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CMA Nos. 1110 & 1117 of 2023

CMA No.1110 & 1117 of 2023
and C.M.P.Nos.10739 & 10810 of 2023

SUNDER MOHAN, J.

These appeals have been listed today under the caption 'for being spoken to'.

2. It is seen that in the Judgment dated 14.08.2023 made in CMA No.1110 & 1117 of 2023 at paragraph 21, direction to the Tribunal with regard to minor share has been omitted.

3. In view of the above, Registry is directed to replace paragraph No.21 as follows and issue a fresh order copy, forthwith.

“21.The appellant/Insurance Company is directed to deposit the award amount in both the appeals, now determined by this Court along with interest and costs, less the amounts already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this common Judgment. On such deposit except the minor claimants, the other respondents/claimants in both the appeals are permitted to withdraw their share of the award amount along with proportionate interest and costs, as per the apportionment fixed by the Tribunal, less the amount if any, already withdrawn. The share of the minors is directed to be deposited in any one of the Nationalised Bank in an interest



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bearing scheme till the minor claimants attain majority. However, the first respondent in C.M.A.No.1117 of 2023/mother of the minor claimants is permitted to withdraw the accrued interest once in three months. The appellant/insurance company is permitted to withdraw the excess amount lying in the deposit, if the entire award amount has already been deposited by them. No costs. Consequently, connected miscellaneous petitions are closed.

04.10.2023

dk

CMA No.1110 & 1117 of 2023
and C.M.P.Nos.10739 & 10810 of 2023



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CMA Nos. 1110 & 1117 of 2023

C.M.A.No.1110 & 1117 of 2023
and C.M.P.Nos.10739 and 10810 of 2023

SUNDER MOHAN, J.

Today, this appeal is listed under the caption 'For being spoken to'.

2. It is brought to the notice of this Court that in Para No.20 (ii) of the Judgment of this Court dated 14.08.2023, the total amount of compensation has been mentioned as Rs.1,78,000/- instead of Rs.7,71,760/-.

3. In view of the above, paragraph No.20 (ii) of the Judgment of this Court dated 14.08.2023 should reads as follows :

20. With the above modifications-

*(ii) C.M.A.No. 1117 of 2023 is partly allowed and the compensation awarded by the Tribunal at Rs.9,93,450/- is reduced to **Rs.7,71,760/-** together with interest and costs (excluding the default period, if any) from the date of petition till the date of deposit.*

4. Registry is directed to issue order copy after carrying out the above corrections. The other contents of the judgment of this Court dated 14.08.2023 shall remain unaltered.

21.08.2023

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CMA Nos. 1110 & 1117 of 2023

SUNDER MOHAN,J.

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C.M.A.No.1110 & 1117 of 2023
and C.M.P.Nos.10739 and 10810 of 2023

21.08.2023



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CMA Nos. 1110 & 1117 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.07.2023

Pronounced on : 14.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal Nos. 1110 & 1117 of 2023
and C.M.P.Nos.10739 & 10810 of 2023

The Manager,
The New India Assurance Co. Ltd.,
No.1-17/D14, Ponnusamy Gounder Complex,
Thiruchengode Road,
Sankagiri.

.... Appellant in both the appeals

Versus

1.Japeulla Baig
2.Jabeenbegum
3.Shaubullabaig,
4.Nishad Begum

...1 To 4th
Respondents/Petitioners.

5.M/s.Sree Balaji Transports,
No.2, Marvampalayathankadu,
Padaveedu Post,
Thirchengode, Namakkal,
Salem District

.... 5th Respondent/1st Respondent
in C.M.A.No.1110 of 2023



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- 1.S.Gulzar
 - 2.Thasthageer
 - 3.T.Nageena
 - 4.T.Haseena
 - 5.Minor T.Dhania
 - 6.Minor T.Kadar Basha
- (5 & 6 are minors rep. by their mother and NFG Mrs.Gulzar)

...1 to 6th Respondents/Petitioners

7.M/s.Sree Balaji Transports,
No.2, Maravampalayathankadu,
Padaveedu Post,
Thirichengode, Namakkal, Salem District.

...7th Respondent/1st Respondent
in C.M.A.No.117 of 2023.

COMMON PRAYER : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 59 of 1988 against the Judgment and decree dated 15.09.2022 made in M.C.O.P. Nos. 380 and 436 of 2019 on the file of the Motor Accident Claims Tribunal and Additional District Judge, MACT – Hosur.

