



C.M.A.Nos.1304, 1305, 1306 & 1317 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2023

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.Nos.1304, 1305, 1306 & 1317 of 2020
and
Cross Objection Nos.107, 108, 110 and 111 of 2021
and
C.M.P.Nos.9374, 9375, 9376 & 9503 of 2020

C.M.A.Nos.1304, 1305, 1306 & 1317 of 2020

The Manager,
M/s.Bajaj Allianz General Insurance Company Limited,
Registered Office,
G.E.Plaza, Airport Road,
Yerwada, Pune 411006.

...Appellant in all CMAs

Vs

1.Saravanan
2.Minor Siva
3.Minor Suganya
(2nd and 3rd respondent represented by their Father/first respondent)
4.M.Paneerselvam

... Respondents in CMA.No.1304 of 2020



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1.Singaram

2.Kanaga

3.M.Paneerselvam

... Respondents in CMA.No.1305 of 2020

1.Minor Suganya,

Represented by her father/Saravanan

2.M.Paneerselvam

... Respondents in CMA.No.1306 of 2020

1.Saravanan

2.M.Paneerselvam

... Respondents in CMA.No.1317 of 2020

Common Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree made in MCOP.Nos.1264, 1294, 1266 and 1265 of 2018 dated 05.11.2019 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

Cross Objection Nos.107, 108, 110 and 111 of 2021

1.Saravanan

2.Minor Siva

3.Minor Suganya

(2nd and 3rd respondent represented by their Father/first respondent)

...Cross Objectors in Cros.Obj.No.107 of 2021



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Saravanan

...Cross Objectors in Cros.Obj.No.108 of 2021

Minor Suganya

Represented by her Father/Saravanan

...Cross Objectors in Cros.Obj.No.110 of 2021

1.Singaram

2.Kanaga

...Cross Objectors in Cros.Obj.No.111 of 2021

Vs.

1.The Manager,

M/s.Bajaj Allianz General Insurance Company Limited,

Registered Office,

G.E.Plaza, Airport Road,

Yerwada, Pune 411006.

2.M.Paneerselvam

...Respondents in all Cross Objections

Common Prayer: Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure, 1908, to enhance the compensation amount and fix the entire



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liability on the first respondent/appellant awarded in judgment and decree dtd 05.11.2019 made in MCOP.Nos.1264, 1265, 1266 and 1294 of 2018 on the file of the Motor Accident Claims Tribunal/Special District Court, Krishnagiri by allowing CMA.Nos.1304, 1317, 1306 and 1305 of 2020 on the file of this Court.

For Appellants
in all CMAs
and 1st respondent
in all Cross Objections : Ms.C.Harini,
for M/s.M.B.Gopalan and Associates

For R1 to R3
in CMA.No.1304 of 2020
R1 & R2 in
CMA.No.1305 of 2020
for R1 in CMA.No.1306
& 1317 of 2020
& for Cross Objector in
all Cross Objections : Mr.S.P.Yuvaraj

For R4 in
CMA.No.1304 of 2020
R3 in
CMA.No.1305 of 2020
R2 in CMA.No.1306
& 1317 of 2020
& For R2 in
Cross Objections : Mr.C.Sivasubramanian



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COMMON JUDGMENT

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These Civil Miscellaneous Appeals have been filed to set aside the judgment and decree made in MCOP.Nos.1264, 1294, 1266 and 1265 of 2018 respectively dated 05.11.2019 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

2. These Cross Objections were filed to enhance the compensation amount and fix the entire liability on the first respondent/appellant awarded in judgment and decree dated 05.11.2019 made in MCOP.Nos.1264, 1265, 1266 and 1294 of 2018 on the file of the Motor Accident Claims Tribunal/Special District Court, Krishnagiri by allowing CMA.Nos.1304, 1317, 1306 and 1305 of 2020 on the file of this Court.

3. In the present case, the accident was occurred on 23.10.2019. The claimant was traveled in a two wheeler along with 4 pillion riders and out of the said 4 pillion riders, one was a child aged about 2 years and another person was minor aged about 17 years. Only the rider and three pillion riders had filed their claim before the Tribunal. The fifth person had not filed any claim before the Tribunal.

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4. The contention of the learned counsel for the insurance company was that the accident occurred on 23.10.2019 when the rider crossed the road in his two-wheeler, from left side of the road, where the petrol bunk is situated, to the right side of the road, where the U-turn is available in 0.5 km away from the place of accident. No FIR was filed immediately after the accident. Thereafter, FIR was filed and the same was closed as Mistake of Facts (“MOF”). The said FIR is marked as Ex.P1.

