



C.M.A. Nos.791 and 796 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 04.04.2022

JUDGMENT PRONOUNCED ON : 28.04.2022

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A. Nos.791 and 796 of 2022
and
CMP.Nos.5717 and 5713 of 2022

The United India Insurance Co. Ltd.,
No.48, Arcot Road, Saligramam,
Chennai 600 093.

...appellant in both the CMAs.

Vs.

1. R.Deepak	...1st respondent in CMA.No.791 of 2022
1. V.S.Akash	...1st respondent in CMA.No.796 of 2022
2. Chellammai	...second respondents in both the CMAs

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicle Act, against the award and decree dated 14.09.2021 made in MCOP.Nos.274 and 273 of 2016 on the file of the Motor Accidents Claims Tribunal (III Additional District & Sessions Court), Tiruvallur @ Poonamalee.



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C.M.A. Nos.791 and 796 of 2022

For appellant : Mr.D.Bhaskaran
For respondents : Mr.K.Varadha Kamaraj
for R1

COMMON JUDGMENT

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J]

These appeals have been filed by the Insurance Company, challenging the judgment and award passed by the Motor Accidents Claims Tribunal/III Additional District & Sessions Court), Tiruvallur @ Poonamalee in MCOP.Nos.274 and 273 of 2016.

2. The facts of the case in nutshell are:-

i) On 24.02.2016 at 12.40 hours, Akash, who is the claimant in MCOP.No.273 of 2016, was riding a motorcycle bearing Registration No.TN-12-L-0502 with Deepak, who is the claimant in MCOP.No.274 of 2016, as pillion rider on Nolambur Service Road. When they were nearing seventh Main Road Junction, a Swaraj Mazda Van bearing Registration No.TN-14-D-6883, driven by its driver in a rash and negligent manner, hit the motorcycle. Due to the impact, both fell on the road side Canal and sustained multiple injuries.



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ii) At the time of the accident, both the claimants were aged about 21 years. Akash was doing Final year B.E. Mechanical and Deepak was doing fourth year D.Pharm. It is their case that due to the accident, they could not continue their education, hence, both of them sought compensation of Rs.35,40,000/- and restricted the same to Rs.25,00,000/-.

3. The Insurance Company resisted their claims, disputing the manner of accident, age, occupation and income of the claimants and their liability to pay the compensation.

4. The Tribunal conducted separate trial and held that the accident had occurred due to the rash and negligent driving of the driver of the Van. By coming to such conclusion, the Tribunal awarded Rs.49,52,734/- in MCOP.No.274 of 2016 and Rs.43,90,496/- in MCOP.No.273 of 2016.

CMA.No.791 of 2022

5. It is the submission of the learned counsel for the Insurance Company that as per the Discharge summary Exs.P5 & 6, the



claimant/Deepak even after the accident can walk on his own and he also continued his Education. Hence, the attender charge fixed by the Tribunal is exorbitant. He further added that the claimant has not produced any records to prove that he took continuous treatment. Hence, the 90% permanent disability fixed by the Tribunal, is on the higher side.

6. Per contra, the learned counsel appearing for the claimant submitted that, in the accident, the claimant sustained Multiple Brainstem Contusions, Right Temporal Contusions and Left Temporoparietal SDH and Pelvic Fracture. Due to the injuries sustained by him, he could not continue his study effectively and his job opportunity has also been affected. Hence, the award of the Tribunal is fair and reasonable, which needs no interference of this Court.

7. Heard the rival submissions made on either side and perused the materials available on record.

8. It is not in dispute that in the accident that had occurred on 24.02.2016, the claimant sustained severe injuries. The Tribunal based on



Ex.X1 disability certificate, fixed his disability at 90%. However, it is pointed out by the learned counsel for the appellant that, after the accident, the claimant continued his D.Pharm. Considering the injuries suffered by him, this Court is of the view that is appropriate to fix the disability as 40%.

9. Considering the educational qualification and the year of the accident, the Tribunal had rightly fixed Rs.10,000/- as monthly notional income and added 40% towards future prospects and arrived the monthly income at Rs.14,000/- [10,000 + 4,000]. Considering the age of the deceased, multiplier 18 was applied and resultant amount was Rs.30,24,000/- [14,000 x 12 x 18]. Since this Court fixed disability as 40%, the Loss Earning Power is arrived at **Rs.12,09,600/-** [26,88,000 x 40/100].

