



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.3108 and 3109 of 2017

Sathya

... Appellant/Claimant
in C.M.A.No.3108 of 2017

1.Sathya

2.Minor Nandhini

3.Minor Gayathri

(Minor respondents 2 and 3 are
represented by their mother and
natural guardian Sathya, the first
appellant herein).

4.Sarasal

... Appellants/Claimants
in C.M.A.No.3109 of 2017

Vs.

1.G.Arumugam

2.The United India Insurance Co.Ltd.,
No.76, VOC Road
Karaikudi.

... Respondents/Respondents
in both the CMAs.

C.M.A.No.3108 of 2017 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 09.08.2016 made in MCOP No.890 of 2013 on the file of the Motor Accidents Claims Tribunal / Additional District Court No.3, Dharapuram, Tiruppur District.

C.M.A.No.3109 of 2017 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 09.08.2016 made in MCOP No.892 of 2013 on the file of the Motor Accidents Claims Tribunal / Additional District Court No.3, Dharapuram, Tiruppur District.

For Appellants : Mr.N.S.Sivakumar
in both appeals

For Respondents : Mr.J.Chandran for R2
in both appeals

R1 Notice Dispensed with
in Both Appeals



COMMON JUDGMENT

The facts of the case, in brief, are as follows:

On 14.04.2013 at about 08.15 p.m., the appellant in C.M.A.No. 3108 of 2017 was travelling in the motorcycle bearing Reg. No.TN-42-Z-3064 as pillion rider, from her residence at Maravapalayam, Dharapuram Taluk to Koduvai. The two-wheeler was driven by her husband Suresh. The lorry bearing Reg.No.TN-55-8710 belonging to the first respondent and insured with the second respondent Insurance Company, was parked on the Dharapuram to Tirupur Main Road near a petrol bunk at Koduvai, without switching on the signal light at the back side of the lorry. When the motorcycle was nearing the said petrol bunk at Koduvai, the rider of the motorcycle was unable to see the stationed lorry due to the brightness in the headlights of the vehicles coming from the opposite direction and the motorcycle dashed on the back side of the lorry. Due to the said impact, both the rider and the pillion rider of the motorcycle, sustained grievous injuries all over the body. The rider of the motorcycle was taken to the Government Hospital, Tirupur, but he died on the way to the hospital. The legal heirs of the deceased filed a claim petition in MCOP No.892 of 2013 before the Tribunal claiming a sum of Rs.15,00,000/- as compensation due to the death of the deceased. The pillion rider filed a claim petition before the Tribunal in MCOP No.890 of 2013, claiming a sum of Rs.6,00,000/- as compensation for the injuries suffered by her. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.11,85,000/- in respect of MCOP No.892 of 2013 (CMA No.3109 of 2017) and a total compensation of Rs.94,000/- in respect of MCOP No.890 of 2013 (CMA No.3108 of 2017), with interest at the rate of 7.5% per annum from the respective dates of the petitions. The Tribunal fixed the negligence at the ratio of 75:25 on the part of the driver of the lorry and the rider of the motorcycle respectively, and accordingly directed the second respondent Insurance Company to pay 75% of the award amounts to the respective claimants.

2.Challenging the same, these Civil Miscellaneous Appeals have been filed by the claimants.

3.The learned counsel for the appellants /claimants has submitted that the Tribunal has erred in fixing 25% contributory negligence on the part of the deceased who drove the motorcycle, since the accident had occurred only due to the negligence on the part of the driver of the lorry by parking the lorry on the road without any parking light or indicator. It is also submitted that the Tribunal has erred in fixing the income of



the deceased at Rs.4,000/- and that the compensation awarded towards different heads are meagre.

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4.The learned counsel for the second respondent Insurance Company has submitted that the Tribunal has correctly considered the materials and evidence on record and has correctly fixed the negligence at the ratio of 75:25 on the part of the driver of the lorry and the rider of the motorcycle respectively. It is also submitted that the compensation awarded by the Tribunal in these petitions are just, fair and reasonable and hence the same does not require any interference in the hands of this Court.

5.Heard the learned counsel for the appellants and the learned counsel for the second respondent Insurance Company and perused the materials and evidence available on record carefully and meticulously.

6.With regard to the aspect of negligence, on a perusal of Ex.P1- First Information Report, it is seen that the lorry was parked on the side of the road. Further, it is not stated in the First Information Report that signal light in the lorry was switched on. The Tribunal observed that if the lorry is under repair, then it is the duty of the driver to park the lorry with the signal lights switched on. At the same time, had the deceased been slow and cautious in riding the motorcycle, the accident would have been avoided. In these circumstances, the Tribunal fixed the negligence at the ratio of 75:25 on the part of the driver of the lorry and the rider of the motorcycle respectively, which finding this Court is not inclined to interfere.

