the Tribunal has awarded just compensation and the same does not warrants any interference by this court. Accordingly, the revised compensation under the various heads in CMA No.2564 of 2010 is extracted hereunder.



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|   | Heads                         | Compensation awarded by the Tribunal | Compensation modified by this court |
|---|-------------------------------|--------------------------------------|-------------------------------------|
| 1 | Medical bills (4977+4927+292) | 10,196                               | 10,196                              |
| 2 | Pain and sufferings           | 10,000                               | 10,000                              |
| 3 | Attender's charges            | 1,000                                | 1,000                               |
| 4 | Extra nourishment             | 1,000                                | 1,000                               |
| 5 | Transportation charges        | 2,000                                | 2,000                               |
| 6 | Damages to vehicles           | 4,50,614                             | 1,00,000                            |
|   | Total                         | 4,74,810                             | 1,24,196                            |

This amount shall carry interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit.

19. As far as the appeal in CMA No.2563 of 2010 is concerned, according to the appellant/ insurance company, the deceased child was aged only 1 1/2 years, however the Tribunal has taken annual income of the deceased as Rs.15,000/- and by adopting multiplier '15' , awarded a compensation of Rs.2,25,000/- towards loss of income, which is excessive, without any basis and hence, the same is unsustainable. Though the deceased was minor and was aged 1 1/2 years at the time of accident, as per the provisions of the Motor Vehicles Act, the Tribunal has rightly fixed the annual income of the deceased as Rs.15,000/- and adopted multiplier '15'. Therefore, this court do not find any fault on the findings of the Tribunal and it is just and fair and does not warrant any interference by this court. Accordingly, the CMA No.2564 of 2010 is liable to be dismissed.

20. The learned counsel appearing for the appellant/ insurance company submitted that, as per the order of this court in both the appeals, already they have deposited 50% of the award amount before Tribunal, and hence, they may be permitted to withdraw the amount deposited by them, over and above the compensation awarded by this court. Accordingly, they are entitled to withdraw the same.

21. In the result,  
CMA No.2563 of 2010

(i) The appeal in CMA No.2563 of 2010 is dismissed. No costs. Connected Civil miscellaneous petition is closed.

(ii) The appellant/insurance company is directed to deposit the entire compensation amount along with interest, as awarded by the Tribunal from the date of claim petition till the



date of deposit, within a period of 6 weeks from the date of receipt of a copy of this order, less the amount if already deposited.

(iii) On such deposit being made by the appellant, the claimants are entitled to withdraw the same, as per the apportionment made by the Tribunal, after following due process of law.

CMA No.2564 of 2010

(i) The appeal in CMA No. 2564 of 2010 is partly allowed and the compensation awarded by the Tribunal is scaled down from Rs. 4,74,810/- to Rs.1,24,196/-. No costs. Connected miscellaneous petition is closed.

(ii) Since it is stated that the appellant/insurance company has already deposited 50% of the award amount along with interest, they are at liberty to withdraw the amount, deposited by them, over and above the revised compensation, as awarded by this court.

(iii) The claimants are entitled to withdraw the revised compensation along with interest, as awarded by this court, as per the apportionment made by the Tribunal, after following due process of law.

s/d-  
Assistant Registrar(CS-VII)

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Sub-Assistant Registrar

mst  
To

1. The Subordinate Judge, Motor Accident Claims Tribunal,  
Cheyyar,

2. Section Officer, V.R. Section,  
Madras High Court, Chennai-104.

+2 Ccs to Mr.K.G.Senthilkumar, Advocate sr 13105, 13106.

+1 CC to Mr.S.Arunkumar, Advocate sr 13293.

+1 CC to Mr.J.Chandran, Advocate sr 12620.

CMA No.2563, 2564 of 2010 and  
M.P.No.1, 1 of 2010

PVS (CO)  
SP(20/09/2021)