10. As per the discharge summaries under Exs.P5 and P6, it is seen that the claimant took treatment as an in-patient for 67 days from 24.02.2016 to 29.04.2016 and on 06.05.2016 and 07.05.2016. Thereafter, he continued his studies, which has been admitted by the learned counsel for the claimant. Hence, the sum of Rs.14,73,500/- awarded by the Tribunal under the head Attender charges is set aside, instead a sum of **Rs.1,00,000/-** is awarded under the said head. In addition to that, the amounts awarded by



the Tribunal under other heads are confirmed. In total, the claimant is entitled to Rs.20,67,334/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. Thus, the total compensation payable to the claimants is re-calculated and tabulated below:

<i>S. No .</i>	<i>Heads under which amounts are awarded by the Tribunal</i>	<i>Amount awarded by the Tribunal in Rs.</i>	<i>Amount awarded by this Court in Rs.</i>
1.	Transportation and Nourishing Food	40,000	40,000
2.	Attender Charges	14,73,500	1,00,000
3.	Medical Expenses	4,17,734	4,17,734
4.	Loss of Earning Power	27,21,600	12,09,600
5.	Loss of Amenities	3,00,000	3,00,000
	Total	49,52,834	20,67,334

11. In fine, the sum of Rs.49,52,734/- awarded by the Tribunal is hereby reduced to Rs.20,67,334/-. The appellant/Insurance Company is directed to deposit the above modified award amount to the credit of the claim petition with accrued 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. On such deposit, the first respondent/claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with interest and costs.



In CMA.No.796 of 2022

12. According to the Insurance Company, the claimant/Akash has not sustained severe injuries. After initial treatment, he came out of the injuries and continued his study. Hence, the attender charge fixed by the Tribunal is exorbitant. He further added that the claimant has not produced any records to prove that he took continuous treatment. Hence, the percentage of disability fixed by the Medical Board is also on the higher side.

13. Per contra, the learned counsel appearing for the claimant submitted that, in the accident, the claimant sustained Post Traumatic-Diffuse Axonal Injury/Left Angle, Right Parasympysis and Right ZMC Fracture and on Tracheostomy. Due to the injuries sustained by him, his study and future prospects have been affected. Hence, the award of the Tribunal is fair and reasonable, which needs no interference by this Court.

14. Heard the rival submissions made on either side and perused the materials available on record.



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15. The Tribunal, based on Ex.X1, fixed the disability of the claimant at 63%, however, he continued his final year B.E. Mechanical after the accident. Considering the above fact and also taking note of the injuries sustained by the claimant, this Court is of the view that it is proper to fix the disability as 25%. Considering the year of the accident and the qualification of the claimant, the Tribunal had rightly fixed Rs.10,000/- as monthly income and added 40% towards future prospects and the resultant amount is arrived at Rs.14,000/- [10,000 + 4,000]. Considering the age of the deceased, multiplier 18 is applied and the amount would be Rs.30,24,000/- [14,000x 12 x 18]. Since 25% disability is fixed, the Loss Earning Power is arrived at **Rs.7,56,000/-** [30,24,000 x 25/100].

16. As per the discharge summary Exs.P9, it is seen that the claimant took treatment as an in-patient for 44 days from 25.02.2016 to 09.04.2016. Further, it is admitted by the claimant's counsel that he continued his studies. Hence, the sum of Rs.14,62,000/- awarded under the head of Attender charges is set aside, instead a sum of **Rs.1,00,000/-** is awarded. In addition to that, the amounts awarded by the Tribunal under other heads are confirmed. In total, the claimant is entitled to Rs.18,79,376/- along with



interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. Thus, the total compensation payable to the claimants is re-calculated and tabulated below:

<i>S. No.</i>	<i>Heads under which amounts are awarded by the Tribunal</i>	<i>Amount awarded by the Tribunal in Rs.</i>	<i>Amount awarded by this Court in Rs.</i>
1.	Transportation and Nourishing Food	40,000	40,000
2.	Attender Charges	14,62,000	1,00,000
3.	Medical Expenses	6,83,376	6,83,376
4.	Loss of Earning Power	19,05,120	7,56,000
5.	Loss of Amenities	3,00,000	3,00,000
	Total	43,90,496	18,79,376

17. In fine, the sum of Rs.43,90,496/- awarded by the Tribunal is reduced to Rs.18,79,376/-. The appellant/claimant is directed to deposit the above modified award amount to the credit of the claim petition with accrued 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. On such deposit, the first respondent/claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with interest and costs.



C.M.A. Nos.791 and 796 of 2022

18. With the above directions, the appeals are partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

[M.K.K.S, J] [V.S.G., J]
28.04.2022

Index : Yes / No
Speaking order: Yes/No
pvs

To

1. The III Additional District & Sessions Court,
Motor Accidents Claims Tribunal, Tiruvallur @ Poonamalee
2. The Section Officer,
V.R.Section, High Court, Madras.



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C.M.A. Nos.791 and 796 of 2022

K.KALYANASUNDARAM, J.
and
V.SIVAGNANAM, J.

pvs

Pre-Delivery Judgment in
C.M.A. Nos.791 and 796 of 2022

28.04.2022