



C.M.A.Nos.3116 to 3118 of 2013

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 10.11.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.Nos.3116 to 3118 of 2013

C.M.A.No.3116 of 2013:

Minor Sanjay

... Appellant/Petitioner

Vs.

1.K.P.Rajamanickam

... 1st Respondent/1st Respondent

2.M/s.National Insurance Company Limited,
D.O.at LRN Colony,
Sarada College Road,
Salem.

... 2nd Respondent/2nd Respondent

C.M.A.No.3117 of 2013:

Minor Dyana

... Appellant/Petitioner

Vs.

1.K.P.Rajamanickam

... 1st Respondent/1st Respondent

2.M/s.National Insurance Company Limited,
D.O.at LRN Colony,
Sarada College Road,
Salem.

... 2nd Respondent/2nd Respondent



C.M.A.Nos.3116 to 3118 of 2013

C.M.A.No.3118 of 2013:
WEB COPY

P.Murugan

... Appellant/Petitioner

Vs.

1.K.P.Rajamanickam

... 1st Respondent/1st Respondent

2.M/s.National Insurance Company Limited,
D.O.at LRN Colony,
Sarada College Road,
Salem.

... 2nd Respondent/2nd Respondent

Prayer in C.M.A.No.3116 of 2013: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 21.08.2012 in M.C.O.P.No.283 of 2007 on the file of the learned Chief Judicial Magistrate, Motor Accidents Claims Tribunal, Salem.

Prayer in C.M.A.No.3117 of 2013: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 21.08.2012 in M.C.O.P.No.284 of 2007 on the file of the learned Chief Judicial Magistrate, Motor Accidents Claims Tribunal, Salem.



C.M.A.Nos.3116 to 3118 of 2013

WEB COPY

Prayer in C.M.A.No.3118 of 2013: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 21.08.2012 in M.C.O.P.No.441 of 2007 on the file of the learned Chief Judicial Magistrate, Motor Accidents Claims Tribunal, Salem.

For Appellants : Mr.S.P.Yuavaraj
in all appeals

For Respondents : Mr.D.Bhaskaran for R2
in all appeals

R1 – Served – No appearance

COMMON JUDGMENT

The claimants in all the three claim petitions are the appellants herein. The detail of the appeals and the respective MCOPs before the learned Chief Judicial Magistrate, Motor Accidents Claims Tribunal, Salem are hereinbelow set out:

(a)C.M.A.No.3116 of 2013 is filed against the Award in M.C.O.P.No.283 of 2007 filed claiming compensation for the injuries sustained by the minor Sanjay.



C.M.A.Nos.3116 to 3118 of 2013

(b)C.M.A.No.3117 of 2013 is filed against the Award in M.C.O.P.No.284 of 2007 filed claiming compensation for the injuries sustained by minor Dyana.

(c)C.M.A.No.3118 of 2013 is filed against the Award in M.C.O.P.No.441 of 2007 filed claiming compensation for the injuries sustained by one P.Murugan.

2.The facts in brief which are common to all the three petitions are that the claimant in M.C.O.P.No.441 of 2007 was riding his Hero Honda motor cycle, bearing Registration No.TN 30S 5167 on the extreme left side of Kunjandiyur to Poraiyur road. When he was so travelling, a Maruthi Omni Van bearing Registration No.TN 30S 4754 came in the opposite direction. The Omni was driven by its driver in a rash and negligent manner and dashed against the motorcycle thereby causing injuries to the occupants of the two wheeler.



3.The claimant in M.C.O.P.No. 441 of 2007 had sustained fractures in his right leg knee and thigh and injuries in the right hip and hand and multiple injuries all over the body. The claimant in M.C.O.P.No. 283 of 2007 had sustained communitied fracture in his right tibia and multiple injuries all over the body. The claimant in M.C.O.P.No. 284 of 2007 had sustained a fracture in her right femur and injuries all over the body.

4.The 1st respondent is the owner of the vehicle and the 2nd respondent its insurer of the vehicle. The Insurance Company had taken a defence that the accident had taken place only on account of the fact that the petitioner in M.C.O.P.No. 441 of 2007 did not possess a valid and effective driving licence and at the time of the accident, three persons were travelling in the vehicle.

5.The Tribunal had relied upon the evidence of PW1 and Ex.P 1 to Ex.P.6 to come to the conclusion that the accident had occurred



C.M.A.Nos.3116 to 3118 of 2013

only on account of the negligence of the driver of the Van, however, since the rider of the two wheeler was carrying 3 persons at a time the contributory negligence of 50% was fastened on the rider of the two wheeler, namely, the petitioner in M.C.O.P.No. 441 of 2007. The Tribunal had awarded a sum of Rs.54,302 to the petitioner in M.C.O.P.No. 284 of 2007 and a sum of Rs.28,600/- to the petitioner in M.C.O.P.No. 283 of 2007 and Rs.1,56,107/- to the petitioner in M.C.O.P.No. 441 of 2007. Further, the 2nd respondent was directed to pay 50% of the said amount since 50% contributory negligence fastened on the rider of the motor cycle. Challenging the same, the petitioners are before this Court.