5. Further contention of the learned counsel for the insurance company is that in the cross-examination of PW1/rider of two-wheeler, it was stated that the said accident was occurred when he crossed the road in his two-wheeler from the left side of the road, where the petrol bunk is situated, to the right side of the road. All these facts have not been considered by the Tribunal in the proper perspective. Further, he would contend that though this accident was occurred purely due to the negligence on the part of the rider of the two wheeler, the Court below had fixed only 15% of contributory negligence towards the said rider. Therefore, he would contend that no fault had been found on the part of the driver of the four wheeler and this accident was occurred purely due to the



negligence on the part of the rider of two-wheeler. He would also submit that the FIR was also closed as MOF and hence, the entire liability should be fastened against the rider of the two wheeler.

6. Per contra, the learned counsel appearing for the claimant/respondents in appeals would submit that though the Court below had held that no negligence on the part of the car driver and the accident was occurred purely due to the negligence of the rider of the two-wheeler, it had fastened 15% liabilities against the rider of the two wheeler, which is squarely against the findings of the Tribunal. Hence, he would submit that the said 15% liabilities has to be set aside. Further, he would contend that the rider had not crossed the road suddenly. He had already crossed the road and when he was moving for the purpose of U-turn, which is situated 0.5 km away from the place of accident, the accident was occurred. Therefore, the negligence is purely on the part of the driver of Car and not on the part of rider of two-wheeler. Hence, he would request this Court that the liabilities fastened against the rider of the two-wheeler has to be set aside.



7. Heard the learned counsel for the claimant and the insurance company and also perused the materials available on record.

8. This accident was occurred at Krishnagiri Highways on 23.10.2019 at 07.45 pm, when the rider of the two-wheeler was riding the vehicle along with four other pillion riders. The reason, adduced by the learned counsel for the insurance company, for the cause of accident was that it was occurred due to sudden crossing of road by the rider of two-wheeler to take U-turn, which is available at 0.5 km away from the place of accident. Due to the said action of the rider of two-wheeler, the car driver, who was riding behind the said two-wheeler, was unable to control the vehicle and thereby the said accident was occurred. PW1, who was the rider of two-wheeler, in his cross-examination had clearly stated that the accident was occurred when he crossed from the left side of the road, where the petrol bunk is situated, to the right side of the road, to take U-turn, which is situated at 0.5 km away from the place of accident. The FIR was filed against the driver of the car and the said FIR, which was marked as Ex.P1, was closed as MOF subsequently. This was also deposed by the PW1 in his cross-examination.



9. On going through the Ex.P1 as well as the deposition of PW1, it is clear that the said accident was occurred when the rider of two-wheeler had suddenly crossed the road from left side to right side. Therefore, no doubt that in the present case, the rider of two-wheeler was also contributing for the accident and due to the negligence on the part of the rider, this accident had occurred. Further, the car driver had also drove the vehicle in a rash and negligent manner and that is the reason why he was unable to control the car immediately. However, since it is a highway, the car driver has to maintain certain speed. It is also pertinent to note that in a highway, it is permitted to drive vehicles at a speed of 80 km/hr. In such speed, if anything happened suddenly, it is difficult to control the vehicle.

10. In view of the above, this Court feels that both the rider and driver had been negligently drove their respective vehicles and both have contributed for the accident. Hence, the Tribunal should have fixed the contributory negligence as 50:50 instead of 85:15. Hence, I find substance in the submissions made by the learned counsel for the insurance company and since there is an error in the fixing of contributory negligence on the part of the



Tribunal, the said contributory negligence of 85:15 is liable to be set aside.

Accordingly, this Court is inclined to fix 50% contributory negligence on the rider of two-wheeler and 50% contributory negligence on the driver of car.

11. As far as quantum of compensation is concerned, the cross objector had challenged the quantum of compensation awarded by the Tribunal in the following Cross Objections:

Cross Objection No.107 of 2021:

12. The Cross Objection in Cros.Obj.No.107 of 2021 has been filed challenging the award passed by the Tribunal in MCOP.No.1264 of 2018.

13. The wife of the rider, who was one of the pillion riders, was died on the spot at the time of accident and she was aged about 24 years. Since she was doing coolie work and the accident occurred in the year 2015, the notional income was fixed by the Tribunal as Rs.8,000/-. Hence, the learned counsel for the claimant would submit that the said notional income is on the lower side and hence, he would request this Court to fix a sum of Rs.15,000/- as notional income.