For Appellants : Mr. P.Sankara Narayanan

For Respondents : Mr. C.Prabakaran
R1 to R6 in C.M.A.No.1117 of 2023
R7 – No Appearance
R1 to R5 – No Appearance
in C.M.A.No.1110 of 2023



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COMMON JUDGMENT

WEB COPY These appeals have been filed by the 2nd respondent challenging the common award passed by the Tribunal in M.C.O.P. Nos.380 and 436 of 2019 dated 15.09.2022 as regards the finding of the Tribunal on contributory negligence fixed on them

***[For the sake of convenience, parties are referred
as per their rank in the claim petition]***

2. The claimants filed claim petitions stating that while the deceased Siddhiqulla Baig and Ibrahim were travelling in a Suzuki Max 100 vehicle bearing Registration No. TN 29 B 8061 on Krishnagiri to Hosur, near Melumalai Kanavai, at about 2.00 A.M., a gas tanker lorry bearing Registration No. TN 34 Z 7466 belonging to the 1st respondent which was driven by its driver in a rash and negligent manner in the opposite direction dashed against the two wheeler and caused the accident. In the said accident, the said Mr.Siddhiqulla Baig and Mr.Ibrahim died on the spot. Thus, the claimants had filed two claim petitions viz., M.C.O.P. Nos. 380 and 436 of 2019 claiming compensation against the respondents.



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3. The 1st respondent in both the claim petitions remained exparte before the Tribunal.

4. The second respondent filed common counter denying all the averments made in the claim petitions including the manner of accident. The accident occurred only due to the negligent act of the rider of the motor cycle. The rider of the motor cycle did not wear helmet at the time of the accident. The final report was filed against the rider of the motorcycle. There is no negligence on the part of the driver of the 1st respondent. The petition is bad for non joinder of necessary parties being the owner and insurer of the motorcycle. The age, occupation and monthly income of the deceased are denied. The amounts claimed as compensation is excessive and prayed for dismissal of claim petitions.

5. The claimants in M.C.O.P.No.380 of 2019 examined two witnesses as P.W.1 and P.W.2 and the claimants in M.C.O.P.No.436 of 2019 examined two witnesses as P.W.1 and P.W.2. Ex.P.1 to Ex.P.24 was marked by the claimants in M.C.O.P.No.380 of 2019 and Exs.P1 to Exs.P2 were marked in M.C.O.P.No.436 of 2019 on the side of the respondents. R.W.1 and R.W.2 were marked in examined in



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M.C.O.P.No.380 of 2019 and R.W.1 and R.W.2 in M.C.O.P.No.436 of 2019. Exs.R.1 and Exs. R2 – copy of charge sheet and rough sketch were marked in both the claim petitions.

6.The Tribunal after considering the oral and documentary evidence filed on the side of the claimants and respondents held that the accident occurred due to rash and negligent driving by both the rider of the motorcycle as well as the driver of the 1st respondent and fixed 25% contributory negligence on the deceased Ibrahim, 10 % negligence on the deceased Siddiquallah Baig and 75% and 90% negligence on the driver of the first respondent in M.C.O.P.Nos.380 & 436 of 2019 respectively. The Tribunal awarded a sum of Rs.11,31,660/- as compensation after deducting 10% contributory negligence on the deceased and a sum of Rs.9,93,450/- in M.C.O.P.No.436 of 2019 after deducting 25% contributory negligence on the deceased.

7. Aggrieved by the said common order, the 2nd respondent/Insurance company had preferred the instant appeals.



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8. The claimants/respondents in the above appeals are the dependants of the deceased involved in the same accident and hence, both Civil Miscellaneous Appeals are disposed of by a common Judgment.

9. The claimants in M.C.O.P.No.436 of 2019 are the dependants of the rider of the motorcycle. The claimants in M.C.O.P.No.380 of 2019 are the dependants of the pillion rider of the motorcycle.

10. This Appeal is filed by the 2nd respondent/Insurance Company challenging the contributory negligence fixed on the deceased.

11. The learned counsel for the 2nd respondent/Insurance Company submitted that the Tribunal ought not to have fixed negligence on the part of the driver of the 1st respondent since there is overwhelming evidence on record to show that the rider of the motorcycle was guilty of the negligence. The learned counsel pointed out the FIR/Ex.P1, the final report/Ex.R.1 to substantiate his submission that the rider was found to be guilty of negligence by the police and since he was deceased, the case was closed. The learned counsel further pointed out that even from the



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evidence of the witness cited on the side of the respondents, it is clear that the driver of the alleged offending vehicle was moving slowly on the correct side and the rider of the motorcycle came and dashed behind the tanker lorry. This evidence is contrary to the version of the claimants in the claim petition and the lorry had suddenly applied break and therefore, the rider of the two wheeler lost control and rammed into the lorry. The learned counsel further submitted that since the entire negligence is on the rider of the two wheeler, the Tribunal erred in fixing only 25% contributory negligence on the deceased who is the rider of the motorcycle.

