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CMA Nos. 787, 788, 790 & 811 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal Nos. 787, 788, 790 & 811 of 2022

1. Shanmuga Sundaram

2. Minor S. Kamalesh,
S/o. Shanmuga Sundaram,
Rep. by is N/F Father
Shanmuga Sundaram ... Appellants in C.M.A. Nos. 787 & 811 of 2022

Minor S. Kamalesh,
S/o. Shanmuga Sundaram,
Rep. by is N/F Father
Shanmuga Sundaram ... Appellant in C.M.A. No. 788 of 2022

Shanmuga Sundaram ... Appellant in C.M.A. No. 790 of 2022

Versus

1. C. Murugesan

2. The National Insurance Co. Ltd.,
Paramathi Road, Namakkal Town,
Namakkal. ... Respondents in all the appeals

COMMON PRAYER : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 59 of 1988 seeking to enhance the compensation amount and fix the entire liability on the second respondent made in Judgment and decree dated 12.12.2019 made in



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M.C.O.P. Nos. 928, 927, 932 of 2016 & 249 of 2015 on the file of the Motor Accident Claims Tribunal and Chief Judicial Magistrate, Namakkal by allowing these Civil Miscellaneous Appeals.

For Appellants : Mr. S.P. Yuvaraj.

For Respondents : Mr. D. Baskaran for R2.

COMMON JUDGMENT

These appeals have been filed challenging the common award passed by the Tribunal in M.C.O.P. Nos.245 of 2015, 928, 927 & 932 of 2016 dated 12.12.2019 as regards the finding on contributory negligence and praying for enhanced compensation.

2.The appellants filed claim petitions stating that the appellants and the deceased by the name Shanthi and minor Sampritha were going in a TVS Moped bearing Registration No. TN 37 BV 4875 on Palakkadu to Walaiyar near Mangalathansalla, at about 5 p.m. a lorry bearing Registration No. KL11 A 9659 belonging to the first respondent came in a rash and negligent manner and dashed against the two wheeler as a result of which the appellants sustained multiple injuries and the said Shanthi and Minor Sampritha died on the spot. Thus, the appellants had filed four different claim petitions viz., M.C.O.P. No. 249 of 2015 for the



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injuries sustained by Shanmugasundaram, M.C.O.P. No. 927 of 2016 for the injuries sustained by the Minor Kamalesh, M.C.O.P. No. 932 of 2016 for the death of Shanthi and M.C.O.P. No. 928 of 2016 for the death of the minor Sampritha.

3.The first respondent remained exparte before the Tribunal. The second respondent has filed a common counter denying all the averments made in the claim petitions and stated that in any case, the claims were excessive.

4.The appellants / petitioners examined two witnesses on his side and marked Ex.P.1 to Ex.P.24. No witness was examined and no document was marked on the side of the respondents.

5.The Tribunal after considering the oral and documentary evidence filed on the side of the appellants / petitioners awarded a sum of of Rs.2,57,040/- in M.C.O.P. No. 249 of 2015 for the injuries sustained by Shanmugasundaram, a sum of Rs.1,58,000/- in M.C.O.P. No. 927 of 2016 for the injuries sustained by the Minor Kamalesh, a sum of Rs.11,63,000/- in M.C.O.P. No. 932 of 2016 for the death of Shanthi and



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a sum of Rs. 5,84,000/- in M.C.O.P. No. 928 of 2016 for the death of the minor Sampritha. Further, the Tribunal had fixed 20% contributory negligence on the rider of the TVS Moped for taking three other passengers and finally after deducting 20%, the above amounts were awarded as compensation. Aggrieved by the said common order, the appellants / petitioners had preferred the instant appeal.

6.The learned counsel for the appellants / petitioners submitted that the Tribunal had awarded meagre amounts as compensation in all the claim petitions viz.,

(a)As regards C.M.A. No. 790 of 2022 filed against the award in M.C.O.P. No. 249 of 2015, the learned counsel submitted that the Tribunal fixed Rs.3000/- per percentage of disability and ought to have fixed Rs.4000/- since the accident is of the year 2014 as per the Judgment of this Court in *M.Chinnathambi Vs. S.Deepa and other* reported in **2020 (1) TN MAC 617**.

(b)As regards C.M.A. No. 788 of 2022 filed against the award in M.C.O.P. No. 927 of 2016, the learned counsel submitted that the compensation awarded is meagre; that the Tribunal ought to have awarded compensation for the injuries suffered by the Minor Kamalesh.



