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C.M.A.No.958 of 2022
and C.M.A.No.21 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.10.2023

Pronounced on : 22.12.2023

CORAM : JUSTICE N.SESHASAYEE

C.M.A.No.958 of 2022 & C.M.A.No.21 of 2022
and CMP.No.166 of 2022

C.M.A.No.958 of 2022 :

1.Rukku

2.Kalaiselvan

... Appellants / Petitioners

Vs

1.Yogesh

2.The Manager

Oriental Insurance Company Limited

No.216/115, 2nd Floor

Prakasam Salai, Broadway

Chennai.

... Respondents / Respondents

C.M.A.No.21 of 2022 :

The Manager

Oriental Insurance Company Limited

No.216/115, 2nd Floor

Prakasam Salai, Broadway

Chennai.

... 2nd Respondent / Appellant

Vs

1.Rukku

2.Kalaiselvan

3.Yogesh

... Respondents /
Petitioners 1,2 & 1st Respondent



C.M.A.No.958 of 2022
and C.M.A.No.21 of 2022

PRAYER in CMA.No.958 of 2022: Civil Miscellaneous Appeal filed under Section 173 of M.V.Act, 1988, praying to enhance the compensation in the judgement and decree dated 10.01.2020 made in MCOP.No.285 of 2017 on the file of MACT/Additional District Court (FTC) at Kanchipuram with interest and cost, by allowing this appeal.

PRAYER in CMA.No.21 of 2022 : Civil Miscellaneous Appeal filed under Section 173 of M.V.Act, 1988, praying to set aside the judgment and decree dated 10.01.2020 made in MCOP.No.285 of 2017 on the file of MACT/Additional District Court (FTC) at Kanchipuram.

In C.M.A.No.958 of 2022 :

For Appellants	: Mr.Ma.Pa.Thangavel for Mr.M.Lokesh
For Respondents	: Mr.S.Arunkumar for R2 R1 - No Appearance

In C.M.A.No.21 of 2022 :

For Appellant	: Mr.S.Arunkumar
For Respondents	: Mr.Ma.Pa.Thangavel for Mr.M.Lokesh for R1 & R2 R3 - No Appearance



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COMMON JUDGMENT

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These twin appeals arise out of an award passed by the Motor Vehicle Accident Claims Tribunal, Kanchipuram (Additional District Court (FTC), Kanchipuram) in M.C.O.P.No.285 of 2017, dated 10.01.2020.

2. On 27.01.2016, at around 10.00 p.m., certain Rajeshkumar was traveling as a pillion rider of a two wheeler, bearing Registration No.TN 04 A 7989, driven by one Hemnath. This vehicle is alleged to have been driven rashly and negligently and dashed against an unknown car. In this accident, Rajeshkumar died on the spot, whereas the rider of the bike, Hemnath died on the way to the hospital. The parents of the pillion rider, Rajeshkumar had preferred M.C.O.P.No.285 of 2017, claiming a total compensation of Rs.42,50,000/- under Section 166 of the Motor Vehicles Act, 1988, as against which the Tribunal had passed an award of Rs.5,80,000/-. The component of this award is tabulated as below:

<i>Sl.No.</i>	<i>Head</i>	<i>Amount allowed (in Rs.)</i>
1.	Loss of income	Rs.5,40,000/-
2.	Medical expenses	--
3.	Funeral expenses	Rs.15,000/-
4.	Loss of consortium	--



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<i>Sl.No.</i>	<i>Head</i>	<i>Amount allowed (in Rs.)</i>
5.	Loss of Estate	Rs.15,000/-
6.	Loss of love and affection	--
7.	Transport to Hospital	Rs.5,000/-
8.	Damages to clothing and by-cycle was fully damaged	Rs.5,000/-
9.	Mental agony and shock	--
10.	Loss of conjugal happiness	--
	Total	Rs.5,80,000/-

3. This liability was fastened jointly and severally against the owner of the motor cycle and its insurance company. Aggrieved by the quantum of compensation awarded, the claimants have preferred C.M.A.No.958 of 2022. Contending that the two wheeler, of which the victim was a pillion rider at the time of the accident, was not responsible for the accident, the insurance company too has filed its appeal in C.M.A.No.21 of 2022, challenging its liability.

4. Mr.Ma.Pa.Thangavel, the learned counsel for the claimants (appellants in C.M.A.No.958 of 2022) submitted that the victim was a final year engineering student, but the Tribunal has fixed his annual income notionally at Rs.30,000/-, which implies that it has quantified his income only at Rs.2,500/- per month.



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An Engineering student will earn around Rs.15,000/- per month and the Tribunal had went wrong in that regard.

5.1 Mr.S.Arunkumar, the learned counsel for the insurance company of the motor vehicle, submitted that in Ex.P.1, F.I.R, which came to be registered at the instance of the father of the rider, it was alleged that the vehicle was hit by an unknown car. It is a case of hit and run, according to the insurance company. However, the claimants would contend in their claim petition that the rider of the motor cycle was solely responsible for the accident. Indeed, in the evidence of P.W.2, he had made a categorical admission that the accident had occurred owing to the rash and negligent driving of the driver of the two wheeler. The learned counsel submitted that there are two similar versions available for the same accident: one, in the F.I.R and the other in the testimony of P.W.2. He also added that R.W.1, the Sub Inspector of Police had testified that the case was closed as undetected since the investigating agency could not track the other offending vehicle.

5.2 Turning to the quantum, the learned counsel made his submission without prejudice to his principal contention (that the rider of the motorcycle was not negligent) and argued that the claimants themselves had invoked an authority



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reported in 2019 ACJ 1705 and altered a claim under Section 166 into 163 A of the Motor Vehicles Act, 1988. He also relied on a case in ***Deepal Girishbhai Soni and Others Vs United India Insurance Co. Ltd.***, [(2004) 5 SCC 385].

