



CMA Nos. 1814 & 364 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal Nos. 1814 & 364 of 2023
and
C.M.P. No. 3080 of 2023

C.M.A. No. 1814 of 2023:

S.Rohinth

... Appellant

Versus

1.P.A. Lakshminarayanan,
Proprietor,
Shree Lakshmi Narayanan Transport,
No.14, Ravathanallur Colony,
1st Street, Charapakkam,
Kancheepuram District – 603 3901.

2.National Insurance Co.Ltd.,
No.751, 3rd floor, Anna Salai,
Chennai – 600 002.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 24.10.2018 made in M.C.O.P. No. 4454 of 2015 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Mr. K. Varadha Kamaraj.



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For Respondents : Mr. P. Sankaranarayanan for R2.
R1 – Exparte.

C.M.A. No. 364 of 2023:

National Insurance Co.Ltd.,
No.751, 3rd floor, Anna Salai,
Chennai – 600 002.

Now at

National Insurance Co.Ltd.,
Motor 3rd Party Claim Cell,
No.66, Greams Road,
Chennai – 6.

... Appellant

Versus

1.R. Franis Mary

2.D. Ravi

3.P.A. Lakshminarayanan,
Proprietor,
Shree Lakshmi Narayanan Transport,
No.14, Ravathanallur Colony,
1st Street, Charapakkam,
Kancheepuram District – 603 3901.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 24.10.2018 made in M.C.O.P. No. 4453 of 2015 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Mr. P. Sankaranarayanan.

For Respondents : Mr. K. Varadha Kamaraj for R1 & R2.
R3 – Exparte.



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COMMON JUDGMENT

C.M.A. No. 1814 of 2023 has been filed by the claimant challenging the award passed by the Tribunal in M.C.O.P. No. 4454 of 2015 dated 24.10.2018 and C.M.A. No. 364 of 2023 has been filed by the insurance company challenging the award passed by the Tribunal in M.C.O.P. No. 4453 of 2015 dated 24.10.2018. Since both the appeals arise out of the same accident and common order has been passed by the Tribunal, they are taken up together for disposal.

2.The appellant in C.M.A. No. 1814 of 2023 and the respondents 1 and 2 in C.M.A. No. 364 of 2023 have filed claim petitions seeking compensation stating that on 18.04.2015, when the appellant in C.M.A. No. 1814 of 2023 was riding the motorcycle bearing Registration No.TN 22 CL 7917 along with one Minor Immanuel, (the deceased) who was the pillion rider in OMR road in front of Jain college, Thoripakkam from South to North direction, a water tanker lorry bearing Registration No.TN 19 V 2436 driven by its driver in a rash and negligent manner from South to North direction, dashed on the motorcycle as a result of which the Minor Immanuel and the appellant in C.M.A. No. 1814 of 2023 sustained severe



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injuries and was admitted in the hospital and the said Immanuel died on the next day.

3.The first respondent in C.M.A. No. 1814 of 2023 / third respondent in C.M.A. No. 364 of 2023 remained ex parte before the Tribunal.

4.The second respondent in C.M.A. No. 1814 of 2023 / appellant in C.M.A. No. 364 of 2023 filed counter stating that the accident occurred due to the rash and negligent riding of the appellant in C.M.A. No. 1814 of 2023; that he was a minor and at the time of accident did not possess valid driving license; that the vehicle is not insured at the time of the accident; hence, 2nd respondent is not liable to pay compensation; and that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petitions.

5.The appellant in C.M.A. No. 1814 of 2023 and the respondents 1 and 2 in C.M.A. No. 364 of 2023 examined four witnesses on their side as PW1 to PW4 and marked Ex.P.1 to Ex.P.19. On the side of the appellant in C.M.A. No. 364 of 2023 / second respondent in C.M.A. No. 1814 of



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2023, neither any witness was examined nor any document was marked.

