

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1022 & 1024 of 2011

C.M.A.No.1022 of 2011:

1.Vijayalakshmi

2.Minor.Narmadha

3.Minor.Sivasankar

(Minor appellants 2 and 3 are represented by their next friend and mother, Vijayalakshmi, 1st appellant herein)

... Appellants 1 to 3/Claimants 1 to 3

Vs.

1.M.Saleema

2.United India Insurance Company Limited,
Divisional Office-XI,
No.14, Whites Road,
Sudarsan Building, 2nd Floor,
Chennai - 600 014.

... Respondents 1 & 2/Respondents 1 & 2

3.Buduglamma

... 3rd Respondent/4th Claimant

4.Kullappa

... 4th Respondent/5th Claimant

C.M.A.No.1024 of 2011:

Suresh

... Appellant/Claimant

Vs.

1.M.Saleema

2.United India Insurance Company Limited,
Divisional Office - XI,
No.14, Whites Road,
Sudarsan Building, 2nd Floor,
Chennai - 600 014.

... Respondents/Respondents

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the common Judgment and Decree dated 01.11.2010 made in M.C.O.P.Nos.932 & 786 of 2007 on the file of the Motor Accident Claims Tribunal, Principal District Court, Krishnagiri.

For Appellant(s): Mr.P.Mani
(in both the appeals)

For R2 : Mr.D.Bhaskaran
(in both the appeals)

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed challenging 40% of contributory negligence fixed on the part of the deceased and on the part of the appellant in C.M.A.No.1024 of 2011 as well as for enhancement of compensation granted by the award dated 01.11.2010 made in M.C.O.P.Nos.932 & 786 of 2007 on the file of the Motor Accident Claims Tribunal, Principal District Court, Krishnagiri.

2.Both the appeals arise out of the same accident and common award and hence disposed of by this common order.

3.The appellants and respondents 3 and 4 in C.M.A.No.1022 of 2011 are the claimants in M.C.O.P.No.932 of 2007 on the file of the Motor Accident Claims Tribunal, Principal District Court, Krishnagiri. They filed the said claim petition, claiming a sum of Rs.12,00,000/- as compensation for the death of one Sheshagiri in the accident that took place on 10.09.2006.

4.The appellant in C.M.A.No.1024 of 2011 is the claimant in M.C.O.P.No.786 of 2007 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Krishnagiri. He filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 10.09.2006.

5.According to appellants and respondents 3 and 4 in C.M.A.No.1022 of 2011 and the appellant in C.M.A.No.1024 of 2011, on 10.09.2006 at about 03.02 P.M., while the deceased was riding his motorcycle bearing Registration No.TN 29 L 6784 along with the appellant in C.M.A.No.1024 of 2011 as pillion rider on Bargur - Krishnagiri NH road near Government Arts College, Krishnagiri, the driver of the lorry loaded belonging to the 1st respondent bearing Registration No.TAN 6979 loaded with iron rods which were protruding on its rear side, who was proceeding in front of the motorcycle in which the deceased and the

appellant in C.M.A.No.1024 of 2011 were travelling, without giving any signal suddenly slowed down the lorry and swerved to the left side of the road in a rash and negligent manner and due to the same, the motorcycle driven by the deceased dashed against the said lorry and caused the accident. In the accident, the deceased and the appellant in C.M.A.No.1024 of 2011 sustained grievous injuries and were taken to Government Head Quarters Hospital, Krishnagiri. Thereafter the deceased was taken to M.S.Ramaiah Memorial Hospital, Bangalore and further the deceased was shifted to M.S.Ramaiah Medical Teaching Hospital, Bangalore. In spite of treatment, the said Sheshagiri succumbed to injuries on 02.10.2006. The appellant in C.M.A.No.1024 of 2011 sustained multiple grievous injuries and was taken to Sanjay Gandhi Accident Hospital and Research Institute, Bangalore and was admitted as an in-patient. Therefore, the appellants and the respondents 3 and 4 in C.M.A.No.1022 of 2011 filed M.C.O.P.No.932 of 2007 and the appellant in C.M.A.No.1024 of 2011 filed M.C.O.P.No.786 of 2007 claiming compensation of Rs.12,00,000/- and Rs.5,00,000/- respectively as compensation against the respondents, being the owner and insurer of the lorry respectively.

