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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2022

CORAM:

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

C.M.A.Nos.2375 and 2376 of 2016
and
C.M.P.Nos.16512 and 16514 of 2016

United India Insurance Co. Ltd.,
Branch Office - II,
77, Oriental Complex,
AA, Street, Salem-1.

... Appellant in both the appeals

Vs.

1.V.Kulandaivel

2.Vinayaka Mission Research Foundation,
Chairman, Dr.Shanmugasundaram,
No.44-A, 2nd Agraharam,
Salem - 636 001.

... Respondents in CMA No.2375 of 2016

1.Jonesh

2.Vinayaka Mission Research Foundation,
Chairman, Dr.Shanmugasundaram,
No.44-A, 2nd Agraharam,
Salem - 636 001.

... Respondents in CMA No.2376 of 2016

COMMON PRAYER: Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act 1988 to set aside the decree and judgment dated 13.02.2015 made in MCOP Nos.2044 and 2045 of 2013 on the file of Motor Accident Claims Tribunal (Special Sub-Judge No.2), Salem.

In both appeals;

For Appellant : Mrs.I.Malar

For Respondents: Mr.C.Kulanthaivel for R1



COMMON JUDGMENT

(Common Judgment of the Court was made by K.KALYANASUNDARAM.,J)

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As against the common award passed in MCOP Nos.2044 and 2045 of 2013 dated 13.02.2015, by the Motor Accident Claims Tribunal, (Special Sub-Judge No.2), Salem, these appeals have been filed by the Insurance Company.

2.The facts of the case in nutshell:-

On 11.09.2013, at about 08.45 p.m, the claimant Jonesh was riding a bike bearing Reg.No.TN-24-M-3640 on the Sankari to Salem Main Road, along with another claimant as pillion rider and when they were nearing in front of V.S.A. College, nearing cutting road, at Uthamasolapuram, a Tata Sumo bearing Reg.No.TN-54-F-3400, which was driven by its driver in a rash and negligent manner, hit the bike. In the impact, both of them were thrown out and sustained serious injuries and fractures all over the body. Immediately, they were admitted in Vinayaka Mission Hospital, Seeragapady, Salem for first aid and thereafter, the claimant Kulandaivel was shifted to Neuro Foundation Hospital, Salem and the claimant Jonesh was shifted to the Salem Nathan Hospital. At the time of accident, the claimants were studying third year B.D.S in Vinayaka Mission Hospital, Seeragapady, Salem and also doing assistance in Anusuya Dental Clinic, Gugai, Salem and earned Rs.20,000/- per month. Alleging that the accident had occurred only due to the rash and negligent driving of the driver of the Tata Sumo, they filed the claim petitions seeking compensation.

3.Resisting the claim, the appellant/Insurance Company filed a counter disputing the manner of accident, nature of injuries and income of the claimants and its liability to pay the compensation. It was also contended that the claim is excessive.

4.To substantiate the case, on the side of the claimants, P.Ws.1 to 3 were examined and Exs.P1 to Ex.P26 were marked. On the side of the appellant/Insurance Company, R.W.1, one Seenivasan was examined and Exs.R1 to R3 were marked.

5.The Tribunal, after considering the oral and documentary evidence held that the driver of the Tata Sumo belonging to the second respondent was responsible for the accident and awarded Rs.20,43,000/- to the claimant Kulandaivel and Rs.26,71,000/- to the claimant Jonesh. Assailing the award, the appellant/Insurance Company has filed these appeals.



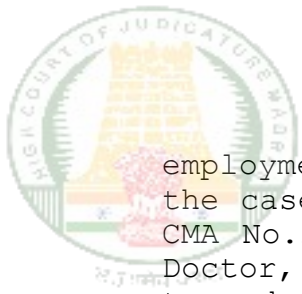
6.The learned counsel appearing for the appellant/Insurance Company Mrs.I.Malar submitted that the the Tribunal had committed an error in awarding compensation to the claimants in the absence of any documentary evidence to show that the accident had occurred due to the negligent driving of the Tata Sumo. She further contended that the Tribunal erred in fixing the notional income of the injured as Rs.10,000/- and adding 50% towards future prospects, when the claimants are students. She further contended that apart from awarding compensation under the head of 'loss of earning', the Tribunal has awarded Rs.1,00,000/- under the head of 'permanent disability'. Besides, the Tribunal has awarded higher compensation under various heads and hence, he prayed for reduction of compensation.

7.The learned counsel appearing for the claimants Mr.C.Kulanthaivel would contend that since the amount awarded by the Tribunal is meager in all the heads, the claimants are entitled for higher compensation. He would further contend that P.W.2-Doctor has assessed the disability of the injured claimant Kulandaivel as 48% and Jonesh as 63% and also issued disability certificate (Exs.P.21 and 24), but the Tribunal without considering the disability certificates, has taken the disability as 42% and 50% respectively. Hence, the claimants seek enhancement of compensation.

8.This Court carefully considered the rival submissions and perused the materials available on record.