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6.The Tribunal after considering the oral and documentary evidence found that the accident occurred due to the rash and negligent driving of the driver of the lorry as well the appellant in C.M.A. No. 1814 of 2023 who rode the motor cycle and fixed 50% contributory negligence on the driver of the lorry and 50% contributory negligence on the appellant in C.M.A. No. 1814 of 2023 and directed the second respondent in C.M.A. No. 1814 of 2023 / appellant in C.M.A. No. 364 of 2023 to pay a compensation of Rs.12,04,700/- to the respondents 1 and 2 in C.M.A. No. 364 of 2023 and a sum of Rs.57,750/- to the appellant in C.M.A. No. 1814 of 2023. Aggrieved by the said common award, the appellants have filed the instant appeals.

7.The learned counsel for the insurance company in both the appeals submitted that the Tribunal ought to have fixed contributory negligence on the side of the deceased who was a pillion rider; since he was aware that the rider of the motorcycle was aged 14 years and did not have a valid driving license to ride the motorcycle; The learned counsel submitted that in the instant case the pillion rider (minor aged 14 years) was equally



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guilty of contributory negligence by travelling in a vehicle ridden by his friend who was a minor and he had no valid license. The learned counsel further submitted that the appellant / insurance company would at best be liable to pay only 50% of the award amount towards the negligence apportioned on the driver of the offending vehicle in respect of C.M.A. No. 364 of 2023.

8.(a) The learned counsel for the appellant in C.M.A. No. 1814 of 2023 submitted that the appeal has been filed challenging the finding of fixing 50% contributory negligence on the appellant only because he did not have a valid driving license although there is no evidence to show that the appellant had contributed to the accident. The learned counsel further submitted that the Tribunal found that the appellant suffered 20% disability and awarded Rs.3,000/- per percentage of disability though the appellant was entitled to Rs.4,000/- per percentage of disability as per the decisions of this Court.

8.(b).As regards the appeal filed by the insurance company in C.M.A. No. 364 of 2023, the learned counsel for the respondents 1 and 2 relied on the Judgment of this Court in ***Tamil Nadu State Transport***



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Corporation Ltd., Vs. Vasantha and others reported in **2022 (2) TN MAC**

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289 in support of his submissions that in the absence of any evidence to show that the deceased / pillion rider contributed to the accident in any manner, the Tribunal was right in fixing the entire liability on the driver of the offending vehicle and no interference is called for.

9.The questions that arise for consideration in the instant appeals are;

- (a)Whether the Tribunal was right in fixing 50% contributory negligence on the rider of the two wheeler / appellant in C.M.A. No. 1814 of 2023?
- (b)Whether the Tribunal ought to have fixed contributory negligence on the pillion rider while awarding compensation to his legal heirs in C.M.A. No. 364 of 2023?
- (c)Whether the quantum of compensations awarded by the Tribunal in both the claim petitions are just and reasonable?

10.As regards the first question, it is seen that the appellant in C.M.A. No. 1814 of 2023 has examined PW1 to PW4 to prove the manner of accident. The Tribunal found on perusal of the above evidence that the



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accident occurred due to the rash and negligent driving of the driver of the offending vehicle insured with the second respondent in C.M.A. No. 1814 of 2023 as well the rider of the motorcycle / appellant in CMA No.1814 of 2023. The evidence shows that while the deceased and the rider in the motor cycle were travelling on the OMR road in front of Jain college, Thoripakkam from South to North direction, the lorry came in the same direction from behind and rammed into the two wheeler. The driver of the lorry was not examined before the Tribunal. The appellant had also marked the FIR and final report which suggest that the negligence is on the part of the driver of the lorry. However, considering the fact that the appellant who rode the two wheeler did not have a valid license and that he was 14 years old at the time of the accident, this Court is of the view that it would be just and reasonable to fix the contributory negligence on the part of the rider of the two wheeler at 20% taking into consideration the decision of this Court in similar circumstances. Thus, the finding of the Tribunal fixing 50% contributory negligence on the appellant is reduced to 20%.

