



C.M.A.Nos.983 and 984 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**C.M.A.Nos.983 and 984 of 2015 and
M.P.Nos.1 and 1 of 2105**

United India Insurance Company Limited,
Cuddalore.

... Appellant / 2nd Respondent
in both C.M.As

Vs.

1. Selvaraj (died)
2. Nagarajan
3. Prabakaran
4. Subha
5. Sakaravarthi (died)
6. Kamatchi

... Respondents / Respondents
in C.M.A.No.983 of 2015

(R1 died and the respondents 3 to 6 brought on record as legal heirs of the deceased R1 viz., Selvaraj and R5 died and R6 brought on record as legal heir of the deceased R5 viz., Sakaravarthi as per the memo dated 30.09.2021 and vide Court order dated 30.09.2021 made in C.M.P.No.8296, 8297 and 8299 of 2021 in C.M.A.No.983 of 2015 by AQJ)

1. Rajendran
2. Nagarajan

... Respondents / Respondents
in C.M.A.No.984 of 2015



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COMMON PRAYER : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the common judgment and decree dated 06.09.2012 made in M.C.O.P.Nos.394 and 395 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court, Chidambaram.

For Appellants
in both C.M.As : Mr.S.Arun Kumar

For Respondents : Mr.A.Murugan
for R3,R4&R6 in C.M.A.No.983 of 2015 &
for R1 in C.M.A.No.984 of 2015
R5 - died in C.M.A.No.983 of 2015

COMMON JUDGMENT

The appellant / insurance company, aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, Sub Court, Chidambaram, in M.C.O.P.Nos.394 and 395 of 2009, dated 06.09.2012, has filed these appeals.

2. The first respondent in C.M.A.No.983 of 2015 viz., Selvaraj while travelling in a mini lorry bearing Registration No.T-31/AW-1161 with load of fish boxes from Tamil Nadu to Kerala near Kodikothi village, the driver of the lorry drove the vehicle in a rash and negligent manner and



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toppled into a pit on the road side and as a result of which, the said Selvaraj sustained grievous injuries. He underwent a surgery on his left leg and admitted in the hospital as inpatient for five days. Due to the accident, he could not do his regular work. Hence, he filed a claim petition in M.C.O.P.No.394 of 2009 seeking compensation for a sum of Rs.8,00,000/- for the injuries sustained by him. The second respondent is the owner of the lorry.

3. The first respondent in C.M.A.No.984 of 2015 viz., Rajendran is the owner of the fish boxes and he filed the claim petition in M.C.O.P.No.395 of 2009 seeking compensation for a sum of Rs.3,00,000/- for the loss sustained by him due to the damages to the fish and fish boxes.

4. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the second respondent. Having



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rendered such a finding, the Tribunal proceeded to determine the compensation payable at Rs.3,21,000/- to the claimant in M.C.O.P.No.394 of 2009 in the following manner:

<i>Sl. No.</i>	<i>Compensation awarded under the head by the Tribunal</i>	<i>Amount</i>
1.	Loss of income	Rs.1,00,000/-
2.	Transportation	Rs.25,000/-
3.	Extra nourishment	Rs.20,000/-
4.	Medical expenses	Rs.36,000/-
5.	Attender charges	Rs.30,000/-
6.	Pain and sufferings	Rs.50,000/-
7.	Disability	Rs.60,000/-
	Total	Rs.3,21,000/-

5. With respect to M.C.O.P.No.395 of 2009, the Tribunal has awarded a sum of Rs.75,000/- towards compensation for the damages caused to the fish and fish boxes. The Tribunal directed the above compensation to be paid by the Insurance Company with interest at the rate of 7.5% p.a. and recover the same from the owner of the vehicle in both the claim petitions.

6. Questioning the quantum of compensation awarded by the



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Tribunal, the appellant / Insurance Company has filed these appeals.

7. Heard Mr.S.Arunkumar, learned counsel for appellant / Insurance Company and Mr.A.Murugan, learned counsel for the respondents.