12. The learned counsel for the claimants in C.M.A.No.1117 of 2023 submitted that the evidence of eye-witness would clearly show that the tanker lorry was driven in a rash manner and since the driver had applied break suddenly, the rider of the motorcycle dashed behind the lorry. The learned counsel further submitted that the Tribunal after considering the evidence had finally held that the accident that took place predominantly due to the negligence of the rider of the motorcycle as well as driver of the tanker lorry and fixed contributory negligence of 25% on the rider of the two wheeler. The learned counsel further



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submitted that the deceased was working as a mechanic in a puncher shop and earning more than Rs.15,000/- per month.

The claimants produced Ex.P.10/salary certificate to prove the income of the deceased. The notional income fixed by the Tribunal at Rs. 8,000/- per month is meagre and in fact, the claimants are entitled to more compensation than the amount awarded by the Tribunal.

13. Though notices have been sent to the seventh respondent in C.M.A.No.1117 of 2023 and Respondents 1 to 5 in C.M.A.No.1110 of 2023, none has entered appearance on behalf of them.

14. The questions involved in the instant appeals are :

- (a) Whether the Tribunal was correctly in fixing the contributory negligence on the rider of the two wheeler?
- (b) Whether the compensation awarded by the Tribunal is just and reasonable ?



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15. As regards the first question, it is seen that Ex.P.1/ FIR lodged by the father of the deceased Ibrahim/rider of the motorcycle that the offending vehicle namely the tanker lorry was moving and the deceased in his bike had rammed into the said lorry. Ex.R.1/Final Report reveals that pursuant to the investigation, it was found that the rider of the two wheeler was guilty of negligence and hence, the case was closed. However, this Court is conscious of the fact that the Tribunal has to independently determine the question of negligence and not be bound by the final report or the statements made before the Police.

16. Both the claimants examined eye-witness to the occurrence. P.W.2 in M.C.O.P.No.436 of 2019 (C.M.A.No.1117 of 2023) had stated that the offending vehicle had applied brake suddenly whereas, the eye-witness, P.W.2 in M.C.O.P.No.380 of 2019/C.M.A.No.1110 of 2023 had stated that the two wheeler dashed from behind. There is contradiction in the evidence of eye-witnesses examined on the side of the claimants in their respective petitions. R.W.2, the driver of the offending vehicle deposed that he was going slowly and he heard a sound, and saw that a motorcycle hit the lorry from behind and that several bikers were going on a race on that day. In the cross examination,



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R.W.2 had admitted that he was driving the vehicle continuously from 10 A.M, the previous day. The accident occurred on 02.06.2019 at about 2.00 A.M. The driver also admitted that there was no other driver in the lorry. The R.W.2/driver of the lorry had denied the suggestion that he had dozed off because of continuous driving.

17. The Tribunal however, held that there was every possibility that the driver/R.W.2 had slept while driving the lorry and hence, the accident took place due to the negligent act of the driver of the lorry. This Court is of the view that such an inference cannot be made in the absence of any evidence. The rough sketch/Ex.R.2 shows that the lorry went on the extreme left of the road. The evidence suggests that there is a high probability of lapse in concentration of the driver in view of the continuous driving. The evidence suggests that the lorry had slowed down at the time of accident. However, on the consideration of the evidence of eye-witnesses in both the claim petitions, the evidence of R.W.2/the driver, rough sketch and the final report filed by the Police, this Court is of the view that the accident did not occur predominantly due to the negligence of the driver of the tanker lorry. The rider of the two wheeler namely Ibrahim was mainly responsible for the accident. He



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ought to have maintained safe distance and ought to have exercised due care and caution, maintained an average speed especially while riding during night hours. On an overall consideration of the evidence, this Court is of the view that both the driver of the lorry and the rider of the two wheeler are guilty of negligence. This Court is of the view that the contribution of the rider of the two wheeler is more than the contribution of the lorry driver for the accident. Therefore, in the facts and circumstances of this case, it would be just and reasonable to fix 60 % contributory negligence on the rider of the two wheeler and 40 % on the lorry driver. Since the liability of lorry driver is fixed as 40%, the appellant is only liable to pay 40% of the compensation amount to the respondents. However, the respondents in C.M.A.No.1110 of 2023 who are the legal heirs of the pillion rider are entitled to recover the balance 60 % only from the insurer of the two wheeler subject to policy conditions. However, since the insurer of the two wheeler is not a party, no such directions can be issued by this Court in the instant appeals.