6. In reply, the learned counsel for the claimants/appellants in CMA.No.958 of 2022, relied on the evidence of P.W.2 to contend that the rider of motorcycle was solely responsible for the accident. He relied on the ratio in ***United India Insurance Co. Ltd., Vs S.Shanmugam***, [(2021) (1) TN MAC 442], ***The Oriental Insurance Company Limited Vs Smt. Indro @ Indro Devi and Others***, [(2016) SCC OnLine P&H 2980] and ***Khenyei Vs New India Assurance Company Limited and Others***, [(2015) 9 SCC 273].

C.M.A.No.21 of 2022 :

7.1 Here in CMA.No.21 of 2022, the insurance company challenges the liability on the ground that the rider of the two wheeler, of which the claimant's son was the pillion rider was not negligent, but the accident was induced by an unknown vehicle. This Court carefully perused the FIR laid at the instance of the father of one of the victim (rider of the motor cycle). Whether the accident



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was induced by the negligence of the rider of the two wheeler or by the driver of an unknown car is in dispute. It is necessary that this Court falls back on the rule of probability to draw necessary inference from the evidence available on record. If this Court turns to Ext.P1, FIR, it is seen it is registered at the instance of one Chandiran, S/o.Mr.Gopal. He is the father of the rider of the motor cycle. He says that the accident was occasioned when an unknown vehicle ran to the two wheeler driven by his son Hemnath. P.W.1, the father of the pillion rider, in his testimony states that he has not seen the accident. This brings in P.W.2, the only neutral witness on both sides to speak about the accident. He has admitted in his cross-examination that the accident had occasioned when an unknown vehicle hit the two wheeler in question. And there are other evidence overwhelming enough to counter the possible inference that could be drawn from the evidence available on record; that the accident could not have been caused by the negligence of the rider of the motor cycle, of which the appellant is the insurer. Necessarily, the insurance company must be absolved of its liability.

7.2 The next aspect is, when the insurance company does not have a cause but for the line of defence it has taken, it would be liable to pay the compensation



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for the injuries suffered by the pillion rider, and the claim petition was laid only under SEc.163-A of the M.V.Act. In terms of the judgment in ***United India Insurance Company Limited Vs Sunil Kumar and another*** [(2019) 12 SCC 398], the insurance company cannot plea negligence of the rider of the motor cycle, but must concern only with usage of the vehicle in a public place. Therefore, notwithstanding the fact that there may not be any negligence on the part of the rider of the vehicle, the appellant cannot escape liability if the liability can sustain under Sec.163-A of the Act.

8. Here, the claimants have preferred an appeal challenging the quantum of compensation. Admittedly, the claimants have preferred the claim petition only under Sec.166 of the Act, but they have altered it to Sec.163-A of the Act. This is evident from the impugned order itself. The strategy is very apparent. If the claimants were to make a claim under Sec.166 of the M.V. Act, then the insurance company can be on the front foot and contend that inasmuch as the rider of the two wheeler was not negligent, it is not liable. But by opting to convert a claim under Sec.166 into Sec.163-A, the claimants have helped themselves with an opportunity to get some compensation in view of the dictum in ***Sunil Kumar case***. This is a conscious decision made with strategic



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advantage in a litigation. And if the petitioners/claimants were to ignore the same, then they cannot realise the compensation against the insurance company. This Court now wants to explore the possibility of compensation only under the scheme 163-A of M.V.Act.

9. Admittedly, the victim was a engineering student and would have made reasonable income. However, by opting to invoke Sec.163-A of the Act, the claimants capped the upper limit of the income of the victim at Rs.40,000/- Here the Tribunal has reckoned it at Rs.30,000/- per annum. Given the fact that the victim was an engineering student, this Court deems it appropriate to fix the annual income of the victim at Rs.40,000/-. At that rate, after applying 18 as the multiplier, the value of loss of income would be Rs.40,000/- x 18 = Rs.7,20,000/-. So far as the conventional heads are concerned, this court retains the award of the Tribunal. The below table provides the details of revised award amount :

<i>Sl.No.</i>	<i>Head</i>	<i>Revised Award (in Rs.)</i>
1.	Loss of income	7,20,000/-
2.	Funeral expenses	15,000/-
3.	Loss of Estate	15,000/-
4.	Transport to Hospital	5,000/-
5.	Damages to clothing and bicycle was	5,000/-



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<i>Sl.No.</i>	<i>Head</i>	<i>Revised Award (in Rs.)</i>
	fully damaged	
	Total	Rs.7,60,000/-

10.1 To conclude, C.M.A.No.958 of 2022 is partially allowed, and the compensation amount is increased from Rs.5,80,000/- to Rs.7,60,000/-. The second respondent/insurance company is now required to deposit the entire sum along with interest at the rate of 7.5% per annum from the date of claim petition till realisation less any amount already deposited within a period of six weeks from the date of receipt of a copy of this judgment. The award amount now determined shall be apportioned in the same ratio in which the Tribunal has apportioned the compensation. No costs.

10.2 So far CMA.No.21 of 2022 is concerned, the same is dismissed. No costs. Connected miscellaneous petitions if any shall stand dismissed.

22.12.2023

Index : Yes / No
Speaking order / Non-speaking order
ds
To

The Motor Accident Claims Tribunal/
Additional District Court (FTC) at Kanchipuram



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N.SESHASAYEE.J.,

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Pre-delivery Judgment in
C.M.A.No.958 & 21 of 2022

22.12.2023