6.The 1st respondent - owner of the lorry remained exparte in both the claim petitions before the Tribunal.

7.The 2nd respondent-Insurance Company, being the insurer of the lorry belonging to the 1st respondent filed common counter statement and denied all the averments made by the appellants and respondents 3 and 4 in C.M.A.No.1022 of 2011 and appellant in C.M.A.No.1024 of 2011. The 2nd respondent-Insurance Company denied the nature of accident as claimed by the appellants and respondents 3 and 4 in C.M.A.No.1022 of 2011 and the appellant in C.M.A.No.1024 of 2011. The rider of the motorcycle, viz., the deceased has not maintained sufficient distance i.e., 15 meters from the lorry. Therefore, the rider of the motorcycle also contributed to the accident. At the time of accident, the driver of the 1st respondent's lorry was not possessing valid driving license and also the lorry was not insured with the 2nd respondent-Insurance Company at the time of accident. The 1st respondent - owner of the lorry violated the statutory as well as policy conditions of the 2nd respondent. The 2nd respondent-Insurance Company denied the age, avocation and income of the deceased as claimed by the appellants and respondents 3 and 4 in C.M.A.No.1022 of 2011. The 2nd respondent-Insurance Company also denied the age, avocation, income, nature of injuries, disability and period of treatment taken by the appellant in C.M.A.No.1024 of 2011. The quantum of compensation claimed in both the claim petitions are highly excessive and prayed for dismissal of both the claim petitions.

8. Before the Tribunal, the 1st appellant in C.M.A.No.1022 of 2011 examined herself as P.W.1, one Suresh, who was a pillion rider in the motorcycle rode by the deceased was examined as P.W.2 and Dr.S.Krishnakumar was examined as P.W.3 and 14 documents were marked as Exs.A1 to A14. The 2nd respondent-Insurance Company did not let in any oral and documentary evidence.

9. The Tribunal considering the pleadings, oral and documentary evidence, held both the driver of the lorry belonging to the 1st respondent as well as the deceased who rode the motorcycle at the time of accident were responsible for the accident and fixed negligence in the ratio 60% : 40% respectively and directed the respondents 1 and 2 jointly and severally to pay a sum of Rs.5,93,580/- and Rs.63,370/- towards 60% of the total award amount as compensation to the appellants and respondents 3 & 4 in C.M.A.No.1022 of 2011 and to the appellant in C.M.A.No.1024 of 2011 respectively.

10. Not being satisfied with the amounts awarded by the Tribunal and for setting aside the portion of the award fixing 40% contributory negligence on the part of the deceased as well as the appellant in C.M.A.No.1024 of 2011, the appellants and the respondents 3 and 4 in C.M.A.No.1022 of 2011 and the appellant in C.M.A.No.1024 of 2011 have come out with the present appeals.

11. The learned counsel appearing for the appellants in both the appeals contended that the accident has occurred only due to the negligence on the part of the driver of the lorry belonging to the 1st respondent. The Tribunal erred in fixing 40% contributory negligence on the part of the rider of the motorcycle as well as on the part of the appellant in C.M.A.No.1024 of 2011. The deceased in C.M.A.No.1022 of 2011 was a milk vendor and doing agricultural labour work and was earning a sum of Rs.5,000/- per month. The deceased was aged 28 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The amounts awarded by the Tribunal towards loss of consortium, loss of love and affection, funeral expenses and transportation are meagre.

11(a). The appellant in C.M.A.No.1024 of 2011 suffered fracture on the right hand, multiple rib fractures at his chest and due to the injuries, he finds it difficult to do hard work and lift heavy articles. P.W.3/Doctor examined the appellant and certified that appellant suffered 50% disability. The Tribunal considering the evidence of P.W.3/Doctor and documents, ought to have awarded a sum of Rs.1,50,000/- towards disability and loss of future earning. The Tribunal without giving any valid reason, reduced the percentage of disability assessed by P.W.3/Doctor to

30% and awarded a meagre sum of Rs.60,000/- towards disability. The Tribunal has not awarded any amounts towards loss of income and pain and sufferings. The amounts awarded by the Tribunal towards attendant charges, transportation and extra nourishment are meagre. The learned counsel appearing for the appellants in both the appeals contended that the amounts awarded by the Tribunal under different heads in both the appeals are meagre and prayed for setting aside the portion of the award fixing 40% contributory negligence on the part of the deceased as well as on the part of the appellant in C.M.A.No.1024 of 2011 and for enhancement of compensation.

