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C.M.A.Nos.4303 and 4304 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2023

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THE HON'BLE MRS.JUSTICE R.KALAIMATHI

C.M.A.Nos.4303 and 4304 of 2019

C.M.A.No.4303 of 2019 (M.C.O.P.No.6999 of 2013):

Narayanan @ Ravindra Kumar

...Appellant/Claimant

Vs.

1. T.Munisamy

2. Reliance General Insurance Company Limited,
Rai's Tower, 2nd Floor,
Plot No.2054,
2nd Avenue,
Anna Nagar,
Chennai – 600 008.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgement and Decree dated 19.03.2019 in M.A.C.T.O.P.No.6999 of 2013 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.



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For Appellant : A.Subadra
For Respondents :
For R1 : Ex-parte
For R2 : Mr.S.Arunkumar

C.M.A.No.4304 of 2019 (M.C.O.P.No.6998 of 2013):

S.Magesh Babu ...Appellant/Claimant

Vs.

1. T.Munisamy

2. Reliance General Insurance Company Limited,
Rai's Tower, 2nd Floor,
Plot No.2054,
2nd Avenue,
Anna Nagar,
Chennai – 600 008.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgement and Decree dated 19.03.2019 in M.A.C.T.O.P.No.6998 of 2013 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : A.Subadra
For Respondents :
For R1 : Ex-parte
For R2 : Mr.S.Arunkumar



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COMMON JUDGMENT

WEB COPY The claimants in M.A.C.T.O.P.No.6998 of 2013 and M.A.C.T.O.P.No.6999 of 2013 have preferred these Civil Miscellaneous Appeals against the Common Judgment and Decree dated 19.03.2019 passed by the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai for enhancement for enhancement.

2. The Claim Petition in M.A.C.T.O.P.No.6998 of 2013 has been filed by one S.Magesh Babu under Section 166 of the Motor Vehicles Act, 1988, claiming a compensation of Rs.15,00,000/- and yet another Claim Petition was filed in M.A.C.T.O.P.No.6999 of 2013 under Section 166 of the Motor Vehicles Act, 1988 claiming a compensation of Rs.25,00,000/- for the injuries sustained by the appellant/claimant namely Narayanan @ Ravindra Kumar in the Motor Accident that occurred on 19.09.2013.

3. Since both petitions are filed based on the same accident, by recording common evidence in M.A.C.T.O.P.No.6998 of 2013, common Judgement came to be passed.



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4. The learned Tribunal held that the rider of the two wheeler namely Narayanan @ Ravindra Kumar (C.M.A.No.4303 of 2019 / M.A.C.T.O.P.No.6999 of 2013) and the driver of the Auto are equally responsible for the accident, thereby only 50% of the award amount is ordered to be deposited by the second respondent Insurance Company. Challenging this Judgement, present Civil Miscellaneous Appeals have been preferred.

C.M.A.No.4304 of 2019 (M.C.O.P.No.6998 of 2013):-

5. The learned counsel for the appellant/claimant in C.M.A.No.4304 of 2019 (S.Magesh Babu) would vehemently argue that the Tribunal after taking into account the details of the rough sketch has come to a wrong conclusion that the rider of the two wheeler is also equally responsible for the accident. She would further contend that on perusal of Ex.P.1 (FIR) and Ex.P.2 (Rough Sketch), it is clear that the rider of the two wheeler namely Narayanan @ Ravindra Kumar was not at fault and only because of the rash and negligent driving of the Auto driver, the accident had occurred. She would further state that as per the



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evidence of P.W.1 and P.W.2, who are the eye witnesses to the occurrence coupled with the above said documents as there is no contra evidence, it was stressed upon that fixing of liability on the rider of the two wheeler is incorrect.

6. It is her further argument that because of the injuries sustained by the appellant/petitioner his earning capacity is also affected, therefore multiplier method should have been adopted by the Tribunal. With regard to medical expenses as per Ex.P.5 (Medical Bills), it was filed for a sum of Rs.1,79,083/-, whereas only a sum of Rs.78,000/- was ordered is incorrect.

