

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.2870 & 2871 of 2012

(Through Video Conferencing)

Pakeem Ahamed ... Appellant/Claimant
in C.M.A.No.2870 of 2012

Iqbal Ahmed ...Appellant/Claimant
in C.M.A.No.2871 of 2012

Vs.

1. Govindaraj
2. The Branch Manager,
Oriental Insurance Company Ltd.,
Katpadi Road,
Vellore, Vellore District.

...Respondents/Respondents in
both C.M.As

C.M.A.No.2870 of 2012

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the Judgment and Decree in M.C.O.P.No.318 of 2007, dated 06.06.2012, on the file of the Motor Accidents Claims Tribunal and Additional District cum Sessions Court-III, Vellore, at Tirupattur and thereby enhance further the award of Rs.3,72,500/-.

C.M.A.No.2871 of 2012

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the Judgment and Decree in M.C.O.P.No.343 of 2008, dated 06.06.2012, on the file of the Motor Accidents Claims Tribunal and Additional District cum Sessions Court-III, Vellore, at Tirupattur and thereby enhance further the award of Rs.4,12,500/-.

For Appellants : Mr.V.Jeevagiridharan
(in both C.M.As)

For Respondents: R1- No appearance
(in both C.M.As)
R2 : Mr.N.Vijayaraghavan
(in both C.M.As)

COMMON JUDGMENT

By this common Judgment, both the appeals filed by the claimants are being disposed.

2. The appellants were the claimants before the Motor Accidents Claims Tribunal, Additional District cum Sessions Court - III, Tirupattur, Vellore District in M.C.O.P.No.318 of 2007 (appellant in C.M.A.No.2870 of 2012 and in M.C.O.P.No.343 of 2008 (appellant in C.M.A.No.2871 of 2012).

3. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.1,27,500/- and a sum of Rs.87,500/- together with interest at 7.5% per annum from the date of filing of the claim petition, till the date of payment, to the appellants/claimants herein in both the appeals. The break up of the amount awarded by the Tribunal are summarised below:-

Heads	Amount awarded by the Tribunal in M.C.O.P.No.318/2008 (C.M.A.No.2870/12)	Amount awarded by the Tribunal in M.C.O.P.No.343/2008 (C.M.A.No.2871/12)
Extra nourishment	Rs. 10,000	Rs. 10,000
Medical bills and future medical expenses	Rs.1,40,000	Rs. 75,000
Transport expenses and future transport expenses	Rs. 10,000	Rs. 10,000
Pain and suffering	Rs. 20,000	Rs. 20,000
Permanent disability	Rs. 65,000	Rs. 50,000
Loss of Income	Rs. 10,000	Rs. 10,000
Total	Rs.2,55,000	Rs.1,75,000
Less: Contributory Negligence at 50%	Rs.1,27,500	Rs. 87,500
Total Compensation	Rs.1,27,500	Rs. 87,500

4. The respective appellants/claimants were the pillion rider and rider of Yamaha Motor Cycle bearing Registration No.TN-29-K-0572 insured with the National Insurance Company. Before the Claims Tribunal, the appellants did not make a claim against the aforesaid insurer of the motor cycle namely National Insurance Company. Instead they filed a claim petition against the owner of the Bajaj Motor Cycle bearing Registration No.TN-23-P-7587 and its insurer namely Oriental Insurance Company, the first and second respondent herein.

5. The case before the Tribunal by the appellants/claimants was that the appellant in C.M.A.No.2871 of 2012 (Iqbal Ahmed) was riding Yamaha Motor Cycle bearing Registration No.TN-29-K-0572 with the appellant in C.M.A.No.2870 of 2012 (Pakeem Ahamed) as the pillion rider on 22.06.2003. It was stated that when they were proceeding on the road/junction at Thaliaruthanmedu, the insured Bajaj Motor Cycle bearing Registration No.TN-23-P-7587 belonging to the first respondent (Govindaraj) driven by the deceased Ramadoss in a rash and negligent manner collided with the motor cycle driven by the appellant (Iqbal Ahamed) in C.M.A.No.2871 of 2012 and as a result of collision, the rider of the Bajaj Motor Cycle bearing Registration No.TN-23-P-7587 died while the respective appellants/claimants i.e., pillion rider (Pakeem Ahamed) and rider (Iqbal Ahamed) sustained suffered the following injuries:-