6.The learned counsel appearing for the claimants would submit that fastening of 50 % contributory negligence only for permitting three persons to ride the bike is very high and the Tribunal has also granted a very meagre amount as compensation to the petitioners in M.C.O.P.No. 441 of 2007. The learned counsel for the petitioners



C.M.A.Nos.3116 to 3118 of 2013

would concede that the compensation granted to the appellants in C.M.A.Nos.3116 and 3117 of 2013 appears to be adequate.

7.The learned counsel for the 2nd respondent/Insurance Company would submit that the compensation granted to the petitioners is fair and reasonable.

8.Heard the learned counsel appearing on either side and perused the papers.

9.The only ground on which 50% negligence is fastened on the petitioners by the rider of the motorcycle in M.C.O.P.No. 441 of 2007 is on the higher side, particularly, when the negligence has now been found against him. However, apart from carrying three persons the rider of the motor cycle was also not in possession of a valid driving licence on the date of the accident. Therefore, taking into account the above, the contributory negligence is reduced to 30%. The petitioner



C.M.A.Nos.3116 to 3118 of 2013

has been granted a sum of Rs.27,000/- under the head of loss of income for six months calculating at Rs.4,500/- per month. This can be enhanced to a sum of Rs.5,000/-. Therefore, the amount under the head of loss of income would stand enhanced to a sum of Rs.30,000/-. The learned counsel for the petitioners would also argue that there is a shortening of the legs. Nowhere in Ex.P.3 -Discharge Summary and Ex.P.1- Wound Certificate has it been so stated. Therefore, the award is modified to the above extent. In all other respects, the Award remains unaltered in all the appeals. Therefore, taking into consideration the above aspects, the modified amount is as follows:

C.M.A.No.3116 of 2013:

Transportation	-Rs. 3,000/-
Extra nourishment	-Rs. 5,000/-
Pain and sufferings	-Rs. 15,000/-
Medical expenditure	-Rs. 4,200/-
Disability	-Rs. 30,000/-

Total	-Rs. 57,200/-



C.M.A.Nos.3116 to 3118 of 2013

30% to be deducted for his
contributory negligence =Rs.57,200/- – Rs.17,160/-=Rs.40,040/-

C.M.A.No.3117 of 2013:

Transportation	-Rs. 3,000/-
Extra nourishment	-Rs. 5,000/-
Pain and sufferings	-Rs. 20,000/-
Medical expenditure	-Rs. 20,605/-
Future medical expenditure	-Rs. 10,000/-
Disability	-Rs. 50,000/-

Total	-Rs.1,08,605/-

30% to be deducted for his
contributory negligence =Rs.1,08,605/- – Rs.32,582/-=Rs.76,023/-

C.M.A.No.3118 of 2013:

Transportation	-Rs. 5,000/-
Extra nourishment	-Rs. 10,000/-
Pain and sufferings	-Rs. 25,000/-
Medical expenditure	-Rs.1,24,215/-
Future medical expenditure	-Rs. 25,000/-
Disability	-Rs. 96,000/-
Loss of income	-Rs. 30,000/-

Total	-Rs.3,15,215/-



C.M.A.Nos.3116 to 3118 of 2013

30% to be deducted for his
contributory negligence

=Rs.3,15,215 – Rs.94,565/-

=Rs.2,20,650/-

10.These Civil Miscellaneous Appeals are partly allowed. The 2nd respondent/Insurance Company is directed to deposit the entire amount, less the amount already deposited, with proportionate accrued interest and costs, to the credit of M.C.O.P.Nos.283, 284 and 441 of 2007 on the file of the learned Chief Judicial Magistrate, Motor Accidents Claims Tribunal, Salem, within a period of four weeks from the date of receipt of a copy of this order, if not deposited earlier. On such deposit, the appellant in C.M.A.No.3118 of 2013 is permitted to withdraw the entire award amount with proportionate accrued interest and costs, by making necessary applications.

11.The share of the minor appellant in C.M.A.Nos.3116 and 3117 of 2013 shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of



C.M.A.Nos.3116 to 3118 of 2013

three years. The interest accruing on the share of the minors in C.M.A.Nos.3116 and 3117 of 2013 shall be paid to the mother of the minors, namely, Ms.Palaniammal, once in three months, till they attain majority.

The claimants are directed to pay the Court fee for the compensation amount, if required. The Tribunal below shall not disburse the amount till such time as proof of payment of Court Fee has been produced by the claimants. No costs.

10.11.2022

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Salem.



WEB COPY



C.M.A.Nos.3116 to 3118 of 2013

P.T. ASHA, J,

mps

C.M.A.Nos.3116 to 3118 of 2013

10.11.2022