7. Per contra, the learned counsel for the second respondent Insurance Company would vehemently contend that the learned Tribunal has fixed the contributory negligence at 50% on the part of the rider of the two wheeler namely Narayanan @ Ravindra Kumar (C.M.A.No.4303 of 2019 / M.A.C.T.O.P.No.6999 of 2013) is correct.



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8. He would further put forth that considering the injuries sustained by the appellant/claimant S.Magesh Babu (C.M.A.No.4304 of 2019), invoking of multiplier method would not arise at all. Moreover, the first page of the Medical bill was not filed by the claimant side. The Tribunal having observed the same has granted Rs.78,000/- and therefore the award needs no interference.

C.M.A.No.4303 of 2019:-

9. The learned counsel for the appellant/claimant in C.M.A.No.4303 of 2019 (Narayanan @ Ravindra Kumar) would strenuously argue that the appellant/petitioner was working in a Textile Shop and the income of the said person was fixed as Rs.7,500/- is insufficient taking into account of the fact that the accident had taken place in the year 2013.

10. Per contra, the learned counsel appearing for the second respondent Insurance Company would vehemently contend that the income fixed as Rs.7,500/- per month is quite reasonable and the award



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is a well reasoned and the amount is a well reasoned and therefore needs no interference.

11. Heard the rival submissions of both the learned counsels.

Perused the materials available on record.

12. The prime issue in both the appeals pertains to the liability. The claimants who are admittedly witnesses to the occurrence have been examined as P.W.1 and P.W.2. It is their evidence that when they were travelling in the two wheeler from Sholinghur towards Arakkonam, an Auto came in a rash and negligent manner from the opposite side and dashed against them.

13. The learned Tribunal has thoroughly observed the details of the above said evidence and the rough sketch. However, the relevant portion of the FIR which is marked as Ex.P1 is extracted hereunder:-

“19.09.2013 அன்று மாலை சுமார் 3.00 மணி அளவில் என்னுடைய சகோதரர் மகேஸ்பாபு மற்றும் அவருடைய நண்பர் நாராயணன் (என்கிற ரவீந்திர குமார் ஆகிய இருவரும்) TN-73-Y-4717 TVS Sports வண்டியில் இருசக்கர வாகனத்தை



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நாராயணன்(எ)ரவீந்திர குமார் ஓட்ட என் தம்பி பின்னால் அமர்ந்து கொண்டு அரக்கோணத்தில் இருந்து சோளிங்கருக்கு பத்திர பதிவு பேப்பர் வாங்குவதற்காக செல்லும் போது தாளிக்கல் கூட்டுரோடு அருகில் செல்லும் போது எதிரே அதிவேகமாகவும், அஜாக்கிரதையாகவும் சாலை விதிகளை மீறியும் வந்த ஆட்டோ TN-23-AS-6951 என்ற எண் உள்ள வண்டி என்னுடைய சகோதரர் மற்றும் இருசக்கர வாகனம் ஓட்டி வந்த நாராயணன்(எ)ரவீந்திரகுமார் என்பவர் மீது மோதியதில் இருவரும் தூக்கி எறியப்பட்டனர்.”

14. PW1 and PW2 have unanimously stated that while they were proceeding from Sholinghur to Arakkonam an Auto came from opposite direction in a rash and negligent manner and hit on the two wheeler and the driver of an Auto is responsible for the accident. There is no contra evidence let in by the second respondent/Insurance Company. It is discernible from the evidence of PW1, PW2 coupled with the FIR and Rough Sketch that the rider of the two wheeler while proceeding from west to east, he wrongly turned to right and the accident occurred. Therefore, the rider of the two wheeler and Auto are equally responsible for the accident.



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15. Based on the above said elaboration, I find no valid reason to interfere with the finding of the learned Tribunal with regard to the liability issue.