Appellant in CMA.No.2870/2012 (Pillion Rider of the insured vehicle)	Appellant in C.M.A.No.2871/2012 (Rider of the insured vehicle)
i) Fractures in femur, left collar bone & right patella (ii) Fracture of the upper bone of right eye (iii) Vision loss	(i) Lost his teeth (ii) Multiple fracture involving the orbits and para nasal sinuses (iii) Multiple fracture involving the facial bones (iv) Eye ball injury/vision loss

6. It is submitted that both the appellants/claimants were working as Assistant Technicians with a Tannery and lost one of their eyes. It was further submitted that the rider of Yamaha Motor Cycle bearing Registration No.TN-29-K-0572 (Iqbal Ahmed) had suffered injuries all over his body. It is submitted that both of them suffered permanent disability due to the accident. It is further submitted that the appellant in C.M.A.No.2870 of 2012 (Pakeem Ahamed) the physician had assessed 40% disability due to loss of eye sight of one eye and 25% due to the injuries on the bone and over all disability at 65%. It was further submitted that in the case of the appellant in C.M.A.No.2871 of 2012 (Iqbal Ahmed), the rider of the motor cycle, the total disability assessed was 65% whereas the Tribunal has taken only 50% of disability for awarding the compensation. It is submitted that the Tribunal erred in fixing 50% of the liability.

7. The learned counsel appearing on behalf of the appellants submitted that the Tribunal erred in awarding a meagre compensation on percentage basis even though both the appellants/claimants suffered permanent disability due to loss of one eye and the fracture all over their body. On behalf of the second respondent Insurance Company, it was submitted that as against the same impugned Judgment and Decree, the second respondent Insurance Company had filed C.M.A.Nos.726 and 729 of 2019 before this Court and that by an order dated 29.01.2019 this Court had dismissed the said appeal filed by the second respondent Insurance Company and therefore the present appeal for enhancement of compensation cannot be entertained.

8. It is therefore submitted that the issue having attained finality by an order dated 29.01.2019 and therefore these appeals were liable to be dismissed. It is further submitted that the appellant in C.M.A. No.2870 of 2012 (Pakeem Ahamed) ought to have impleaded the insurer of Yamaha Motor Cycle in which both the appellants/claimants were travelling as rider and pillion rider and therefore no fault can be found in the impugned order. It is further, submitted that the Tribunal has awarded only 50% of the compensation considering the fact that the Legal Representatives of the deceased Ramados also had filed a claim petition against the rider of the Yamaha Motor Cycle (Iqbal Ahmed) the appellant in C.M.A.No.2871 of 2012 and that the Motor Vehicles Inspection Report indicated that there was a complete damage of both the Motor Cycles.

9. I have considered the arguments advanced on behalf of the respective appellants and the second respondent Insurance Company. I have also perused the evidence on record.

10. In my view, the Tribunal has come to a fair conclusion to the extent that the appellant viz., Iqbal Ahamed in C.M.A.No.2871 of 2012 and the deceased Ramados were equally responsible for the accident and therefore the Tribunal was justified in awarding only 50% of the compensation to the said Iqbal Ahamed. At the same time, the Tribunal has erred in awarding a restricted compensation to the appellants/claimants by simply awarding a sum of Rs.1,000/- per percentage of the disability assessed before it.

11. Though the appellant in C.M.A.No.2870 of 2012, viz. Pakeem Ahamed, as the pillion rider was not in any way concerned with the accident, yet while awarding the compensation payable to him, the negligence of the rider of the motorcycle who is the appellant in C.M.A.No.2871 of 2012, viz. Iqbal Ahamed, will adversely impact his claim.

12. At the same time, the Tribunal should have followed the decision of the Hon'ble Supreme Court in the case of Raj Kumar Vs Ajay Kumar and Another, (2011) 1 SCC 343 while computing the compensation due to permanent partial disability of the respective appellants. The Tribunal ought to have considered the functional disability and its impact on the earning capacity of the respective appellants/claimants.

13. There is no evidence to suggest that the appellants/claimants have indeed lost their job due to the accident. However, the fact remains that they have suffered permanent partial disability which impairs the quality of their life and will impact their earning capacity if they were to seek fresh employment elsewhere.