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(c)As regards C.M.A. No. 787 of 2022 filed against the award in

M.C.O.P. No. 928 of 2016, the learned counsel submitted that the notional income fixed by the Tribunal is very meagre and ought to be enhanced.

(d)As regards C.M.A. No. 811 of 2022 filed against M.C.O.P. No. 932 of 2016, the learned counsel submitted that the deceased Shanthi was working as a Tailor and the income fixed by the Tribunal at Rs.7,500/- is meagre and has to be enhanced.

The learned counsel further submitted that finding with regard to contributory negligence fixed on the rider of the two wheeler is unjustified and the hence, the same should not be deducted in the award of compensation.

7.The learned counsel for the second respondent /insurance company per contra submitted that the very fact that four people were travelling in a small vehicle viz., TVS Moped is sufficient to establish the contributory negligence. The appellant / petitioner viz., Shanmugasundaram is liable for contributory negligence as he had taken three pillion riders in such a small vehicle. The Tribunal had gone into this question, considered the evidence and held that the manner of the



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accident and the number of the pillion riders showed that the rider of the TVS Moped viz., Shanmugasundaram contributed to the accident. The Tribunal had also taken into consideration that in all claim petitions which were filed separately, it was made to appear as if there was only one pillion rider. The learned counsel further submitted that the compensation awarded by the Tribunal is just and there is no reason to enhance the same.

8. This Court finds that in the claim petitions, as rightly pointed out by the Tribunal, it shows as if either the deceased or the minor victim were only riding as pillions. The fact that four people travelled in the TVS Moped was not disclosed. This Court also takes into account the fact that though the accident had predominantly taken place due to the rash and negligent driving of the lorry, one cannot disregard the fact that the rider of the TVS Moped had also contributed to the accident. It is a matter of common knowledge that the rider with three pillion riders cannot be expected to maintain a proper balance. The act of taking three pillion riders in such a small vehicle besides being a violation under the Motor Vehicles Act is also a contributory factor for the accident. The principle of *Res-ipsa-loquitur* is applicable in the facts of the case. The



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petitioners have not established that the accident took place solely due to the rash and negligent driving of the lorry. In such circumstances, the contributory negligence of 20% fixed on the rider of the TVS Moped by the Tribunal cannot be assailed.

9.As regards the compensation, this Court finds that the appellants are entitled to enhancement of compensation in the following manner.

(a)As regards C.M.A. No. 790 of 2022, the Tribunal had only awarded Rs.3,000/- per percentage for disability. The accident is of the year 2014 and hence, the Tribunal ought to have fixed Rs.4,000/- per percentage for disability as per the Judgment of this Court in ***Chinnathambi's case (cited supra)***. Hence, Rs.3,000/- per percentage awarded by the Tribunal is enhanced to Rs.4,000/-. The disability as per Ex.P.24 disability certificate is 58%. However, the Tribunal had fixed only 40% without any basis. The Tribunal ought to have accepted Ex.P.24 disability certificate. Hence, the compensation under the head permanent disability is enhanced from Rs.1,20,000/-(Rs.3000/- X 40) to Rs.2,32,000/-(Rs.4000/- X 58). The compensation awarded by the Tribunal under the other heads remains unaltered. Thus the



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compensation awarded by the Tribunal is enhanced from Rs.3,21,300/- to

Rs.4,33,300/-. After deducting 20% contributory negligence, the

compensation awarded by the Tribunal is enhanced from Rs.2,57,040/- to

Rs.3,46,640/-. Thus, the appellant is entitled to a total compensation of

Rs.3,46,640/-.

(b)As regards C.M.A. No. 788 of 2022, this Court finds that the compensation awarded for the injuries suffered by the minor is justified under all heads. However, the compensation for the injuries suffered has not been awarded by the Tribunal. Hence, this Court is of the view that a sum of Rs.25,000/- can be awarded for the injuries suffered by the minor. Hence, the compensation awarded by the Tribunal is enhanced from Rs.1,97,500/- to Rs.2,22,500/-. After deducting 20% contributory negligence, the compensation awarded by the Tribunal is enhanced from Rs.1,58,000/- to Rs.1,78,000/-. Thus, the appellant is entitled to a total compensation of Rs.1,78,000/-.