16. With regard to the claimant in C.M.A.No.4304 of 2019 (S.Magesh Babu) it is discernible from Ex.P.4 (Discharge Summary) issued by the Christian Medical College, Vellore, that he had suffered Type III Open Fracture Right Proximal Tibia with Subluxation of Right Knee, Closed Right Neck of Femur Fracture, Closed Right Comminuted Shaft of Femur Fracture. For which open reduction and internal fixation, was done under anesthesia. He was in the hospital as an inpatient for about 18 days. Disability Certificate Ex.P.26 reads that he suffers disability to the tune of 40%. The disability assessed by the Medical Board appears to be reasonable considering the details of the fractures as mentioned supra.

17. The learned counsel for the appellant in C.M.A.No.4304 of 2019 (S.Magesh Babu) would strenuously argue that considering the nature of injuries/fractures sustained by the appellant/claimant for



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assessing loss of income the multiplier method is to be invoked. It is the evidence of P.W.1 that he was running a Textile Shop under the name and style of Thirumurugan Textiles and he continues to run the same after the accident. It indicates the fact that he himself was running the business. It is not his evidence that on account of the injuries sustained, he discontinued his business.

18. On the other hand, it cannot be denied that he would have been at home by taking bed rest for few months because of the fractures and surgeries undergone by him. Taking note of the fact that the Tribunal has awarded a sum of Rs.2,00,000/- as compensation based on the disability assessed by the Medical Board, the learned Tribunal has awarded Rs.5000/- for 1%. Therefore, considering the facts and circumstances as mentioned supra granting of Rs.2,00,000/- for 40% disability suffered by the claimant is quite reasonable. Hence it is not interfered with.

19. The learned counsel for the appellant in C.M.A.No.4304 of 2019 (S.Magesh Babu) would strenuously contend that for the medical expenses under Ex.P.5 an amount of Rs.1,79,083/- is granted. The



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learned Tribunal has awarded a sum of Rs.80,000/- based on Ex.P.5 medical bills stating that there is no account for a sum of Rs.1,08,486/- and further stated that first page of the bill has also not been produced.

20. When so many medical bills/receipts are filed, so much care has to be taken while filing the said bills as one document. Among the so many bills, the bill issued at the time of discharge is for an amount of Rs.1,09,611/- Therefore, an amount of Rs.1,25,000/- is awarded under the head of Medical Expenses. In all other aspects, the award passed by the learned Tribunal under different heads appears to be reasonable and needs no interference.

21. For the appellant/claimant in C.M.A.No.4303 of 2019 (Narayanan@Narayan) P.W.2, he was said to be working as a salesman in the Textile Shop of P.W.1. No proof for income was filed.

22. In **Syed Sadiq vs. United India Insurance Company Limited**, reported in (2014) 2 SCC 735, for 24 years old person/vegetable vendor, the notional income was fixed at Rs.6,500/- for



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the accident occurred in the year 2008. Here is a case where a 33 year old person who was said to be working as a salesman in the Textile Shop.

Therefore, considering the age and nature of work done by him, the income of the appellant/claimant namely (Narayanan@Narayan) is fixed as Rs.8,500/-. Fixing of age of the claimant and selection of multiplicand is not in dispute.

23. I am reminded of the observations of the Hon'ble Supreme Court in the case of **Syed Sadiq vs. United India Insurance Company Limited**, reported in (2014) 2 SCC 735. The appellant/claimant namely (Narayanan@Narayan) aged about 33 years has sustained open pelvic fracture with evisceration of small bowel, bladder injury, inguinal and perineal laceration, both bone open fracture right leg, open humerus fracture and monteggia fracture right arm, right, right 5th metatarsal base fracture.

24. Considering the injuries and fractures sustained by the appellant/claimant in C.M.A.No.4303 of 2019 (Narayanan @ Narayan), an amount of Rs.1,00,000/- is granted under the head of loss of



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amenities. In respect of the other heads, award granted by the learned Tribunal appears to be reasonable and needs no interference.