7.(a)The details of compensation awarded by the Tribunal in MCOP No.892 of 2013 (CMA No.3109 of 2017) are as follows:

HEADS	AMOUNT (Rs.)
Loss of income	10,80,000/-
Loss of consortium	50,000/-
Loss of love and affection	40,000/-
Funeral expenses	15,000/-

TOTAL...	11,85,000/-
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(b)The Tribunal has awarded a sum of Rs.10,80,000/- towards loss of income, fixing the monthly income of the deceased at Rs.7,500/-, deducting 1/4th of the amount towards personal expenses of the deceased and adopting the multiplier of 16.



Considering the fact that the deceased was aged 28 years at the time of accident, this Court is of the view that the deceased would have earned more in future had he been alive, as he was stated to have been earning Rs.10,000/- per month as a Tailor in a Banian Company as claimed in the claim petition. Hence, it would be appropriate to award a sum of Rs.1,15,000/- under the head 'loss of future prospects'. The amounts awarded by the Tribunal towards other heads are reasonable and hence the same are confirmed. The details of the modified compensation are as under:

HEADS	AMOUNT (Rs.)
Loss of income	10,80,000/-
Loss of future prospects	1,15,000/-
Loss of consortium	50,000/-
Loss of love and affection	40,000/-
Funeral expenses	15,000/-

TOTAL...	13,00,000/-
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(c) Since the negligence has been fixed at the ratio of 75:25 on the part of the driver of the lorry and the rider of the motorcycle (deceased) respectively, the second respondent Insurance Company is liable to pay 75% of the modified compensation of Rs.13,00,000/- which works out to Rs.9,75,000/-. It is made clear that out of the said sum of Rs.9,75,000/-, only for the compensation of Rs.8,88,750/- (75% of the total compensation awarded by the Tribunal), the interest rate of 7.5% per annum shall be calculated from the date of claim petition. For the balance amount of Rs.86,250/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal.

8.(a) The details of compensation awarded by the Tribunal in MCOP No.890 of 2013 (CMA No.3108 of 2017) are as follows:

HEADS	AMOUNT (Rs.)
31% disability	62,000/-
Extra nourishment	10,000/-
Loss of income during the treatment period	12,000/-
Pain and suffering	10,000/-

TOTAL...	94,000/-
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(b) Considering Ex.P4-Discharge summary issued to the appellant / injured by K.M.C.H. Hospital, Coimbatore, Ex.P3-Wound Certificate and the deposition of P.W.2-Doctor that the injured suffered epilepsy and there was malunion of bones; that movement of her left hand has been reduced, that her left hand wrist movement was reduced, that she is facing great difficulty in lifting the articles and the fact that she suffered 31% disability, and also the materials and evidence available on record, it would be appropriate to award a sum of Rs.20,000/- towards medical expenses, Rs.2,000/- towards transportation expenses and Rs.16,000/- towards loss of amenities. It would also be appropriate to enhance the amount awarded towards loss of earning during the treatment period from Rs.12,000/- to Rs.15,000/- and the amount awarded towards pain and suffering from Rs.10,000/- to Rs.25,000/-. The amounts awarded by the Tribunal towards other heads are reasonable and hence the same are confirmed. The details of the modified compensation are as under:

HEADS	AMOUNT (Rs.)
Medical expenses	20,000/-
Transportation expenses	2,000/-
31% disability	62,000/-
Extra nourishment	10,000/-
Loss of income during the treatment period	15,000/-
Pain and suffering	25,000/-
Loss of amenities	16,000/-

TOTAL...	1,50,000/-
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Since the negligence has been fixed at the ratio of 75:25 on the part of the driver of the lorry and the rider of the motorcycle (deceased) respectively, the second respondent Insurance Company is liable to pay 75% of the modified compensation of Rs.1,50,000/- which works out to Rs.1,12,500/-. It is made clear that only for the compensation of Rs.70,500/- (75% of the total compensation awarded by the Tribunal), the interest rate of 7.5% per annum shall be calculated from the date of claim petition. For the balance amount of Rs.42,000/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal.



9.The Civil Miscellaneous Appeals are allowed to the extent indicated above. No costs.

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10.The second respondent Insurance Company is directed to deposit the modified compensation amounts as ordered above, less the amounts if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the major claimants are permitted to withdraw their respective shares, on making proper application before the Tribunal. In respect of the shares of the minor respondents 2 and 3 in C.M.A.No.3109 of 2017, the same shall continue to be in the bank deposit, as ordered by the Tribunal till they attain majority. The interest accrued in the bank deposit shall be withdrawn by the mother of the minors, the first appellant in C.M.A.No.3109 of 2017, once in six months, directly from the bank, which shall be used for the benefit and welfare of the minors.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal /
Additional District Court No.3, Dharapuram,
Tiruppur District.

2.The Section Officer,
VR Section,
Madras High Court.

+1 cc to M/s.N.S.Sivakumar,Advocate Sr.No. 82502

+1 cc to M/s.J.Chandran,Advocate Sr.No.82400

AKM/20.01.2020/6P-5C /

C.M.A.Nos.3108 and 3109 of 2017