12.Per contra, Mr.D.Bhaskaran, learned counsel appearing for the 2nd respondent-Insurance Company in both the appeals contended that the driver of the lorry belonging to the 1st respondent was driving the lorry at a moderate speed. The rider of the motorcycle without maintaining sufficient distance between two vehicles, rode the motorcycle in a rash and negligent manner and dashed on the backside of the lorry and invited the accident. The Tribunal ought to have fixed entire negligence on the part of the rider of the motorcycle. The appellants and the respondents 3 and 4 in C.M.A.No.1022 of 2011 has not proved the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income, a sum of Rs.4,500/- per month fixed by the Tribunal as notional income of the deceased is excessive. The amounts awarded by the Tribunal under different heads are not meagre. P.W.3/Doctor is not the Doctor who treated the appellant in C.M.A.No.1024 of 2011 and the percentage of disability assessed by P.W.3/Doctor is excessive. P.W.3/Doctor admitted in his cross examination that by proper physiotherapy treatment, the stiffening of the muscles would be cured. The Tribunal considering all the above materials, awarded compensation which is not meagre. The appellants and the respondents 3 and 4 as well as the appellant in C.M.A.No.1024 of 2011 have not made out any case for enhancement of compensation and prayed for dismissal of both the appeals.

13.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company in both the appeals and perused the entire materials on record.

14.From the materials available on record, it is seen that the accident has occurred only when the motorcycle dashed on the backside of the lorry. According to the appellants, in the lorry iron rods were protruding from the lorry without any signal. The driver of the lorry belonging to the 1st respondent suddenly slowed down and turned down to left hand side and accident has occurred. The accident has occurred only due to rash and

negligent driving by the driver of the lorry belonging to the 1st respondent. The Tribunal considering the evidence of appellant in C.M.A.No.1024 of 2011 as P.W.2, who was a pillion rider at the time of accident, held that rider of the motorcycle would have avoided the accident had he maintained safe distance from ongoing lorry and fixed 60% negligence on the part of the driver of the lorry belonging to the 1st respondent and 40% negligence on the part of the rider of the motorcycle and appellant in C.M.A.No.1024 of 2011. The reason given by the Tribunal for fixing 40% contributory negligence on the part of the rider of the motorcycle as well as on the part of the appellant in C.M.A.No.1024 of 2011 is valid. As admitted by the appellant in C.M.A.No.1024 of 2011, iron rods were protruding from the lorry without any signal. In such case, the rider of the motorcycle ought to have been more cautious and careful while riding the motorcycle behind the lorry. In view of the above materials, the contributory negligence fixed by the Tribunal on the part of the rider of the motorcycle as well as on the part of the appellant in C.M.A.No.1024 of 2011 is not interfered with.

15.As far as quantum of compensation in C.M.A.No.1022 of 2011 is concerned, it is the contention of the appellants that the deceased was aged 28 years and was working as a milk vendor and doing agricultural labour work and was earning a sum of Rs.5,000/- per month. They failed to prove the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the deceased. The deceased was aged 25 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. Thus, a sum of Rs.5,000/- per month is fixed as monthly income of the deceased as claimed by the appellants and the appellants are entitled to 40% enhancement towards future prospects. The Tribunal has adopted multiplier '18' and deducted 1/4th towards personal expenses of the deceased, which are proper. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.11,34,000/- {Rs.7,000/- [Rs.5,000/- + Rs.2,000/- (40% of Rs.5,000/-)] X 12 X 18 X $\frac{3}{4}$ }. The Tribunal has awarded a sum of Rs.10,000/- towards loss of consortium to the 1st appellant. The 1st appellant is entitled to a sum of Rs.40,000/- towards loss of consortium. The appellants 2 and 3 are children and respondents 3 and 4 are parents of the deceased. The Tribunal has not awarded any amount towards loss of love and affection. The appellants 2 and 3 are entitled to a sum of Rs.40,000/- and the respondents 3 and 4 are entitled to a sum of Rs.20,000/- towards loss of love and affection. The Tribunal has awarded meagre sum of Rs.10,000/- and Rs.2,000/- towards loss of estate and funeral expenses respectively and the same are enhanced to Rs.15,000/- each. The amounts awarded by the Tribunal towards attendant charges and extra nourishment are set aside and the amounts

