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C.M.A.Nos.2198, 2199, 1234 and 1235 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.Nos. 2198, 2199, 1234 and 1235 of 2018

and

C.M.P.Nos.10062 and 10063 of 2018

C.M.A.No.2198 of 2018

Vijay

... Appellant

Vs.

1. Kandasamy

2. M/s.United India Insurance Co.Ltd.,
D.O.II, Dr.Sankaran Road,
Namakkal District.

3. R.Mani

4. Tata AIG General Insurance Co.Ltd.,
III Floor, Jaya Enclave 1057,
Avinashi Road,
Coimbatore – 18.

... Respondents

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act to enhance the Award amount in the judgment and decree



C.M.A.Nos.2198, 2199, 1234 and 1235 of 2018

dated 15.11.2017 made in M.C.O.P.No.1562 of 2011 on the file of the
Motor Accident Claims Tribunal, Special Subordinate Court-I, Salem.

For Appellant : Mr.H.Manojin

For Respondents : R1 and R3 – *Ex-parte*
before the Tribunal
Mr.C.Paranthaman
for R2
Ms.C.Harini
for M/s.M.B.Gopalan Associates
for R4

C.M.A.No.2199 of 2018

Selvam @ Selvaraj

Vs.

... Appellant

1. Kandasamy

2. M/s.United India Insurance Co.Ltd.,
D.O.II, Dr.Sankaran Road,
Namakkal District.

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4. Tata AIG General Insurance Co.Ltd.,
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before the Tribunal
Mr.C.Paranthaman
for R2
Ms.C.Harini
for M/s.M.B.Gopalan Associates
for R4

C.M.A.No.1234 of 2018

United India Insurance Co.Ltd.,
Divisional Office,
No.2, Dr.Sankaran Road,
Namakkal – 637 001.

... Appellant

Vs.

1. Selvam @ Selvaraj
2. Kandasamy
3. R.Mani
4. Tata AIG General Insurance Co.Ltd.,
3rd Floor, Jaya Enclave,1057,
Avinashi Road,
Coimbatore – 18.

... Respondents

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act to set aside the judgment and decree dated 15.11.2017 made in M.C.O.P.No.1563 of 2011 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court-I, Salem.



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C.M.A.Nos.2198, 2199, 1234 and 1235 of 2018

For Appellant : Mr.C.Paranthaman

For Respondents : Mr.H.Manojin
for R1

R2 and R3-*Ex-parte*
before the Tribunal

Ms.C.Harini
for M/s.M.B.Gopalan Associates
for R4

C.M.A.No.1235 of 2018

United India Insurance Co.Ltd.,
Divisional Office,
No.2, Dr.Sankaran Road,
Namakkal – 637 001.

... Appellant

Vs.

1. Vijay
2. Kandasamy
3. R.Mani
4. Tata AIG General Insurance Co.Ltd.,
3rd Floor, Jaya Enclave,1057,
Avinashi Road,
Coimbatore – 18.

... Respondents

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act to set aside the judgment and decree dated 15.11.2017 made in M.C.O.P.No.1562 of 2011 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court-I, Salem.



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R2 and R3-*Ex-parte*
before the Tribunal

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for R4

COMMON JUDGMENT

These Civil Miscellaneous Appeals are arising out of the common judgment dated 15.11.2017 passed in M.C.O.P.Nos.1562 and 1563 of 2011 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court-I, Salem.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3. The claimant in M.C.O.P.No.1562 of 2011 is the son and the claimant in M.C.O.P.No.1563 of 2011 is the father. The first respondent is



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the owner of the lorry and the second respondent/United India Insurance Company is the insurer of the lorry. The third respondent is the owner of the motorcycle and the fourth respondent/TATA AIG General Insurance Company is the insurer of the motorcycle.

4. The brief facts of the case are as follows:

(i) On 24.07.2011 at about 2.30 p.m., the claimant (Vijay) in M.C.O.P.No.1562 of 2011 riding the motorcycle viz., Bajaj Caliber bearing Registration No.TN 28 S 6166 from Thengalpalayam to Thattankuttai Pudur. The claimant (Selvam @ Selvaraj) in M.C.O.P.No.1563 of 2011 is the pillion rider of the motorcycle. When they were nearing Rasipuram to Thengalapayam Road from West to East direction, a lorry bearing Registration No. TN 28 H 6463 came from South to North direction, and the driver of the lorry suddenly applied brake and stopped the lorry on the middle of the road. As a result of that, the motorcycle dashed against the lorry. Due to the said impact the claimants fell down and sustained multiple injuries all over the body.

(ii) Seeking compensation against the owner of the lorry and its



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insurer M/s.United India Insurance Company Limited, the claimants have filed claim petitions, claiming a sum of Rs.5,00,000/-, each as compensation.

