IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal Nos. 1628 to 1630 of 2022

Manimegalai ... Appellant in C.M.A. No. 1628 of 2022

N.Dhanakodi ... Appellant in C.M.A. No. 1629 of 2022

1.N.Dhanakodi
2.Manimegalai ...Appellants in C.M.A. No. 1630 of 2022

Versus

1.S.Saravanan

2.The Correspondent,
Anbu Arts and Science College,
Office at Korapillamedu,
New Pallipalayam Road,
Komarapalayam,
Namakkal District – 638 183.

3.Reliance General Insurance Co. Ltd.,
Office situated at Sakthi Super Market,
3rd Floor, 408, Perundurai Road,
Erode – 638 011. ... Respondents in all the appeals

COMMON PRAYER : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the Common Judgment and

Decree in M.C.O.P. Nos. 396 and 397 of 2017 and 346 of 2018 dated 22.12.2020 on the file of the MACT/IV-Additional District & Sessions Judge, Bhavani at Erode District.

For Appellants in all C.M.A.s	:	Mr. M.Lokesh for Mr. C.Ramaraj
For Respondents in all C.M.A.s	:	R1 & R2 - Exparte Mr. P.Suresh Srinivasan (for R3)

COMMON JUDGMENT

The appellants have filed the instant appeals seeking enhancement of compensation awarded by the Tribunal in common judgment in M.C.O.P. Nos. 396 and 397 of 2017 and 346 of 2018 dated 24.02.2021. All the appeals have been taken up together as they arise out of the common order passed by the Tribunal since the injured and the deceased concerned were involved in the same accident.

2.While the appellants in C.M.A. Nos. 1628 and 1629 of 2022 who were injured in the accident that occurred on 16.08.2017 were travelling in a two wheeler along with their minor daughter, the deceased (in C.M.A. No. 1630 of 2022), the rider had stopped the vehicle on seeing a buffalo and at that time, a bus insured with the third respondent insurance company came in a rash and negligent manner from behind and hit the two wheeler, as a result of which, the appellants in C.M.A. Nos. 1628 & 1629 of 2022 sustained grievous injuries and the minor daughter, who was traveling as a pillion rider, sustained fatal injuries; Hence, three claim petitions were filed before the Tribunal.

3.The first and second respondent remained exparte before the Tribunal.

4.The third respondent filed a counter stating that the accident took place only due to the negligence of the rider of the two wheeler; that he had stopped the vehicle suddenly on seeing a buffalo and that the bus was forced to hit the vehicle from behind and no negligence can be attributed to the driver of the bus; and that in any case, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

5.The appellants examined PW1 to PW5 and marked Ex.P.1 to Ex.P.25. The third respondent neither examined any witness nor marked any document. Further, Ex.X.1, Ex.X.2, Ex.C.1 and Ex.C.2 were marked.

6.The Tribunal after considering the oral and documentary evidence held that the accident took place due to the negligence of the driver of the offending vehicle as well as the negligence of the rider of the two wheeler and fixed 15% contributory negligence on the rider of the two wheeler and 85% contributory negligence on the driver of the offending vehicle and directed the third respondent to pay a compensation of Rs. 4,40,870/- to the appellant in C.M.A. No. 1629 of 2022, a compensation of Rs. 3,82,491/- to the appellant in C.M.A. No. 1628 of 2022 and a compensation of Rs. 3,14,500/- to the appellants in C.M.A. No. 1630 of 2022.

7.The learned counsel for the appellants submitted that the compensation awarded for the appellants in all the three appeals are meagre and prayed for enhancement.

a.In C.M.A. No. 1628 of 2023, the learned counsel submitted that though the Medical Board had assessed the percentage of disability as 50% for the appellant in that appeal, the Tribunal had erroneously fixed the disability as 30% and awarded Rs. 4,000/- per percentage of disability. The Tribunal had also fixed a meagre notional income for computing loss of income for the treatment period; that the Tribunal had not awarded compensation under the head attender charges.

b.In C.M.A. No. 1629 of 2022, the learned counsel submitted that though the Medical Board assessed the disability at 60% and the Tribunal had accepted the same, awarded a sum of Rs. 2,000/- per percentage of disability which requires enhancement and submitted that the notional income fixed by the Tribunal for the appellant was meagre; and that the compensation under the head attender charges was not awarded by the Tribunal and hence, prayed for enhancement of compensation.

c.In C.M.A. No. 1630 of 2022, the learned counsel submitted that the deceased was a three year old child. However, the Tribunal had taken meagre annual income of Rs. 24,000/- and deducted $1/3^{rd}$ towards personal expenses, which is unreasonable, and prayed for enhancement.