14. In reply, the learned counsel for the respondent would fairly submit that a sum of Rs.12,000/- may be fixed as notional income.

15. In view of the above submission, this Court is inclined to fix the notional income of the deceased as Rs.12,000/- per month and as per the law laid down by the Hon'ble Apex Court, the future prospects of 40% is also added, which is computed as below:

$$\text{Rs.12,000 (income) + Rs.4,800 (40\% of income) = Rs.16,800/-}.$$

Accordingly, the amount awarded by the tribunal is revised as follows:

$$\begin{aligned} &\text{Rs.16,800 (income) * (2/3) (dependents) * 18 (multiplier)} \\ &\quad * 12 \text{ (months) = Rs.24,19,200/-} \end{aligned}$$

16. With regard to the love and affection, the Tribunal had awarded only a sum of Rs.35,000/- for 2 minor children and the same is on lower side. Hence, this Court feels that as per the law laid down by the Apex Court, each of the minor child is entitled for a sum of Rs.40,000/-. Accordingly, the amount awarded by the Tribunal under the head Love and Affection stands increased from Rs.35,000/- to Rs.80,000/-.



17. Similarly, the Loss of Consortium awarded to the spouse also stands increased from Rs.25,000/- to Rs.40,000/-. Accordingly, the award stands modified as follows:

S.No	Heads	Compensation awarded by Tribunal (Rs.)	Compensation awarded by this Court (Rs.)
1	Loss of Dependency	16,13,088	24,19,200
2	Loss of Love and Affection	35,000	80,000
3	Loss of Estate	15,000	15,000
4	Funeral Expenses	15,000	15,000
5	Loss of Consortium	25,000	40,000
	Total	17,03,088	25,69,200

18. Accordingly, the compensation awarded by the Tribunal stands increased from Rs.17,03,088/- to Rs.25,69,200/-. After deducting the 50% contributory negligence, the Insurance Company is liable to pay a sum of Rs.25,69,200/- x 50% = Rs.12,84,600/-. The revised compensation shall be withdrawn by the claimants in the following ratio:

(i) The husband of the deceased/1st cross objector is entitled for a sum of Rs.4,84,600/-.

(ii) The two minor children of the deceased/2nd and 3rd cross objector are entitled for a sum of Rs.4,00,000/- each.

19. The claimants shall pay necessary Court fee, if any, on the enhanced



compensation. The 1st respondent/Insurance Company is directed to deposit the enhanced award amount along with interest and costs now determined by this Court, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the share of the minors/2nd and 3rd cross objectors i.e a sum of Rs.8,00,000/- is directed to be deposited in a Fixed Deposit under a Re-Investment Scheme in any one of the Nationalised Bank till they attain majority. The Tribunal is directed to transfer the share of the 1st cross objector by way of RTGS, within a period of three weeks from the date of deposit or from the date of receipt of the Bank details obtained for the claimant or application made by the 1st cross objector for withdrawal, whichever is earlier. As far as the 1st cross objector is concerned, if anything left after the settlement of the claim of claimants in M.C.O.P.No.1294 of 2018, the same shall be transferred by way of RTGS as directed by the Tribunal.

Cross Objection No.111 of 2021:

20. This Cross Objection was filed against the judgment and decree passed by the Tribunal in M.C.O.P.No.1294 of 2018.



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21. In the present case, the deceased was minor at the time of accident and he was aged about 17 years. The learned counsel appearing for the cross objector would submit that the Tribunal had passed the following award:

S.No	Heads	Compensation
1	Loss of Dependency	10,58,400
2	Towards Love and Affection	15,000
3	Loss of Estate	15,000
4	Funeral Expenses	15,000
	Total	11,03,400

22. By referring the above, he would submit that the Tribunal had fixed a sum of Rs.7,000/- as notional income and the same is on the lower side. Hence, he requested this court to fix a sum of Rs.15,000/- per month as notional income.

23. The learned counsel for the respondent would submit that the notional income of the deceased shall be fixed as a sum of Rs.11,000/- per month, since, the deceased is minor and was aged about 17 years.