18. As regards quantum, this Court finds that the deceased in C.M.A.No.1110 of 2023 was working as a Mechanic in a Puncher Shop. The Tribunal had taken the notional income as Rs.8,000/- for an accident



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which took place in the year 2019. Considering the age of the victim his avocation prior to his death and the year of accident and in similar circumstances, this Court had fixed between Rs.12,000/- to Rs.15,000/- per month as notional income, this Court is of the view that it would be reasonable to fix Rs.12,000/- per month as notional income of the deceased.

19. Likewise, the deceased in C.M.A.No.1117 of 2023 also was working as a Mechanic in Puncher Shop. For the aforesaid reasons, the notional income has to be fixed as Rs.12,000/- per month even for him. Thus, the amount awarded by the Tribunal towards loss of dependency is calculated as follows:

C.M.A.No.1110 of 2023

$$12000 + 4800 (12000 \times 40\%) \times 12 \times 17 \times \frac{1}{2} = 17,13,600/-$$

C.M.A.No.1117 of 2023

$$12000 + 4800 (12000 \times 40\%) \times 12 \times 18 \times \frac{1}{2} = 18,14,400/-$$

The amounts awarded under other heads are just and reasonable. Thus, the award of compensation awarded by the Tribunal in M.C.O.P.Nos.380 of 2019 and 436/2019 are modified as follows:



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C.M.A.No.1110 of 2023

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	11,42,400/-	17,13,600/-	enhanced
2.	Parental Consortium	80,000/-	80,000/-	confirmed
3.	Transportation	5,000/-	5,000/-	confirmed
4.	Funeral expenses	15,000/-	15,000/-	confirmed
5.	Loss of estate	15,000/-	15,000/-	confirmed
6.	Medical Bills	---	---	---
	Total	12,57,400/-	18,28,600/-	
		Less: 10% towards contributory negligence Rs.1,25,740	Less: 60% towards contributory negligence Rs.10,97,160	
	Grand Total	Rs.11,31,660/-	Rs.7,31,440/-	Reduced by Rs.4,00,220/-

C.M.A.No.1117 of 2023

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	12,09,600/-	18,14,400/-	enhanced
2.	Parental Consortium	80,000/-	80,000/-	confirmed
3.	Transportation	5,000/-	5,000/-	confirmed



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4.	Funeral expenses	15,000/-	15,000/-	confirmed
5.	Loss of estate	15,000/-	15,000/-	confirmed
6.	Medical Bills	---	---	---
	Total	13,24,600/-	19,29,400/-	
		Less: 25% Contributory Negligence Rs.3,31,150/-	Less: 60 % Contributory Negligence 11,57,640/-	
	Grand Total	Rs.9,93,450/-	Rs.7,71,760/-	Reduced by Rs.2,21,690/-

20. With the above modifications-

(i) C.M.A. No. 1110 of 2023 is partly allowed and the compensation awarded by the Tribunal at Rs.11,31,660/- is reduced to Rs.7,31,440/- together with interest and costs (excluding the default period, if any) from the date of petition till the date of deposit.

(ii) C.M.A.No. 1117 of 2023 is partly allowed and the compensation awarded by the Tribunal at Rs.9,93,450/- is reduced to Rs.1,78,000/- together with interest and costs (excluding the default period, if any) from the date of petition till the date of deposit.

21. The appellant/Insurance Company is directed to deposit the



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award amount in both the appeals, now determined by this Court along with interest and costs, less the amounts already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this common Judgment. On such deposit the respondents/claimants in both the appeals are permitted to withdraw their share of the award amount along with proportionate interest and costs, as per the apportionment fixed by the Tribunal, less the amount if any, already withdrawn. The appellant/insurance company is permitted to withdraw the excess amount lying in the deposit, if the entire award amount has already been deposited by them. No costs. Consequently, connected miscellaneous petitions are closed.

14.08.2023

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Index : Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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CMA Nos. 1110 & 1117 of 2023

SUNDER MOHAN, J
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To

1. The Additional District Judge,
MACT – Hosur.
2. The Section Officer,
VR Section
High Court of Madras.

Civil Miscellaneous Appeal Nos. 1110 & 1117 of 2023
and C.M.P.Nos.10739 & 10810 of 2023

Dated: 14.08.2023