8.The first and second respondents had remained exparte before the Tribunal and notice to the first and second respondents had been dispensed with by the order of this Court dated 07.06.2023.

9.The learned counsel for the third respondent submitted that the award of compensation is just and reasonable and prayed for dismissal of all the appeals.

10.The questions that arise for consideration in the instant appeal are;

(i) Whether the Tribunal was right in fixing 15% contributory ngeligence on the injured appellants and the deceased?

(ii) Whether the compensation awarded by the Tribunal is just and reasonable?

11.As regards the first question, it is seen that the Tribunal had fixed 15% contributory negligence on the appellants and the deceased for not wearing helmet. It is seen that the accident had taken place only due to the rash and negligent driving of the offending vehicle, viz., the bus, insured with the third respondent. This Court is of the view that no contributory negligence can be fixed in respect of the child for not wearing helmet. Therefore, the finding that 15% has to be deducted for the compensation payable for the death of the child is set aside. Similarly, this Court is of the view that fixing 15% contributory negligence for not wearing helmet in the facts and circumstances of the case is on the higher side. Therefore, it would be just and reasonable to fix 10% contributory negligence for the appellants in C.M.A. Nos. 1628 and 1629 of 2023 for not wearing helmet.

12.In C.M.A. No. 1628 of 2023, the appellant was the pillion rider. She had examined herself as PW2. She had stated that she was working as a sales woman in an optical shop and earning Rs. 10,000/- per month. Though she had also examined PW5, who is her employer to prove the income, no documentary proof was produced to substantiate the same. It is seen from Ex.C.1 that the Doctor had assessed 20% disability for facial disfigurement and 30% disability for the fracture suffered by her. Therefore, this Court is of the view that the disability should be fixed as 50% for computing the compensation by adopting percentage method. The accident took place in the year 2017. Hence, the appellant is entitled to Rs. 5,000/- per percentage of disability. Therefore, the compensation under the head permanent disability has to be Rs. 5,000 x 50 = Rs. 2,50,000/-. The appellant was hospitalized for 23 days. Therefore, the appellant would be entitled to Rs. 15,000/- under the head attender charges. The Tribunal had assessed the loss of income for a period of four months. There is no infirmity in the said finding. However, the notional income fixed as Rs. 7,500/- per month is meagre and the same is enhanced to Rs. 10,000/-. Therefore, the compensation under the head loss of income would be Rs. 40,000/- (Rs. 10,000/- x 4). The award under the other heads are just and the same are confirmed. Thus, the award of the Tribunal in M.C.O.P. No. 397 of 2017 is modified as follows;

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and sufferings	1,00,000	1,00,000	Confirmed
2.	Permanent disability	1,20,000	2,50,000	Enhanced
3.	Medical expenses	1,76,990	1,76,990	Confirmed
4.	Loss of income	30,000	40,000	Enhanced
5.	Transport expenses	10,000	10,000	Confirmed
6.	Extra nourishment	10,000	10,000	Confirmed
7.	Damage to clothing and articles	3,000	3,000	Confirmed
8.	Attender charges	---	15,000	Granted
	Total	4,49,990	6,04,990	
	After deducting contributory negligence	3,82,491 (15%)	5,44,491 (10%) rounded off to 5,45,000	Enhanced by Rs. 1,62,509/-