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24. In view of the above submission, this Court is inclined to fix a sum of Rs.11,000/- as notional income. With the said notional income 40% future prospects is also added and computed as follows:

$$\text{Rs.11,000 (income) + Rs.4,400 (40\% of income) = Rs.15,400/-}$$

Accordingly, the loss of dependency will be calculated as below:

$$\begin{aligned} &\text{Rs.15,400/- (income) * 12 (months)} \\ &* 18 (\text{multiplier}) * (1/2) (\text{dependents}) = \text{Rs.16,63,200/-} \end{aligned}$$

25. With regard to the love and affection, the Tribunal had awarded only a sum of Rs.15,000/- for the father and mother of the deceased. Hence, he would contend that said compensation is on lower side.

26. Therefore, this Court feels that as per the law laid down by the Apex Court, both the father and mother of the deceased are entitled for a sum of Rs.40,000/- each. Accordingly, the amount awarded by the Tribunal under the head Love and Affection stands increased from Rs.15,000/- to Rs.80,000/-.



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27. Further, since no compensation was awarded towards transportation by the Tribunal, this Court is inclined to award a sum of Rs.10,000/- towards transportation.

28. Accordingly, the award stands modified as follows:

<i>S.No</i>	<i>Heads</i>	<i>Compensation awarded by Tribunal (Rs.)</i>	<i>Compensation awarded by this Court (Rs.)</i>
1	Loss of Dependency	10,58,400	16,63,200
2	Towards Love and Affection	15,000	80,000
3	Loss of Estate	15,000	15,000
4	Funeral Expenses	15,000	15,000
5	Transportation	Nil	10,000
	Total	11,03,400	17,83,200

29. Accordingly, the compensation awarded by the Tribunal stands increased from Rs.11,03,400/- to Rs.17,83,200/-. Further it is made clear that both the cross objectors are entitled for equal share of compensation awarded by this Court. Since the rider of the two-wheeler has contributed 50% of negligence, a sum of Rs.8,91,600/- (50% of Rs.17,83,200/-) shall be recovered from the rider of the two-wheeler. The insurance company is hereby directed to



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deposit the amount revised by this Court, i.e., a sum of Rs.8,91,600/- (50% of Rs.17,83,200/-), along with interest at the rate of 7.5% and costs now determined by this Court, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the cross objectors are permitted to withdraw their share of the award amount, along with interest and costs, less the amount if any, already withdrawn. The Tribunal is directed to transfer the respective shares of the cross objectors by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained for the claimant or application made by the cross objectors for withdrawal, whichever is earlier.

Cross Objection No.110 of 2021:

30. This Cross Objection has been filed against the quantum of compensation awarded by the Tribunal in M.C.O.P.No.1266 of 2018.

31. The learned counsel appearing for the cross objector would submit that the Court below had awarded the compensation of a sum of Rs.60,000/- towards partial disability. The Doctor had assessed the partial/permanent



disability of the cross objector at 20% and the Tribunal had arrived at the aforesaid compensation by awarding a sum of Rs.3,000/- per percentage. Hence, he would request this Court to enhance the said amount as Rs.4,500/- per percentage.

32. In view of the above, this Court is inclined to award Rs.4,500/- per percentage and hence, the partial disability is calculated as:

$$\text{Rs.4,500 (amount)} * 20 \text{ (percentage of disability)} = \text{Rs.90,000/-}$$

33. With regard to the all other heads, the award passed by the Tribunal stands confirmed. Accordingly, the award stands modified as follows:

<i>S.No</i>	<i>Heads</i>	<i>Compensation awarded by Tribunal (Rs.)</i>	<i>Compensation awarded by this Court (Rs.)</i>
1	For Partial loss of earnings	50,000	50,000
2	Transport to Hospital	5,000	5,000
3	Extra Nourishment	2,000	2,000
4	For medical expenses	5,000	5,000
5	Pain and sufferings	40,000	40,000
6	For Partial disability	60,000	90,000
	Total	1,62,000	1,92,000



34. Accordingly, the compensation awarded by the Tribunal stands reduced from Rs.1,62,000/- to Rs.1,92,000/-.

35. Since the cross objector was aged about 2 years at the time of accident, this Court is not inclined to fasten the contributory negligence on the part of the cross objector. The claimant shall pay necessary Court fee, if any, on the enhanced compensation. The 1st respondent/Insurance Company is directed to deposit the enhanced award amount along with interest and costs now determined by this Court, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment in a Fixed Deposit under a Re-Investment Scheme in any one of the Nationalised Bank till the cross objector attains majority. The Tribunal is directed to transfer the principal amount, along with accrued interest, to the cross objector by way of RTGS, when she attains majority.