9.According to the learned counsel appearing for the appellant/Insurance Company, the Tribunal committed error in fixing the negligence on the part of the driver of the Tata Sumo. However, perusal of the order impugned in these appeals would show that the Tribunal, considering the evidence of P.W.1 and P.W.2 and Exs.P.1 and P.8, fixed the negligence on the part of the driver of the Tata Sumo. We find no substance in the argument of the learned counsel for the appellant and confirm the finding on negligence.

10.In respect of quantum, in the case on hand, the Tribunal fixed the notional income of the claimants as Rs.10,000/- and added 50% towards future prospects and by applying multiplier '18', assessed the compensation towards 'loss of earning capacity'. When the claimants were students, the Tribunal added 50% towards future prospects. P.W.2-Doctor has assessed the disability of the claimant Kulandaivel as 48% and the claimant Jonesh as 63% and also issued disability certificate (Exs.P.21 and 24), however, the Tribunal has taken the disability as 42% and 50% respectively, which is not proper. Since the claimants were students and no evidence was available to prove their



employment, future prospects will not arise. Hence, in both the cases, adding 50% towards future prospects is set aside. In CMA No.2375 of 2016, adopting 48% disability as fixed by P.W.2 Doctor, this Court awards Rs.10,36,800/- (10000x12x18x48/100) towards loss of earning capacity instead of Rs.13,60,800/-. In CMA No.2376 of 2016, adopting 63% disability, this Court awards Rs.13,60,800/- (10000x12x18x63/100) instead of Rs.16,20,000/-. The Tribunal in both the cases, apart from the awarding the amount under the head of loss of earning capacity, has awarded Rs.1,00,000/- under the head of 'permanent disability', hence, the same is set aside. The amount awarded under the remaining heads and the rate of interest fixed by the Tribunal as 7.5% are confirmed. Accordingly, the compensation awarded by the Tribunal to the claimants is re-quantified as follows:-

11. C.M.A.No.2375 of 2016:-

Heads	Amount awarded by the Tribunal	Re-quantified Amount by this Court	Status
Loss of dependency	13,60,800/-	10,36,800/-	reduced
Pain and Sufferings	60,000/-	60,000/-	confirmed
Medical Expenses	2,95,800/-	2,95,800/-	confirmed
Loss of Amenities	50,000/-	50,000/-	confirmed
Loss of Prospects of Marriage	50,000/-	50,000/-	confirmed
Loss of Expectation of Life	50,000/-	50,000/-	confirmed
For Transportation	10,000/-	10,000/-	confirmed
For Extra Nourishment	10,000/-	10,000/-	confirmed
Attendant Charges	30,000/-	30,000/-	confirmed
Damage to cloth	1,400/-	1,400/-	confirmed
Permanent disability	1,00,000/-	Nil	set aside
Future Medical Expenses	25,000/-	25,000/-	confirmed
Total	20,43,000/-	16,19,000/-	reduced

12. C.M.A.No.2376 of 2016:-



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Heads	Amount awarded by the Tribunal	Re-quantified Amount by this Court	Status
Loss of dependency	16,20,000/-	13,60,800/-	reduced
Pain and Sufferings	60,000/-	60,000/-	confirmed
Medical Expenses	6,34,400/-	6,34,400/-	confirmed
Loss of Amenities	50,000/-	50,000/-	confirmed
For Transportation	10,000/-	10,000/-	confirmed
For Extra Nourishment	15,000/-	15,000/-	confirmed
Attendant Charges	50,000/-	50,000/-	confirmed
Damage to cloth	1,600/-	1,600/-	confirmed
Permanent disability	1,00,000/-	Nil	set aside
Future Medical Expenses	30,000/-	30,000/-	confirmed
Loss of Expectation of Life	50,000/-	50,000/-	onfirmed
Loss of Prospects of Marriage	50,000/-	50,000/-	confirmed
Total	26,71,000/-	23,11,800/-	reduced
Rounded off		23,12,000/-	

13. In such view of the matter, both the Civil Miscellaneous Appeals are partly allowed. In CMA No.2375 of 2016, the award amount of Rs.20,43,000/- is reduced to Rs.16,19,000/- In CMA No.2376 of 2016, the award amount of Rs.26,71,000/- is reduced to Rs.23,12,000/-. The appellant/Insurance Company is directed to deposit the modified 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 Judgment. On such deposit, the claimants are permitted to withdraw the modified award amount along with proportionate interest and costs, less the amount if already withdrawn. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VII)

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Sub Assistant Registrar



skn

To

1. The Special Sub-Judge No.2,
Motor Accident Claims Tribunal
Salem.

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

+2ccs to Mr.C.Kulanthaivel, Advocate SR.No.13441, 13442

+1cc to Mr.T.Ravichandran, Advocate SR.No.12987

C.M.A.Nos.2375 and 2376 of 2016
and
C.M.P.Nos.16512 and 16514 of 2016

GP(CO)
GMY(08/06/2022)