13.In C.M.A. No. 1629 of 2023, the appellant was the rider of the two wheeler. He was examined by the Medical Board which assessed the disability as 60%. The Tribunal accepted the disability certificate and awarded only a sum of Rs. 2,000/- per percentage of disability. This Court is of the view that having accepted the disability certificate of the Medical Board, the Tribunal ought to have awarded Rs. 5,000/- per percentage since the accident took place in the year 2017. Therefore, the compensation under the head permanent disability has to be Rs. 5,000 x 60 = Rs. 3,00,000/-. The appellant was also hospitalized for nearly a month. Hence, he would be entitled to Rs. 15,000/- under the head attender charges. Though the appellant claimed that he was earning Rs. 20,000/- per month, no documentary proof was filed to establish his income. However, his employer PW4 was examined. Considering the age, avocation and the year of the accident, this Court is of the view that it would be just and reasonable to fix the notional income as Rs. 12,000/- per month. The Tribunal had observed that the appellant had suffered loss of income for six months. There is no infirmity in the said finding. Therefore, the compensation under the head loss of income would be Rs. 72,000/- (Rs. 12,000/- x 6). The award under the other heads are just and the same are confirmed. Thus, the award of the Tribunal in M.C.O.P. No. 396 of 2017 is modified as follows;

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and sufferings	1,00,000	1,00,000	Confirmed
2.	Temporary disability	1,20,000	3,00,000	Enhanced
3.	Medical expenses	2,21,670	2,21,670	Confirmed
4.	Loss of income	54,000	72,000	Enhanced
5.	Transport expenses	10,000	10,000	Confirmed
6.	Extra nourishment	10,000	10,000	Confirmed
7.	Damage to clothing and articles	3,000	3,000	Confirmed
8.	Attender charges	---	15,000	Granted
	Total	5,18,670	7,31,670	
	After deducting contributory negligence	4,40,869.50 (15%) rounded off to 4,40,870	6,58,503 (10%) rounded off to 6,59,000	Enhanced by Rs. 2,18,130/-

14.In C.M.A. No. 1630 of 2023, it is seen that the deceased was a three year old child. The annual income of the deceased was fixed at Rs. 24,000/- and Rs. 8,000/- has been deducted towards personal expenses for the purpose of computing the compensation under the head loss of dependancy. This Court is of the view that the said approach of the Tribunal is erroneous. Since the deceased was a child, it would be just and reasonable to fix Rs. 50,000/- as annual income for the purpose of computing the compensation under the head loss of income. The multiplier applicable is 15. Therefore, the appellants would be entitled to Rs. 7,50,000 (Rs. 50,000 x 15) under the head loss of dependancy. The award under the other heads are just and the same are confirmed. Thus, the award of the Tribunal in M.C.O.P. No. 346 of 2018 is modified as follows;

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependancy	2,40,000	7,50,000	Enhanced
2.	Loss of love and affection	50,000	50,000	Confirmed
3.	Funeral expenses	15,000	15,000	Confirmed
4.	Loss of estate	15,000	15,000	Confirmed
	Total	3,70,000	8,30,000	
	After deducting contributory negligence			

15.With the above modifications, these Civil Miscellaneous Appeals are partly allowed and;

a. the compensation awarded by the Tribunal in M.C.O.P. No. 397

of 2017 at Rs. 3,82,491/- is hereby enhanced to Rs. 5,45,000/- in C.M.A. No. 1628 of 2022;

b. the compensation awarded by the Tribunal in M.C.O.P. No. 396 of 2017 at Rs. 4,40,870/- is hereby enhanced to Rs. 6,59,000/- in C.M.A. No. 1629 of 2022;

c.the compensation awarded by the Tribunal in M.C.O.P. No. 346 of 2018 at Rs. 3,14,500/- is hereby enhanced to Rs. 8,30,000/- in C.M.A. No. 1630 of 2022;

together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The third respondent is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment, if not already deposited. On such deposit, the appellants are permitted to withdraw their respective share of the award amounts along with interest and costs, less the amount if any, already withdrawn as per the apportionment fixed by the Tribunal in all the appeals. The appellants are further directed to pay the requisite court fee, if any, on the enhanced award amount. No costs.

14.09.2023

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Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

To

1. The MACT/IV-Additional District & Sessions Judge,
   Bhavani,
   Erode District.

2. The Section Officer,
   VR Section,
   Madras High Court,
   Chennai – 600 104.

SUNDER MOHAN, J

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C.M.A. Nos. 1628 to 1630 of 2022

Dated: 14.09.2023