8. This Court carefully considered the submissions made on either side and the materials available on record.

9. This Court also carefully went through the award passed by the Tribunal.

10. The learned counsel for the appellant / Insurance Company submitted that the Tribunal erred in granting a sum of Rs.3,21,000/- as compensation to the first respondent in C.M.A.No.983 of 2015 and directing the appellant to pay and recover in spite of the fact that the insured has violated the policy conditions by permitting to drive the vehicle without valid driving licence. That apart, the Tribunal has also granted a sum of



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Rs.1,00,000/- towards loss of income in the absence of proof towards avocation or earnings. The compensation awarded towards the heads such as transportation, medical expenses, extra nourishment, attender charges and pain and sufferings are also excessive. The learned counsel further submitted that the award with respect to M.C.O.P.No.395 of 2009 (C.M.A.No.984 of 2015) is also excessive as the insured has violated the policy conditions and the loss of goods is not covered by insurance.

11. Per contra, the learned counsel for the respondents submitted that the Tribunal has assigned proper reasons while awarding the compensation and it does not require the interference of this Court.

12. On carefully considering the discussion made by the Tribunal in M.C.O.P.No.394 of 2009, this Court is of the opinion that with respect to loss of income, the Tribunal has awarded a sum of Rs.1,00,000/- as compensation. On a perusal of the award of the Tribunal, it is found that the claimant has sustained laceration on the head and right wrist and left foot



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along with fracture of the libia. The nature of the injuries sustained by the claimant seems to be not so serious in nature and he had been treated in the hospital as impatient only for five days and therefore, this Court is of the view that he might have not able to attend his work for a period of four months and the presumption of the Tribunal that he would have been out of work for a period of ten months is excessive. Therefore, this Court is inclined to reduce the compensation awarded towards loss of income as Rs.40,000/- instead of Rs.1,00,000/- taking the period the claimant was out of work would have been four months.

13. Considering that no documents have been produced to substantiate the transportation charges, the compensation awarded towards transportation charges is reduced from Rs.25,000/- to Rs.10,000/- and with respect to extra nourishment, the same is reduced from Rs.20,000/- to Rs.5,000/-.

14. With respect to the medical expenses, the claimant has



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produced receipts for a sum of Rs.35,456/-, whereas the Tribunal awarded a sum of Rs.36,000/-, however the same is reduced to actual expenses incurred by him, i.e., Rs.35,456/-

15. With respect to attender charges, there is no proof submitted and hence, the same is not liable to be paid by the Insurance Company and with respect to pain and sufferings, the same is reduced from Rs.50,000/- to Rs.25,000/-. This Court is not inclined to interfere the compensation awarded by the Tribunal towards disability at Rs.60,000/-.

16. In the light of the above discussion, this Court modifies the compensation in the following manner in M.C.O.P.No.394 of 2009 (C.M.A.No.983 of 2015):

<i>Sl. No.</i>	<i>Compensation awarded under the head by this Court</i>	<i>Amount</i>
1.	Loss of income	Rs.40,000/-



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<i>Sl. No.</i>	<i>Compensation awarded under the head by this Court</i>	<i>Amount</i>
2.	Transportation	Rs.10,000/-
3.	Extra nourishment	Rs. 5,000/-
4.	Medical expenses	Rs.35,456/-
5.	Attender charges	-
6.	Pain and sufferings	Rs.25,000/-
7.	Disability	Rs.60,000/-
	Total	Rs.1,75,456/-

17. With respect to C.M.A.No.984 of 2015 (M.C.O.P.No.395 of 2009), this Court after considered that no documentary evidence was produced to substantiate the loss of fish and fish boxes and tall claim of Rs.3,00,000/- has been claimed and that the Tribunal awarded a sum of Rs.75,000/-. However, this Court unable to appreciate the manner of determination of compensation and in the absence of any documentary evidence to produce to substantiate the value of goods damaged due to the accident, this Court is inclined to reduce the compensation to a sum of Rs.10,000/- instead of Rs.75,000/-.

18. The compensation awarded by the Tribunal with respect to



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M.C.O.P.No.394 of 2009 (C.M.A.No.983 of 2015) at Rs.3,21,000/- is reduced to Rs.1,75,456/- and with respect to M.C.O.P.No.395 of 2009 (C.M.A.No.984 of 2015) at Rs.75,000/- is reduced to Rs.10,000/-. The appellant / Insurance Company is directed to deposit the reduced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petitions till the date of deposit within a period of four weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

19. In the result, the Civil Miscellaneous Appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No
vji



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To
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1. The Motor Accidents Claims Tribunal,
Sub Court,
Chidambaram.
2. The Section Officer,
V.R. Section,
High Court,
Chennai.



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M.DHANDAPANI, J.

vji

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