5. The first respondent, who is the owner of the lorry and the third respondent, who is the owner of the motorcycle, remained *ex-parte* before the Tribunal.

6. The case of the claimants was resisted by the second respondent/United India Insurance Company by taking a defence that though the lorry was insured with the Insurance Company, the driver of the lorry did not follow the policy conditions. The further defence is that the claimant in M.C.O.P.No.1562 of 2011, who took his father as a pillion rider had drove the motorcycle in a rash and negligent manner and met with an accident. Due to the said impact, they sustained injuries. Therefore, the Insurance Company is not liable to pay compensation to the claimants. Thus, they sought for dismissal of the claim petitions.

7. The claim was resisted by the fourth respondent/TATA AIG



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General Insurance Company by taking a defence that the driver, who drove the lorry had suddenly applied break and stopped the lorry in the middle of the road, due to which the accident had occurred. The first respondent's lorry driver is only liable for the accident. Therefore, the fourth respondent Insurance Company is not liable to pay compensation amount to the claimants. Thus, they sought for exoneration from the liability.

8. In order to prove the claim before the Tribunal, on the side of the claimants, the claimants examined themselves as P.W.1 and P.W.2 and marked Ex.P1 to Ex.P17. On the side of the second respondent/United India Insurance Company, R.W.1 to R.W.3 were examined and Ex.R1 to Ex.R4 were marked. Disability Certificate/Ex.C1 and copy of the X-ray report/Ex.C2 were marked as Court documents and Ex.W1 to Ex.W4 were marked as on the side of the witnesses.

9. The Tribunal, after considering the entire oral and documentary evidence available on record, awarded a sum of Rs.62,500/- to the claimant in M.C.O.P.No.1562 of 2011 and awarded a sum of Rs.2,91,715/- to the claimant in M.C.O.P.No.1563 of 2011 and directed the



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first respondent (owner of the lorry) and second respondent (United Insurance Company) to jointly and severally pay compensation to the claimants. The Tribunal dismissed the claim petitions as against the respondent No.3 (owner of the motorcycle) and respondent No.4 (insurer of the motorcycle). The break-up details of the compensation awarded by the Tribunal in each of the M.C.O.Ps are as under :

(i) In M.C.O.P.No.1562 of 2011

<i>S. No.</i>	<i>Heads under which the amount is awarded by the Tribunal</i>	<i>Amount awarded by the Tribunal in Rs.</i>
1.	10% disability	30,000
2.	Pain and Sufferings	5,000
3.	Transportation and other expenses	10,000
4.	Medical expenses	7,500
5.	Extra nourishment and loss of amenities	10,000
	Total	62,500

(i) In M.C.O.P.No.1563 of 2011

<i>S. No.</i>	<i>Heads under which the amount is awarded by the Tribunal</i>	<i>Amount awarded by the Tribunal in Rs.</i>
1.	Loss of income and 25%	1,80,000



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S. No.	<i>Heads under which the amount is awarded by the Tribunal</i>	<i>Amount awarded by the Tribunal in Rs.</i>
	disability	
2.	Pain and Sufferings	15,000
3.	Transportation and other expenses	10,000
4.	Medical expenses	51,715
5.	Extra nourishment	15,000
6.	Loss of Amenities	20,000
	Total	2,91,715

10. Challenging the quantum of compensation awarded by the Tribunal, the claimants have preferred C.M.A.Nos.2198 and 2199 of 2018 and as against the liability fixed by the Tribunal, the second respondent/United India Insurance Company has preferred C.M.A.Nos.1234 and 1235 of 2018.

11. The learned counsel for the appellants/United Insurance Company Limited submitted that admittedly the lorry bearing Registration No.TN 28 H 6463, which met with an accident was insured with the appellant/Insurance Company. Initially F.I.R was registered against the driver of the said lorry, but subsequently, F.I.R was closed as a 'mistake of



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fact'. Only due to the rash and negligent driving of the claimants, the accident had occurred. Even the claimants themselves stated that the driver of the lorry had applied sudden break and stopped the lorry, however, the claimants, who came in a negligent manner hit behind the standing lorry and fell down and sustained injuries. Therefore, there is no negligence on the part of the driver of the lorry and F.I.R also closed as a 'mistake of fact'. The Tribunal failed to consider the facts and fastened the liability on the owner and the insurer of the lorry, instead of fixing liability on the owner and the insurer of the motorcycle. He further submitted that the quantum of compensation awarded by the Tribunal under different heads are highly excessive and the same needs proper reduction. Therefore, the Award passed by the Tribunal in a common judgment is liable to be set aside.