(c)As regards C.M.A. No. 787 of 2022, this case relates to the compensation awarded for the death of the minor Sampritha. The Tribunal considering the age of the deceased has fixed the multiplier '15'



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and fixed the annual loss of dependency at Rs.45,000/- X 15 = Rs.6,75,000/-. In the facts and circumstances of this case, there is no infirmity in the said finding. However, this Court finds that the appellants / petitioners viz., father and brother of the minor were awarded a total sum of Rs.40,000/- towards loss of love and affection. As per the Judgment of the Honourable Apex Court in ***Sarala Varma Vs. Delhi Transport Corporation & another*** reported in ***(2009) 6 SCC 121*** confirmed by the Judgment of the Honourable Apex Court in ***National Insurance Company Ltd., Vs. Pranay Sethi*** reported in ***(2017) 16 SCC 680***, the appellants are entitled to Rs.40,000/- each under the head loss of consortium. Hence, the compensation is enhanced from Rs.40,000/- to Rs.80,000/- towards Loss of Love and Affection. Further the Tribunal had not awarded any compensation under the head 'Loss of Estate'. Hence, Rs.15,000/- is awarded under the said head. Thus the award of the Tribunal is enhanced from Rs.7,30,000/- to Rs.7,70,000/-. After deducting 20% contributory negligence, the compensation awarded by the Tribunal is enhanced from Rs.5,84,000/- to Rs.6,16,000/-. Thus, the appellants are entitled to a total compensation of Rs.6,16,000/-.



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(d)As regards C.M.A. No. 811 of 2022, this Court finds that the deceased Shanthi was a Tailor. The Tribunal had fixed the notional income of Rs.7,500/- for the accident that took place in the year 2014. In the facts and circumstances of the case, this Court is of the view that the income fixed by the Tribunal is meagre and hence, the notional income for the deceased is enhanced to Rs.10,000/- considering the year of the accident and the fact that the deceased was a tailor. Hence, the compensation under the head “loss of dependency” is calculated as follows; $\text{Rs.10,000} + 40\% \text{ future prospects} = \text{Rs.14,000/-}$. Thus, the annual income would be Rs.1,68,000/- ($\text{Rs.14,000/-} \times 12$). After deducting $\frac{1}{3}$ towards personal expenses, the loss of income would be Rs.1,12,000/-. By adopting multiplier '16', the loss of dependency would be Rs.17,92,000/-. The award under the other heads are just and no interference is called for. Thus, the compensation awarded by the Tribunal is enhanced from Rs.14,54,000/- to Rs.19,02,000/-. After deducting 20% contributory negligence, the compensation awarded by the Tribunal is enhanced from Rs.11,63,200/- to Rs.15,21,600/-. Thus, the appellants are entitled to a total compensation of Rs.15,21,600/-. Thus, the compensation awarded by the Tribunal is modified as follows;



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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of Dependency	13,44,000	17,92,000	enhanced
2.	Loss of Consortium	40,000	40,000	confirmed
3.	Loss of Estate	15,000	15,000	confirmed
4.	Loss of love and affection	40,000	40,000	confirmed
5	Funeral Expenses	15,000	15,000	Confirmed
	Total	14,54,000	19,02,000	enhanced
	After deducting 20% towards contributory negligence	11,63,200	15,21,600	enhanced by Rs.3,58,400/-

10. With the above modifications, the Civil Miscellaneous Appeal No. 790 of 2022 is partly allowed and the compensation awarded by the Tribunal at Rs.2,57,040/- is enhanced to Rs.3,46,640/-; the Civil Miscellaneous Appeal No. 788 of 2022 is partly allowed and the compensation awarded by the Tribunal at Rs.1,58,000/- is enhanced to Rs.1,78,000/-; the Civil Miscellaneous Appeal No. 787 of 2022 is partly allowed and the compensation awarded by the Tribunal at Rs.5,84,000/-



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is enhanced to Rs.6,16,000/-; and the Civil Miscellaneous Appeal No.

811 of 2022 is partly allowed and the compensation awarded by the Tribunal at Rs.11,63,200/- is enhanced to Rs.15,21,600/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petitions till the date of deposits. The second respondent / Insurance Company is directed to deposit the enhanced award amounts in all 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 appellant viz., Shanmugasundaram is permitted to withdraw the award amount along with proportionate interest and costs, as per the apportionment fixed by the Tribunal, less the amount if any, already withdrawn and the compensation amounts pertaining to the appellant viz., Minor Kamalesh are directed to be deposited in a nationalised Bank in the interest bearing Fixed Deposit till the minor attains the age of majority and father of the minor viz., Shanmugasundaram is permitted to withdraw the accrued interest on the deposits of the minor once in six months. The appellants are directed to pay the necessary Court Fee if any on the enhanced award amounts. No costs.



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12.07.2023

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Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Namakkal.



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SUNDER MOHAN, J

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Dated: 12.07.2023