11.The contention of the learned counsel for the respondents 1 and 2 in C.M.A. No. 364 of 2023 that even assuming that the rider of the two



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wheeler had contributed to the accident to the extent of 20%, the pillion rider is entitled to file the claim petition against either the tortfeasor or both the tortfeasor and the insurer of the vehicle; that the appellant being the insurer of the tortfeasor's vehicle is liable to pay the entire compensation amount. There cannot be any quarrel with the said proposition of law. However, in the instant case, it is seen that the pillion rider was also aged 14 years. He is the friend of the rider of the two wheeler who was aged 14 years at the time of the accident. The pillion rider in the said circumstances had also contributed to the accident as he had knowingly travelled in the vehicle ridden by a minor without license and hence, he would also be liable for contributory negligence in the same manner as the rider of the two wheeler. Therefore, 20% contributory negligence is fixed on the pillion rider as well.

12. The quantum of compensation awarded by the Tribunal in so far as the deceased pillion rider in C.M.A. No. 364 of 2023 is concerned, is not questioned by either of the parties. However, legal heirs of the pillion rider who are the respondents 1 and 2 in C.M.A. No. 364 of 2023 would be entitled to 80% compensation amount determined by the Tribunal which comes to Rs.9,63,760/-. Hence, the compensation awarded in



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M.C.O.P.4453 of 2015 is reduced from Rs.12,04,700/- to Rs.9,63,760/-.

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13.As regards the compensation in respect of rider of the two wheeler in C.M.A. No. 1814 of 2023 is concerned, he is entitled to Rs.4,000/- per percentage of disability and hence, the compensation under the head disability is enhanced from Rs.60,000/- to Rs.80,000/-. The award under the other heads are just and the same are confirmed. Thus, the award of the Tribunal 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	20,000	20,000	Confirmed
2.	Transport and extra nourishment	10,000	10,000	Confirmed
3.	Disability	60,000	80,000	Enhanced
4.	Tuition charges	5,000	5,000	Confirmed
5.	Attender charges	500	500	Confirmed
6.	Loss of amenities	10,000	10,000	Confirmed
7.	Medical Expenses	10,000	10,000	Confirmed
	Total	1,15,500	1,35,500	
	After deducting 50% contributory negligence fixed by the tribunal	57,750		
	After deducting 20% contributory negligence fixed by this Court		1,08,400	Enhanced by Rs.50,650/-



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14. With the above modification, C.M.A. No. 1814 of 2023 is partly allowed and the compensation awarded by the Tribunal at Rs.57,750/- is hereby enhanced to Rs.1,08,400/- together with interest at 7.5% per annum (excluding the default period if any) from the date of petition till the date of deposit and C.M.A. No. 364 of 2023 is partly allowed and the compensation awarded by the Tribunal at Rs.12,04,700/- is hereby reduced to Rs.9,63,760/- 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 second respondent in C.M.A. No. 1814 of 2023 / appellant in C.M.A. No. 364 of 2023 is directed to deposit the award amounts now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellant in C.M.A. No. 1814 of 2023 is permitted to withdraw the award amount along with interest and costs after adjusting the amount, if any already withdrawn. The respondents 1 and 2 in CMA No.364 of 2023, are permitted to withdraw their respective shares along with proportionate interest and costs, less the amount if any, already withdrawn. The appellant in C.M.A. No. 1814 of 2023 is directed to pay the necessary court fee if any on the enhanced award amount. The appellant / insurance company in C.M.A. No. 364 of



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2023 is permitted to withdraw the excess amount lying in the credit of MCOP No.4453 of 2015, if the entire amount had already been deposited by them. No costs. Consequently, the connected Miscellaneous petition is closed.

28.08.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Motor Accident Claims Tribunal,
V Small Causes Court,
Chennai.
2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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C.M.A. No. 1814 & 364 of 2023
and
C.M.P. No. 3080 of 2023

Dated: 28.08.2023