25. The award of the Tribunal in M.A.C.T.O.P.No.6999 of 2013 (Narayanan @ Ravindra Kumar/C.M.A.No.4303 of 2019) is modified as follows:-

Sl. No.	Head for Compensation	Amount awarded by the Tribunal	Amount awarded by this court	Award confirmed or enhanced or reduced or granted or set aside
1	Compensation for Disability	Rs.10,08,000/-	Rs.11,42,400/-	Enhanced
2	Pain and Sufferings	Rs.2,00,000/-	Rs.2,00,000/-	Confirmed
3	Medical Bills	Rs.5,70,000/-	Rs.5,70,000/-	Confirmed
4	Transportation	Rs.25,000/-	Rs.25,000/-	Confirmed
5	Extra nourishment	Rs.25,000/-	Rs.25,000/-	Confirmed
6	Attender Charges	Rs.50,000/-	Rs.50,000/-	Confirmed
7	Loss of Amenities		Rs.1,00,000/-	Granted
	Total	Rs.18,78,000/-	Rs.21,12,400/-	

Total award amount : Rs.21,12,400/-

Less 50% negligence on the part of the appellant : Rs.10,56,200/-

Net Amount : Rs.10,56,200 /-

Rounded off to Rs.10,56,000/-

26. In the result,



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1. The Civil Miscellaneous Appeal is partly allowed. No costs.
2. The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount of **Rs.10,56,000/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of **M.C.O.P.No.6999 of 2013 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai**, within a period of eight weeks from the date of receipt of a copy of this Judgment.
3. The appellant/claimant is directed to pay the appropriate Court Fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of appropriate Court Fee.
4. On such deposit being made, the appellant is permitted to withdraw the enhanced award amount of Rs.10,56,200/- along with interest and cost, less any amount already withdrawn, if any, by filing appropriate application before the Tribunal.



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27. The award of the Tribunal in M.A.C.T.O.P.No.6998 of 2013

(Magesh Babu/C.M.A.No.4304 of 2019) is modified as follows:-

Sl. No.	Head for Compensation	Amount awarded by the Tribunal	Amount awarded by this court	Award confirmed or enhanced or reduced or granted or set aside
1	Compensation for Disability	Rs.2,00,000/-	Rs.2,00,000/-	Confirmed
2	Pain and Sufferings	Rs.1,00,000/-	Rs.1,00,000/-	Confirmed
3	Medical Bills	Rs.78,000/-	Rs.1,25,000/-	Enhanced
4	Future Medical Expenses	Rs.25,000/-	Rs.25,000/-	Confirmed
5	Transportation	Rs.10,000/-	Rs.10,000/-	Confirmed
6	Extra nourishment	Rs.15,000/-	Rs.15,000/-	Confirmed
7	Attender Charges	Rs.10,000/-	Rs.10,000/-	Confirmed
	Total	Rs.4,38,000/-	Rs.4,85,000/-	

Total award amount : **Rs.4,85,000/-**

Less 50% negligence on the part of the appellant : **Rs.2,42,500/-**

Net Amount : **Rs.2,42,500/-**

Rounded off to Rs.2,42,000/-



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WEB COPY 28. In the result,

1. The Civil Miscellaneous Appeal is partly allowed. No costs.
2. The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount of **Rs.2,42,000/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of **M.C.O.P.No.6998 of 2013 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai**, within a period of eight weeks from the date of receipt of a copy of this Judgment.
3. The appellant/claimant is directed to pay the appropriate Court Fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of appropriate Court Fee.



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4. On such deposit being made, the appellant is permitted to withdraw the enhanced award amount of Rs.2,42,000/- along with interest and cost, less any amount already withdrawn, if any, by filing appropriate application before the Tribunal.

25.04.2023

Index : Yes/No

Neutral Citation : Yes/No

rgm

To:

Motor Accidents Claims Tribunal, Chennai
(In the II Court of Small Causes), Chennai.



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R.KALAIMATHI, J.

rgm

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