Cross Objection No.108 of 2021:

36. This Cross Objection has been filed against the quantum of compensation awarded by the Tribunal in M.C.O.P.No.1265 of 2018.



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37. The rider of the two-wheeler had sustained severe injury in his leg and taking treatment for the past 7 years. However, still he is not cured and he is unable to walk without a walker. The medical board has assessed the disability at 50%. However, this Court is inclined to take 35% as functional disability.

38. The learned counsel appearing for the cross objector would further submit that a sum of Rs.1,50,000/- was awarded for partial loss of earnings. However, the Court below has not fixed any notional income for the injured. Hence, he would request this Court to take entire 50% as functional disability and award compensation by applying multiplier method.

39. The learned counsel for the Insurance company would fairly submit that Rs.12,000/- may be considered as notional income and 35% shall be taken as functional disability of the injured.



40. In view of the above submission, this Court is inclined to fix a sum of Rs.12,000/- as notional income. With the said notional income 40% future prospects is also added and computed as follows:

$$\text{Rs.12,000 (income) + Rs.4,800 (40\% of income) = Rs.16,800/-}$$

Accordingly, the loss of partial disability will be calculated as below:

$$\begin{aligned} &\text{Rs.16,800 (income) * 12 (months)} \\ &* 17 (\text{multiplier}) * 35\% (\text{functional disability}) = \text{Rs.11,99,520/-} \end{aligned}$$

41. Further, this Court is inclined to set aside the compensation awarded by the Tribunal under the head 'partial loss of earnings' for a sum of Rs.1,50,000/- and also inclined to enhance the medical expenses awarded by the Tribunal from Rs.10,000/- to Rs.50,000/-. With regard to all other aspects, the award passed by the Tribunal stands confirmed.

42. Accordingly, the award stands modified as follows:

<i>S.No</i>	<i>Heads</i>	<i>Compensation awarded by Tribunal (Rs.)</i>	<i>Compensation awarded by this Court (Rs.)</i>
1	Partial loss of earnings	1,50,000	Nil
2	Transport to hospital	10,000	10,000



S.No	Heads	Compensation awarded by Tribunal (Rs.)	Compensation awarded by this Court (Rs.)
3	Extra Nourishment	5,000	5,000
4	Future medical expenses	10,000	50,000
5	Pain and Sufferings	1,00,000	1,00,000
6	Partial disability	1,50,000	11,99,520
	Total	4,25,000	13,64,520

43. Accordingly, the award stands increased from Rs.4,25,000/- to Rs.13,64,520/-. Since the contributory negligence was fixed at 50% on the part of the injured, a sum of Rs.6,82,260/- shall be deducted from the award amount of Rs.13,64,520/-, which would come around a sum of Rs.6,82,260/-. In all other aspects, the award of the Tribunal stands confirmed.

44. The claimants shall pay necessary Court fee, if any, on the enhanced compensation. The 1st respondent/Insurance Company is directed to deposit the enhanced award amount along with 7.5% interest from the date of claim till the date of deposit and costs now determined by this Court, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant in M.C.O.P.No.1294 of



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2018 / Cross Objector in Cross Obj. No.111 of 2021 in C.M.A.No.1305 of 2020

is permitted to withdraw the award amount, along with interest and costs, less the amount if any, already withdrawn. The Tribunal is directed to transfer the award amount to the claimants in M.C.O.P.No.1294 of 2018 by way of RTGS, to the extent of a sum of Rs.8,91,600/- which is the liability attributed to the cross objector in Cross Obj.No.108 of 2021 and the claimant in M.C.O.P.No.1265 of 2018, within a period of three weeks from the date of deposit or from the date of receipt of the Bank details obtained from the claimant in M.C.O.P.No.1294 of 2018 or application made by the cross objector in Cross Objection No.111 of 2021 for withdrawal, whichever is later. In the event, if the amount available in the M.C.O.P.No.1265 of 2018 is not sufficient, the balance amount for the claimant in M.C.O.P.No.1294 of 2018 can be recovered from the award amount available in the M.C.O.P.No.1264 of 2018 (from the share of first claimant of a sum of Rs.4,84,600/-, less the amount already paid).

45. In the result, the Civil Miscellaneous Appeals and the Cross Objections are partly allowed. Consequently, the connected miscellaneous



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petitions are closed. No cost.

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Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

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To:

The Motor Accidents Claims Tribunal,
Special District Court, Krishnagiri.

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KRISHNAN RAMASAMY,J.

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and C.M.P.Nos.9374, 9375, 9376 & 9503 of 2020

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