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C.M.A.Nos.1232,1233 and 1234 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.02.2023

Delivered on : 02.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A.Nos.1232,1233 and 1234 of 2016

K.Rajaram ... Appellant in C.M.A.No.1232 of 2016

R.Vinodhini ... Appellant in C.M.A.No.1233 of 2016

R.Mala ... Appellant in C.M.A.No.1234 of 2016

Vs.

1.Sri Ragavendra Travels
10, New No-2, 4th Main road
United India Colony
Kodambakkam
Chennai

2.ICICI Lombard General Insurance Co.Ltd
Chota Bai Centre
2nd and 3rd floor
No.140, Nungambakkam High Road
Chennai

... Respondents in all the cases



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COMMON PRAYER: Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 15.12.2012, made in M.A.C.T.O.P.Nos.2358,2359 and 2360 of 2009 on the file of the Motor Accident Claims Tribunal, II Additional Subordinate Judge, Cuddalore.

For Appellant : Ms.M.Malar

For Respondents : Mrs.R.Sree Vidhya for R2

R1-Exparte

COMMON JUDGMENT

The above three Civil Miscellaneous Appeals arise out of common judgment and decree dated 15.12.2012 passed in M.A.C.T.O.P.Nos.2358,2359 and 2360 of 2009 on the file of the Motor Accident Claims Tribunal, II Additional Subordinate Judge, Cuddalore.

2. The facts that are necessary for adjudication of the above Civil Miscellaneous Appeals are as follows:

All the appellants were travelling in a Maruti 800 car from Villupuram to Sithanangur and the vehicle viz., Toyota Qualis bearing registration



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No.TN-10-J-4052 coming from the opposite direction being driven in a rash and negligent manner dashed against the car in which the appellants were travelling, as a result of which the appellants suffered serious multiple grievous injuries. The appellants in C.M.A.Nos.1232 and 1234 of 2016 claimed compensation of Rs.15,00,000/- each and the claimant in C.M.A.No.1233 of 2016 claimed compensation of Rs.20,00,000/-.

3. The 2nd respondent/insurance company filed a counter claiming that the car in which the appellants were travelling was being driven in a rash manner and therefore the liability cannot be fastened on the insurer of the vehicle bearing registration No.TN-10-J-4052. The quantum of compensation claimed by the appellants was also disputed as being speculative, excessive and arbitrary.

4. The Motor Accidents Tribunal, Cuddalore tried all the three M.A.C.T.O.Ps together. On the side of the appellants, seven witnesses were examined, including the appellants herein who examined themselves as



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P.Ws.2,3 and 4 and marked Exs.P.1 to P.33. On the side of the respondents no oral or documentary evidence was let in, except for cross examining the witnesses on the side of the claimants.

5. The Tribunal in and by its common judgment, for reasons stated therein passed awards to the tune of Rs2.20,455/- for the appellant in C.M.A.No.1232 of 2016, Rs.3,02,970/- for the appellant in C.M.A.No.1233 of 2016 and Rs.23,460/- for the appellant in C.M.A.No.1234 of 2016.

6. Aggrieved by the quantum of compensation awarded to them, the claimants in the three M.A.C.T.O.Ps are before this Court, challenging the judgment and decree of the Tribunal.

7. Heard the learned counsel for the appellants and the learned counsel appearing for the 2nd respondent/insurance company.



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8. The learned counsel for the appellants relied upon the evidence of P.Ws.5,6 and 7 the Doctors and contended that the compensation awarded by the Tribunal was very insignificant and low and that the Tribunal has also not considered various heads viz., permanent disability, loss of earning capacity, damages to clothes and articles besides also awarding very low amounts under the heads of transport and extra nourishment.

9. This Court has paid anxious consideration to the rival contentions put forth on either side besides also perusing the entire oral and documentary evidence available on record.

10. In so far as the case of the appellant in C.M.A.No.1232 of 2016, the Tribunal taking note of the fact that the appellant was a driver and agriculturist, fixed his annual income at Rs.1,80,000/-. Regarding disability, despite the Doctor P.W.6 assessing disability at 36%, the Tribunal has taken only 24% and factoring it for overall body, finally arrived at 8%. Towards loss of income and pain and suffering a sum of Rs.30,000/- and Rs.10,000/-



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respectively were awarded by the Tribunal. In so far as medical bills the award passed by the Tribunal does not warrant any interference as it is based on the actual bills submitted and there is no reason to interfere with the same.

11. In so far as the appellant in C.M.A.No.1233 of 2016, it is her case that she was aged 19 years on the date of accident and that she was pursuing her B.Com (C.A) course besides also working as part time in a private concern. Ex.P.19 has been rightly taken note of by the Tribunal in finding that the actual age of the appellant in C.M.A.No.1233 of 2016 was only 17 at the relevant point of time and not 19 years as stated in the claim petition. Ex.P.27 which is the employment certificate to evidence that the appellant was employed as a part time Computer Data entry(part time) was disbelieved as the certificate ran contrary to the proof affidavit filed by the appellant as P.W.3. It is true that a person aged 17 years, at best would have completed Higher Secondary school examination and joined an Under Graduation course. The Tribunal rightly focussed its attention on these aspects and concluded that the appellant could not have been pursuing her Chartered



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Accountancy course after graduation. The reasons assigned for disbelieving the salary certificate in Ex.P.27 are also justified on available materials before the Tribunal and does not warrant any interference. The Tribunal also rightly awarded a sum of Rs.1,75,770/- towards medical expenses and transport expenses besides a sum of Rs.15,000/- towards nourishment and a sum of Rs.15,000/- towards pain and suffering.

