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CMA Nos.128, 131 & 132 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2023

CORAM:

THE HONOURABLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

CMA.Nos. 128, 131 & 132 of 2023

and

CMP Nos.1130, 1137 & 1139 of 2023

CMA No.128 of 2023

The Branch Manager,
United India Insurance Co.Ltd.,
19-19/, South End Road,
Basavangudi,
Bangalore - 560 004.

....

Appellant

Vs

1. R.Kannan

2. G.Vijaya Kumar Singh

....

Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 26.04.2017 made in M.C.O.P. No.386 of 2016 on the file of the Motor Accident Claims Tribunal, Special District Judge, Krishnagiri.

For Appellant

: M/s.I.Malar

For Respondents

: Mr.S.P.Yuvaraj

CMA No.131 of 2023

The Branch Manager,
United India Insurance Co.Ltd.,
19-19/, South End Road,
Basavangudi, Bangalore - 560 004.

....

Appellant



CMA Nos.128, 131 & 132 of 2023

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Vs

1. R.Saroja
2. Minor R.Mohana
3. Minor R.Suvetha
4. Minor R.Mownitha
- (Minors are represented by their
Natural Guardian mother Saroja)
5. Rani
6. Devaraj
7. G.Vijay Kumar Singh

.... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 26.04.2017 made in M.C.O.P. No.385 of 2016 on the file of the Motor Accident Claims Tribunal, Special District Judge, Krishnagiri.

For Appellant	: M/s.I.Malar
For Respondents	: Mr.G.Murugendran

CMA No.132 of 2023

The Branch Manager,
United India Insurance Co.Ltd.,
19-19/, South End Road,
Basavangudi,
Bangalore - 560 004.

Vs

.... Appellant

1. K.Tamilazhagan
 2. G.Vijaya Kumar Singh
- Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 26.04.2017 made in M.C.O.P. No.387 of 2016 on the file of the Motor Accident Claims Tribunal, Special District Judge, Krishnagiri.



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For Appellant : M/s.I.Malar
For Respondents : Mr.S.P.Yuvaraj

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed as against the Judgment and Decree dated 26.04.2017 made in M.C.O.P.Nos. 385 to 387 of 2016 on the file of the Motor Accident Claims Tribunal, Special District Judge, Krishnagiri, thereby the Tribunal passed common award.

2. The case of the claimants is that on 07.03.2016 at about 5.45 p.m., when the deceased and two other injured persons were proceeding in their motorcycle, bearing Registration No.TN-25-P-4951 on the extreme left hand side of the road of Singarapettai to Tiruvannamalai main road, a car bearing Registration No.KA-05-AB-1440, owned by the first respondent and insured with the second respondent in the claim petition, in a rash and negligent manner and dashed as against the motorcycle. Due to the accident, the deceased sustained grievous injuries and other two pillion riders fell down from the motorcycle and they also sustained grievous injuries. All were taken to the hospital and the rider of the motorcycle succumbed to the injuries in the hospital and two others were treated by the hospital authorities.



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3. A specific stand of the appellant before the Tribunal is that the deceased and two other injured persons travelled in the same motorcycle as triples. They only drove the motorcycle in a rash and negligent manner and dashed as against the car. The deceased was also not holding any valid license and as such they are not entitled for any compensation.

4. On the side of the claimants, they had examined P.Ws.1 to 3 and marked Exs.P1 to P20. On the side of the respondent, no one was examined and no document was marked.

5. Though the appellant had taken a specific stand that only because of rash and negligent driving of the two wheeler, the accident had occurred. No one was examined to substantiate the said contention. Considering the evidence of P.Ws.2 and 3 and Ex.P1-FIR registered as against the driver of the car, the Tribunal concluded that the accident had occurred only due to rash and negligent driving of the car and fixed the liability as against the appellant. However, the Tribunal



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considered the fact that the deceased and two other injured travelled same motorcycle as triples and as such, 20% of the negligence contributed towards the deceased and two other injured persons and only 80% of the negligence contributed by the car.

6. The deceased in MCOP No.385 of 2016 was aged about 42 years at the time of accident. Though the claimants marked Ex.P8 stating that he owned lorry, he was paying monthly EMI, the Tribunal had taken notional income at the rate of Rs.300/- per day. It is also pertinent to note that the deceased is the owner of the lorry and admittedly he was not a driver of the said lorry. Therefore, at any cost, the income from the said lorry would not be affected in any way. At the same time, the claimants failed to produce any other documents to show that he was earning Rs.40,000/-per month. Therefore, the Tribunal had taken notional income of Rs.300/- per day and adopted 15 years of multiplier method and awarded a sum of Rs.12,96,000/- under the head of loss of earnings and the Tribunal also awarded a sum of Rs.3,80,000/- under various heads and totally awarded a sum of Rs.16,76,000/-.



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7. The injured in MCOP No.386 of 2016, sustained a fracture of the left femur, fracture of both the bones of his right leg, metal plate and screws were fixed over his left femur and IL nailing was done over his right tibia. The wound certificate was marked as Ex.P11. The discharge summary was marked as Ex.P12. His disability was assessed at 60% and the disability certificate was marked as Ex.P19. Considering the above documents, the Tribunal rightly awarded a total sum of Rs.10,33,600/- as compensation, which is just and fair compensation.

8. The injured in MCOP No.387 of 2016, sustained fracture of the left tibia, left fibula, fracture of the first metacarpal bone of his right hand, injury over his right ankle and injury over his tongue. Therefore, his disability was assessed at 35% and the disability certificate was marked as Ex.P20. Considering the above documents, the Tribunal rightly awarded a sum of Rs.2,73,590/- as compensation, which is just and fair compensation.

9. Therefore, this Court finds no infirmity or illegality in the Judgment and Decree dated 26.04.2017 passed in M.C.O.P.Nos. 385



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to 387 of 2016 on the file of the Motor Accident Claims Tribunal, Special District Judge, Krishnagiri. Accordingly, these Civil Miscellaneous Appeals stand dismissed. However, the claimants in MCOP No.385 of 2016 is at liberty to file a petition for enhancement separately in accordance with law. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

25.01.2023

Speaking/Non-speaking

Internet: Yes/No

Index: Yes/No

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To

The Motor Accident Claims Tribunal,
Special District Judge,
Krishnagiri.

G.K.ILANTHIRAIYAN, J



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