awarded towards transportation and medical expenses are confirmed. Thus, the compensation awarded by Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	7,29,000/-	11,34,000/-	enhanced
2.	Loss of consortium to 1 st appellant	10,000/-	40,000/-	Enhanced
3.	Funeral expenses	2,000/-	15,000/-	Enhanced
4.	Loss of estate	10,000/-	15,000/-	Enhanced
5.	Attendant charges	2,000/-	-	Set aside
6.	Extra nourishment	3,000/-	-	Set aside
7.	Transportation	3,000/-	3,000/-	Confirmed
8.	Loss of love & affection to appellants 2 and 3 (Rs.20,000/- X 2)	-	40,000/-	Granted
9.	Loss of love & affection to respondents 3 and 4 (Rs.10,000/- X 2)	-	20,000/-	Granted
	Total	Rs.7,59,000/-	Rs.12,67,000/-	enhanced by Rs.3,04,800/-
	60% of total	Rs.4,55,400/-	Rs.7,60,200/-	(Rs.7,60,200/- - Rs.4,55,400/-) -
10	Medical expenses	1,38,180/-	1,38,180/-	Confirmed

Total award amount	Rs.5,93,580/-	Rs.8,98,380/-	enhanced by Rs.3,04,800/- (Rs.8,98,380/- - Rs.5,93,580/-)
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15(a).As far as quantum of compensation in C.M.A.No.1024 of 2011 is concerned, it is the contention of the appellant that in the accident he suffered injuries and disability. P.W.3/Doctor examined the appellant and assessed the disability suffered by the appellant at 50% and issued Ex.A14/disability certificate to that effect. The Tribunal reduced the percentage of disability to 30% holding that by doing physiotherapy exercise, the percentage of disability will be reduced. The reason given by the Tribunal for reducing the percentage of disability is not correct. The 2nd respondent-Insurance Company has not let in any contra evidence to disprove the evidence of P.W.3/Doctor and Ex.A14/disability certificate. The appellant is entitled to compensation for 50% disability. The accident occurred in the year 2006 and the Tribunal has granted a sum of Rs.2,000/- per percentage of disability and the same is proper. Thus, the amount awarded by the Tribunal towards disability is enhanced to Rs.1,00,000/- (Rs.2,000/- X 50% of disability). The appellant claimed that he was aged 28 years and working as Crane Operator Assistant and was earning a sum of Rs.4,000/- per month. He failed to prove the said contention. The accident occurred in the year 2006 and a sum of Rs.4,000/- per month is fixed as monthly income of the appellant as claimed by him. Due to the injuries and disability suffered by him in the accident, he would not have worked atleast for a period of six months. Thus, the appellant is entitled to a sum of Rs.24,000/- (Rs.4,000/- X 6 months).

15(a) (i).From the materials on record, it is seen that the appellant has taken treatment in Sanjai Gandhi Hospital, Bangalore as in-patient from 10.09.2006 to 04.11.2006 for a period of 56 days and a sum of Rs.3,000/- each awarded by the Tribunal towards attendant charges and extra nourishment are meagre and the same are enhanced to Rs.20,000/- each. The Tribunal has not awarded any amount towards pain and sufferings and loss of amenities. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.15,000/- each is awarded towards pain and sufferings and loss of amenities respectively. The amounts awarded by the Tribunal

towards medical expenses and transportation are just and reasonable and hence, the same is confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	60,000/-	1,00,000/-	Enhanced
2.	Attendant charges	3,000/-	20,000/-	Enhanced
3.	Transportation	8,000/-	8,000/-	Confirmed
4.	Extra nourishment	3,000/-	20,000/-	Enhanced
5.	Pain and sufferings	-	15,000/-	granted
6.	Loss of amenities	-	15,000/-	Granted
7.	Loss of income	-	24,000/-	Granted
	Total	Rs.74,000/-	Rs.2,02,000/-	enhanced by Rs.76,800/-
	60% of total	Rs.44,400/-	Rs.1,21,200/-	(Rs.1,21,200/- - - Rs.44,400/-)
8.	Medical expenses	18,970/-	18,970/-	Confirmed
	Total award amount	Rs.63,370/-	Rs.1,40,170/-	enhanced by Rs.76,800/- (Rs.1,40,170/- - - Rs.63,370/-)

