



C.M.A.Nos.2701 & 2970 of 2014

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2022

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.Nos.2701 & 2970 of 2014

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M.P.Nos.1 & 1 of 2014

C.M.A.No.2701 of 2014:

The Branch Manager,
M/s.Oriental Insurance Co. Ltd.,
90/A, Thuraiyur Road,
Namakkal – 637 002.

...Appellant

Vs

1.M.Rajappa

2.Sivasubramani

3.J.Padmavathi

... Respondents



C.M.A.Nos.2701 & 2970 of 2014

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Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and Judgement passed in M.C.O.P.No.582 of 2009, dated 25.11.2013 on the file of the Motor Accident Claims Tribunal (Additional Special – Judge) at Krishnagiri District.

C.M.A.No.2970 of 2014:

The Branch Manager,
M/s.Oriental Insurance Co. Ltd.,
90/A, Thuraiyur Road,
Namakkal – 637 002.

...Appellant

Vs

1.M.Venkatesh

2.Sivasubramani

3.J.Padmavathi

... Respondents



C.M.A.Nos.2701 & 2970 of 2014

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Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and Judgement passed in M.C.O.P.No.631 of 2009, dated 25.11.2013 on the file of the Motor Accident Claims Tribunal (Additional Special – Judge) at Krishnagiri District.

For Appellant : Mr.J.Chandran
(*in both cases*)

For Respondent 1: Mr.Mukund R. Pandian
(*in both cases*)

For Respondents : No Appearance
2 & 3
(*in both cases*)

COMMON JUDGEMENT

Aggrieved by the quantum of compensation granted by the Tribunal below, the Insurance Company is before this Court.



C.M.A.Nos.2701 & 2970 of 2014

C.M.A.No.2970 of 2014:

WEB COPY

2. The claim petition in M.C.O.P.No.631 of 2009 has been filed by the 1st respondent herein on the file of the Motor Accidents Claims Tribunal, Krishnagiri claiming compensation of a sum of Rs.10,00,000/- for the injuries sustained by him in a road accident on 15.07.2004. The 1st respondent would submit that he is carrying on a small time business and earning an income of Rs.6,000/- per month.

3. On 15.07.2004 at about 11.00 hrs., the 1st respondent was driving his TVS Victor motor cycle with one Rajappa riding pillion, slowly and cautiously and proceeding towards Dhinnur. When they reach Perandapalli in Krishnagiri to Hosur Road, they had got off to talk to one of their friends on the side of the road. At that time, a Car bearing registration No.TN 28 J 0097 belonging to the 2nd respondent and insured with the appellant by the 3rd respondent which was driven by its driver in a rash and negligent manner hit the 1st respondent and



C.M.A.Nos.2701 & 2970 of 2014

WEB COPY

the others causing the accident. The 1st respondent had sustained injuries and fracture on his right leg, right hip and mandible apart from multiple injuries to the body.

4. The appellant / Insurance Company had filed a counter stating that the 1st respondent did not have a valid driving licence and that apart he was driving the motorcycle with two pillion riders.

5. The Insurance Company would further contend that the driver of the Car had driven his Car in a very slow and cautious manner and when he neared the 1st respondent he had hooted the horn to warn the 1st respondent, however, the 1st respondent had suddenly crossed the road and though the driver of the Car had applied brake, since the action of the 1st respondent was so sudden the driver of the 2nd respondent vehicle was not in a position to avoid hitting the vehicle of the 1st respondent. Therefore, the accident is only on account of the



C.M.A.Nos.2701 & 2970 of 2014

WEB COPY

negligence on the part of the 1st respondent herein. The 2nd and 3rd respondents herein remained ex parte.

6. The Tribunal below had passed an award dated 09.07.2013 holding the driver of the 2nd respondent's vehicle to be responsible for the accident and ultimately awarded a sum of Rs.7,00,760/-.

7. The Tribunal had adopted a monthly notional income of a sum of Rs.4,500/-. This according to the appellant Insurance Company is on the higher side. The 1st respondent had stated that he is carrying on a small time business. However, no documents have been filed to support the same. Therefore, taking into account the year of the accident, the amount can be reduced to a sum of Rs.3,000/-. Therefore, the amount under the head of Loss of Earning would be Rs.3,000/- X 12 X 17 X 65/100 = **Rs.3,97,800/-**. Except for the above, in all other respects, the award does not require any re-consideration.



C.M.A.Nos.2701 & 2970 of 2014

WEB COPY

8. The award of the Tribunal below is re-worked as follows:

<i>Heads</i>	<i>Award of the Tribunal</i>	<i>Award of the High Court</i>
Loss of Earning	Rs.5,96,700/-	Rs.3,97,800/- (Reduced)
Pain and Sufferings	Rs.10,000/-	Rs.10,000/-
Nutrition and Transport	Rs.10,000/-	Rs.10,000/-
Attender through out life time	Rs.20,000/-	Rs.20,000/-
Medical Bills	Rs.39,060/-	Rs.39,060/-
Future Treatment though out life time	Rs.25,000/-	Rs.25,000/-
Total	Rs.7,00,760/-	Rs.5,01,860/-

C.M.A.No.2701 of 2014:

9. The Insurance Company has challenged the award passed in M.C.O.P.No.582 of 2009 on the file of the Motor Accident Claims Tribunal, Additional Special Court, Krishnagiri on the ground that the



C.M.A.Nos.2701 & 2970 of 2014

compensation which has been granted is on the higher side.

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10. The petitioner in the claim petition is the 1st respondent in this appeal, who is the pillion rider in TVS victor motor cycle, which was driven by the 1st respondent in C.M.A.No.2970 of 2014. Here again, the Insurance Company has only challenged the quantum of compensation awarded. The records would show that P.W.2, the Doctor has assessed the disability at 45% and the compensation under the head of disability has been awarded at the rate of Rs.2,000/- per percentage. That apart, amounts have been granted under the head of Pain and Sufferings and Repeated Surgeries, Nutrition, etc.,

11. A perusal of the same would indicate that the compensation awarded is perfectly in order and does not require any re-consideration.



C.M.A.Nos.2701 & 2970 of 2014

WEB COPY

12. The appellant / Insurance company is directed to deposit the award amount along with interest and costs, less the amount already deposited within a period of six weeks from the date of receipt of a copy of this Judgement, to the credit of M.C.O.P.Nos.582 & 631 of 2009. On such deposit, the respective claimants are permitted to withdraw the award amount, after adjusting the amount, if any, already withdrawn, by filing necessary application before the Tribunal.

13. In the result, C.M.A.No.2970 of 2014 is partly allowed and C.M.A.No.2701 of 2014 is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

26.09.2022

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Index : Yes/No

Speaking order/non-speaking order



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C.M.A.Nos.2701 & 2970 of 2014

P.T.ASHA, J.,

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To,
The Motor Accident Claims Tribunal
(Additional Special – Judge) at
Krishnagiri District

C.M.A.Nos.2701 & 2970 of 2014

26.09.2022

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