12. The learned counsel for the claimants submitted that without making any indication or following the road traffic rules, the driver of the lorry all of a sudden stopped the lorry and that the rider of the motorcycle lost his control and hit behind the lorry. Only due to the act committed by the driver of the lorry, the accident had occurred and there is no negligence on the part of the claimants. The F.I.R was closed as a



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‘mistake of fact’, however, the driver of the lorry, who was an eye witness to the accident was not examined before the Tribunal, to prove their claim.

The claimants, who are the rider and the pillion rider of the motorcycle, were examined as P.W.1 and P.W.2 and they categorically stated about the manner of the accident. Since the driver of the lorry did not come to the witness box and subjected for cross examination, the Tribunal has rightly fixed the liability on the driver of the lorry and directed the owner and insurer of the lorry to pay compensation. Hence, there is no merit in the appeals filed by the Insurance Company and the same are liable to be dismissed.

13. With regard to the quantum of compensation, the learned counsel for the claimants submitted that the compensation awarded by the Tribunal does not reflect 'just' compensation and it warrants interference by this Court and the compensation may be enhanced. Though the claimant in M.C.O.P.No.1563 of 2011 sustained grievous injuries and the Doctor assessed his disability at 60%, the Tribunal fixed his disability at 25% and awarded a very meagre amount under the head of loss of income and the



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amounts awarded under different heads are very low. He further submitted that the Tribunal awarded a sum of Rs.62,500/- to the claimant in M.C.O.P.No.1562 of 2011 and the same is very low. Hence, the quantum of compensation fixed by the Tribunal may liable to be enhanced.

14. Heard the learned counsel on either side and perused the materials available on record.

15. It is settled proposition of law that the Tribunal has to consider the materials available on record, but need not relied on the other materials which are not before it.

16. So far as the liability is concerned, initially the case was registered against the driver of the lorry and subsequently, the same was closed as a 'mistake of fact'. During trial, the claimants examined themselves as P.W.1 and P.W.2 and they have clearly stated about the manner of the accident. However, no contra evidence was let in by the appellant/Insurance Company to prove their claim and even they did not



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choose to examine the driver of the lorry. Therefore, in the absence of contra evidence, the Tribunal has fixed the liability on the driver of the lorry.

17. This Court being the first appellate Court and the final Court of fact finding, considering the entire materials available on record independently finds that the accident had occurred only due to rash and negligent act of the driver of the lorry. Therefore, the owner and insurer of the lorry are liable to pay compensation.

18. So far as the quantum of compensation is concerned, on a perusal of the records it is seen that the Doctor assessed the disability of the claimant in M.C.O.P.No.1562 of 2011 at 10% and the Tribunal also fixed Rs.3,000 per percentage of disability and awarded a sum of Rs.30,000/- under the head of disability and also awarded reasonable amounts under the other heads, which does not warrant any interference.

19. Further, the Doctor assessed the disability of the claimant



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in M.C.O.P.No.1563 of 2011 at 60%, but the Tribunal found that as the disability caused only in a part of the body, reduced the same to 25%. Since the avocation and income of the claimant was not proved, the Tribunal fixed the notional income at Rs.4,000/- per month and applied multiplier method and awarded a sum of Rs.1,80,000/- under the head of loss of income and the amount awarded under the other heads are reasonable. This Court finds that the impugned Award was passed by the Tribunal by granting compensation is 'just and fair', this Court does not find any perversity in appreciation of the evidence. Therefore, there is no reason and the ground to enhance the compensation. Unless this Court finds any perversity in appreciation of the evidence by the Tribunal or the compensation awarded is not 'just', this Court as the appellate Court will not interfere with the impugned Award passed by the Tribunal.

20. There is no merit in the present appeals, which are accordingly dismissed, confirming the impugned Award passed by the



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Tribunal. There shall be no order as to costs in the present appeals.

Consequently, connected miscellaneous petitions are closed.

21. The first respondent before the Tribunal/owner of the lorry and the second respondent before the Tribunal/United Insurance Company are directed to jointly and severally deposit the entire compensation as awarded by the Tribunal to the credit of M.C.O.P.Nos.1562 of 2011 and 1563 of 2011, respectively on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Salem within a period of six weeks from the date of receipt of a copy of this judgment, after adjusting the amount, if any already deposited by them before the Tribunal. On such deposit, the Tribunal is directed to credit the compensation to the Bank Account of the claimants, by following the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016 (reported in 2016 (2) LW 561 - The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others). On such deposit, the claimants are permitted to



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withdraw the amount of compensation in the ratio mentioned by the Tribunal, after adjusting the amount, if any already withdrawn.

13.09.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
ms

To

1. The Special Subordinate Judge-I,
Motor Accident Claims Tribunal,
Salem.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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P.VELMURUGAN, J.

ms

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1234 and 1235 of 2018**

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