14. The compensation has to be awarded by determining the functional disability of the respective appellants. In other words, the Tribunal was expected to make a guess as to the impact of the injury on the earning capacity based on the Disability Certificates filed before it. The appellants were working as a Technician and Assistant Technician in a tannery unit. Since they lost vision of their one eye, it would certainly impair their job prospect. The income disclosed by the respective appellants in their claim petitions as Rs.7,000/- p.m. and Rs.10,000/- p.m. appear to be reasonable.

15. The Tribunal has not thus awarded a just compensation. In my view, the functional disability of the respective appellants can be assessed as 50% considering the nature of injuries. Therefore, compensations to be awarded under the head of loss of earning capacity has to be computed as per the decision of the Hon'ble Supreme Court in Raj Kumar Vs. Ajay Kumar and Another, (2011) 1 SCC 343:-

Heads	C.M.A.No.2870 of 2012 (M.C.O.P.No.318 of 2007)	C.M.A.No.2871 of 2012 (M.C.O.P.No.343 of 2008)
Monthly Income as per claim petitions	Rs.7,000/-	Rs.10,000/-
Annual Income before the accident	Rs.84,000/- (7,000 x 12)	Rs.1,20,000/- (10,000 x 12)

Heads	C.M.A.No.2870 of 2012 (M.C.O.P.No.318 of 2007)	C.M.A.No.2871 of 2012 (M.C.O.P.No.343 of 2008)
Loss of notional income per annum at 50% of disability.	Rs.42,000/-	Rs.60,000/-
Add: Future Prospectus at 40% **	Rs.16,800/- ----- Rs.58,800/-	Rs.24,000/- ----- Rs.84,000/-
Applicable multiplier with reference to the age * 25 Years - 18 37 Years - 15	Rs.10,58,400/- (58,800 x 18)	Rs.12,60,000/- (84,000 x 15)

* As per the decision in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680.

** As per the decision of the in Sanjay Verma Vs. Haryana Roadways, (2014) 3 SCC 210 and V.Mekala Vs. Malathi and Another, (2014) 11 SCC 178.

16. Considering the same, the amount of compensation awarded by the Tribunal is to be re-quantified as follows:-

Heads	C.M.A.No.2870/12	C.M.A.No.2871/12
Loss of Earning Capacity	Rs.10,58,400/-	Rs.12,60,000/-
Extra Nourishment	Rs. 10,000/-	Rs. 10,000/-
Medical bills and future medical expenses	Rs. 1,40,000/-	Rs. 75,000/-
Transport expenses and future transport expenses	Rs. 10,000/-	Rs. 10,000/-
Pain and suffering	Rs. 20,000/-	Rs. 20,000/-
Total	Rs.12,38,400/-	Rs.13,75,000/-

17. Since there is contributory negligence on the part of the rider of the respective motorcycles, i.e., appellant in C.M.A.No.2871 of 2012 (Iqbal Ahmed) and the deceased Ramadoss the rider of the other motorcycle, there shall be 50% deduction in the aforesaid compensation to be paid to the respective appellants as has been rightly determined by the Tribunal. Therefore, on the above amount of compensation, 50% has to be

deducted towards contributory negligence. Therefore, the compensation to be paid to the respective appellants in the respective appeals are as follows:-

Subject	C.M.A.No.2870/2012	C.M.A.No.2871/2012
Re-quantified amount of Compensation	Rs.12,38,400/-	Rs.13,75,000/-
Less: Contributory Negligence at 50%	Rs. 6,19,200/-	Rs. 6,87,500/-
Total amount of compensation to be paid to the respective appellants	Rs. 6,19,200/-	Rs. 6,87,500/-

18. Therefore, the second respondent Insurance Company is directed to deposit the amount of compensation of Rs.6,19,200/- and Rs.6,87,500/- together with interest at the rate of 7.5% from the date of filing of the claim petition till the date of deposit and costs, less if any amount already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment.

19. On such deposit, the appellants are permitted to withdraw their respective amount of compensation together with interest thereon and costs, less if any amount already withdrawn, by filing suitable applications before the Tribunal.

20. Accordingly, the present Civil Miscellaneous Appeals are partly allowed. No cost.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

ARB/JEN

To:-

The Motor Accidents Claims Tribunal
and Additional District cum Sessions Court-III,
Tirupattur, Vellore District

C.M.A.Nos.2870 & 2871 of 2012

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