12. A perusal of Ex.P.27, the certificate dated 21.12.2011 alleged to have been issued by the employer of the appellant, it is seen that the appellant was working as a part time Data entry operator and that her salary was Rs.5,000/- between the period January 2008 to October 2009. Having regard to the fact that the appellant was born only on 25.01.1992, she was barely 16 years old in January 2008. Therefore, it is not believable that she would have been out of school by then and that too being in a part time employment earning Rs.5,000/- per month. Therefore, this Court does not find any infirmity in the Tribunal fixing the notional income at Rs.3,000/ per month. However, while arriving at the percentage of personal disability, the Tribunal



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despite the evidence of the Doctor P.W.6 assessing disability at 45%, fixed the disability at 15%, and no reason is assigned by the Tribunal for fixing such a low percentage especially in the light of the nature of injuries sustained by the appellant.

13. In so far as the third appeal in C.M.A.No.1234 of 2016, the appellant has suffered injury to her ear lobe and the Tribunal has rejected the evidence of P.W.6 Doctor and also the disability certificate finding that the injury was minor and awarded a sum of Rs.23,400/- alone.

14. As already found, the Tribunal has erred in fixing a much lower disability percentage, viz., 24% instead of 36% in the case of appellant in C.M.A.No.1232 of 2016 and 15% instead of 45% in the case of the appellant in C.M.A.No.1233 of 2016. No justifiable reasons have been assigned by the Tribunal in arriving at the final percentage of disability. There is no contra evidence produced on the side of the respondents to negate the evidence of the Doctor examined on behalf of the appellants to prove disability in so far



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as the appellants in C.M.A.Nos.1232 and 1233 of 2016 are concerned.

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15. In so far as the C.M.A in 1234 of 2016 is concerned, admittedly the appellant had lost her left earlobe and after surgery was performed she was discharged on 08.05.2010. The Tribunal has found that the appellant in C.M.A.No.1234 of 2016 did not spend any money for plastic surgery and took note of Exs.P.21 and P.22 in this regard. The disability certificate assessing the disability of the appellant/ P.W.4 issued by the Doctor-P.W.5 has been discussed in detail by the Tribunal and ultimately the Tribunal has found that the disability certificate issued by the Doctor, P.W.5 fixing the disability at 50% was wholly baseless and the disability certificate Ex.P.31 was rejected and not taken into consideration. The Tribunal also found that the problem in the left ear was rectified by plastic surgery and therefore no loss would occasion to the appellant in C.M.A.No.1234 of 2016 and therefore there is no question of loss on account of future income. The Tribunal finally awarded a sum of Rs.15,000/- towards pain and suffering besides also the expenses on account of medical bills, transportation, extra nourishment



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totalling in all Rs.23,460/-. This Court also finds that under Ex.P.30, it is made clear that the left ear lobe problem was corrected by plastic surgery by JIPMER specialists.

16. In so far as the appellants in C.M.A.Nos.1232 and 1233 of 2016, the Tribunal was in error in factoring a reduced disability percentage contrary to the evidence of the experts (Doctors P.W.5 and 6). No reasons have been assigned by the Tribunal in taking the disability at 24% and 15% respectively as against 36% and 45% certified by the Doctor-P.W.5. Similarly the Tribunal ought to have awarded higher compensation for pain and suffering for all the appellants considering the nature of injuries sustained by the family members and consequent mental trauma that they would have certainly underwent.

17. Learned counsel for the appellants relied on the judgment of the Hon'ble Supreme Court in ***Raj Kumar vs. Ajay Kumar & Anr, 2010(2) TNMAC 581(SC)***. This Court does not find the said judgment coming to the



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aid of the appellants herein. The Hon'ble Supreme Court has summarized the principles concerning injuries, permanent disabilities arising out of such injuries and made a distinction with regard to loss of earning capacity in different cases. Infact one of the principles that the Hon'ble Supreme Court has reiterated that the Doctor who treated the injured claimant or who examined himself to assess the extent of permanent disability can give evidence only in so far as the extent of permanent disability and with regard to loss of earning capacity, it can be assessed only by reference to the evidence in entirety. The various principles laid down by the Hon'ble Supreme Court in the said case have been kept in mind by this Court while deciding the above Civil Miscellaneous Appeals.

18. In fine, the above Civil Miscellaneous Appeals are partly allowed with no order as to costs, in the manner following:



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C.M.A.No.1232 of 2016:

Additional sum of Rs.20,000/- towards loss of pain and suffering, additional Rs.25,000/- towards loss of amenities, Rs.10,000/- towards attender charges, in all totalling an additional sum of Rs.55,000/-.

C.M.A.No.1233 of 2016:

Additional sum of Rs.15,000/- towards loss of pain and suffering, additional Rs.25,000/- towards loss of amenities, Rs.5,000/- towards attender charges, in all totalling an additional sum of Rs.45,000/-.

C.M.A.No.1234 of 2016:

Additional sum of Rs.10,000/- towards loss of pain and suffering and Rs.5,000/- towards extra nourishment, in all totalling an additional sum of Rs.15,000/-.

19. It was brought to the notice of this Court that the award amounts in all the above Civil Appeals were not only deposited by the insurance/2nd respondent but also withdrawn by the respective claimants. In view of the enhanced compensation being awarded in these appeals, the insurance



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company is directed to deposit the same within a period of four weeks from the date of receipt of a copy of this judgment and thereupon the respective claimants shall be at liberty to withdraw the same following the due procedure under law.

02.03.2023.

Internet: Yes

Index: Yes/No

Neutral Citation: Yes/No

To

1. The Motor Accident Claims Tribunal,
II Additional Subordinate Judge, Cuddalore.

2. The Section Officer

V.R. Section

High Court, Madras



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P.B.BALAJI, J.,
kpr

Pre-delivery judgment in
C.M.A.Nos.1232,1233 and 1234 of 2016

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