16. In the result,

(i) C.M.A.No.1022 of 2011 is partly allowed and the compensation awarded by the Tribunal at Rs.5,93,580/- is hereby enhanced to Rs.8,98,380/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 and 2 are jointly and severally directed to deposit the enhanced award amount now determined by this Court, i.e., Rs.8,98,380/-, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.932 of 2007 on the file of the Motor

Accident Claims Tribunal, Principal District Court, Krishnagiri. On such deposit, the 1st appellant and the respondents 3 and 4 are permitted to withdraw their respective share of the enhanced award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor appellants 2 and 3 are directed to be deposited in any one of the Nationalized Banks, till the minor appellants 2 and 3 attain majority. On such deposit, the 1st appellant, being the mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellants 2 and 3. The appellants are directed to pay the necessary Court fee, if any on the enhanced amount of compensation now determined by this Court.

16.(ii).C.M.A.No.1024 of 2011 is partly allowed and the compensation awarded by the Tribunal at Rs.63,370/- is hereby enhanced to Rs.1,40,170/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 and 2 are jointly and severally directed to deposit the enhanced award amount now determined by this Court, i.e., Rs.1,40,170/-, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.786 of 2007 on the file of the Motor Accident Claims Tribunal, Principal District Court, Krishnagiri. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant is directed to pay the necessary Court fee, if any on the enhanced amount of compensation now determined by this Court. No costs.

Sd/-

सतराजिपुलरयने
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

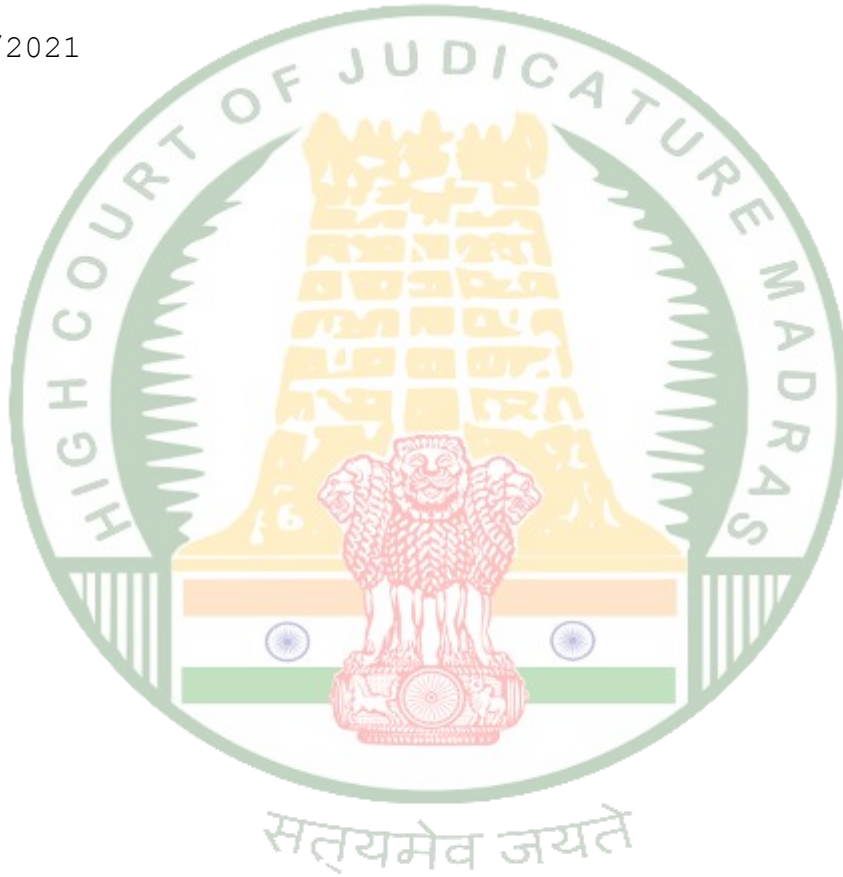
1.The Principal District Judge,
Motor Accident Claims Tribunal,
Krishnagiri.

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

+2ccs to Mr.P.Mani, Advocate Sr.33921

C.M.A.Nos.1022 & 1024 of 2011

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