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C.M.A.Nos.1559 of 2022 and 1502 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A. Nos. 1559 of 2022 and 1502 of 2023
and C.M.P. No.11550 of 2022

C.M.A.No.1559 of 2022

The Branch Manager,
United India Insurance Company Ltd,
having its Micro Office at No. 74/A-2,
Sathya Medical Complex, Vaniyambadi Road,
Tirupattur Town and Taluk,
Vellore District-632 601.

... Appellant

Versus

1.N.Sathish (Now mentally disorder)
Represented by his Father and natural
guardian C.Narayanappa.

2.M.Arun Kumar

... Respondents

C.M.A.No.1502 of 2023

N.Sathish (Now mentally disorder)
Represented by his Father and natural
guardian C.Narayanappa.

... Appellant

Versus

1.M.Arunkumar



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2.The Branch Manager,
United India Insurance Company Ltd,
having its Micro Office at No. 74/A-2,
Sathya Medical Complex, Vaniyambadi Road,
Tirupattur Town and Taluk,
Vellore District-632 601.

... Respondents

COMMON PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 15.07.2021 passed in M.C.O.P. No.522 of 2018, by the Motor Accident Claims Tribunal, Additional District Judge, Hosur, Krishnagiri District.

In C.M.A.No.1502 of 2023

For Appellant	: Mr.M.Sivakumar
For R1	: Mr.S.Shakila Banu
For R2	: Mr.D.Bhaskaran

In C.M.A.No.1559 of 2022

For Appellant	: Mr.D.Bhaskaran
For R1	: Mr.C.Prabakaran
For R2	: Mr.S.Shakila Banu

COMMON JUDGMENT

C.M.A.No.1502 of 2023 has been filed by the appellant/claimant challenging the contributory negligence as well as quantum of compensation awarded by the Tribunal in M.C.O.P.No.522 of 2018, dated 15.07.2021.



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C.M.A.No.1559 of 2022 has been filed by the appellant/Insurance

Company challenging the compensation awarded by the Tribunal in M.C.O.P.No.522 of 2018, dated 15.07.2021.

2.For the sake of convenience, parties are referred as per their rank in the claim petition.

3.The claim petition was filed stating that on 28.11.2017, at about 09.30 p.m., when the claimant was crossing the road at Addakurukki Village bus stop, Hosur to Krishnagiri N.H.Road from North to South, a Bajaj Pulsar motorcycle bearing Regn No. TN 23 BX 6088, ridden by its rider one M.Rajesh from Hosur in a rash and negligent manner, dashed against the claimant; that due the said accident, the claimant sustained grievous injuries in his head, right foot, multiple abrasion over the face and multiple injuries all over the body; that thus, the claimant was entitled for compensation.

4.The 1st respondent/owner of the offending vehicle remained *ex-parte* before the Tribunal.



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5.The 2nd respondent/Insurance Company filed a counter denying all the averments made in the claim petition and stated that at the time of accident the claimant was under the influence of alcohol and contributed to the accident; that the rider of the motorcycle did not possess valid driving license at the time of accident; that hence, the 2nd respondent is not liable to pay any compensation to the claimant; that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the claimant examined one witness and marked Ex.P.1 to Ex.P.15 on his side. On behalf of the 2nd respondent, R.W.1 was examined and Ex.R1 and Ex.R2 were marked.

7.The Tribunal after considering the oral and documentary evidence had held that the accident occurred due to rash and negligent riding by the rider of the motorcycle and fixed 15% contributory negligence on the part of the claimant who was under the influence of alcohol at the time of accident and directed the 2nd respondent, being the insurer of the 1st respondent vehicle to pay a sum of Rs.5,72,404/-, being 85% of the award amount, as compensation to the claimant.



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8. Aggrieved over the award passed by the Tribunal, the claimant filed C.M.A.No.1502 of 2023, questioning the contributory negligence fixed on him and for enhancement of compensation and the 2nd respondent has filed C.M.A.No.1559 of 2022, challenging the quantum of compensation awarded by the Tribunal.

9. The learned counsel for the 2nd respondent submitted that the Tribunal had after holding that the claimant also contributed to the accident, fixed only 15% as contributory negligence; that the evidence discloses that the claimant was main cause for the accident; that the Tribunal had also ignored the evidence of RW1, who had clearly stated that the medical bills produced by the claimant were fake and ought not to have awarded a sum of Rs.3,91,416/- towards “medical expenses”; that therefore, the learned counsel sought for reduction in the compensation of amount awarded by the Tribunal.

10. The learned counsel for the claimant per contra submitted that the Tribunal had erroneously fixed contributory negligence on the claimant without any evidence suggesting the same. Further the injuries suffered by the claimant would show that he is suffering from the mental



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disorder and he was unable to pursue any avocation; that the Tribunal ought to have adopted multiplier method for awarding compensation to the claimant; that RW1 had admitted that the claimant has spent a sum of Rs.2,06,000/- towards medical expenses and hence, it cannot be said that the claimant has produced fake bills and that the compensation awarded under other heads are meagre and hence, sought for enhancement of compensation.

11.Heard the learned counsel for the 1st respondent/owner of the vehicle.

12.The questions involved in the instant appeals are:

(a) Whether the Tribunal was right in fixing 15% contributory negligence on the claimant?

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

13.As regards the first question, it is seen that the claimant had examined PW1-father of the claimant to prove the manner of accident.

The driver of the offending vehicle was not examined. The evidence



discloses that the claimant had attempted to cross the road where there was no pedestrian crossing. Ex.P3-discharge summary also shows that the claimant was under the influence of alcohol. Considering the above facts, this court is of the view that the Tribunal was right in fixing the contributory negligence at 15% on the claimant and no interference is called for in the said finding.

14.As regards the second question, quantum of compensation, it is seen that the Medical Board had assessed the disability of the claimant as 60% partial permanent. Ex.P3-discharge summary shows that claimant had sustained injuries of RTA with diffuse axonal injury, Left hemiparesis and Left clavicle fracture. He was treated as an inpatient for nearly 32 days. Considering the nature of injuries, the disability suffered by the claimant and his avocation as Cable TV Operator prior to the accident, this Court is of the view that the claimant had suffered functional disability. In the facts, it would be reasonable to fix the functional disability as 25%. The Tribunal had fixed notional income of the claimant as Rs.8000/-per month. Considering the age, avocation and the year of accident, this Court is of the view that it would be just and reasonable to fix a sum of Rs.12,000/- per month as notional income of



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the claimant. In the facts, the claimant is entitled to 40% enhancement towards “Future Prospects”. The multiplier applicable is 18. Therefore, the award of compensation under the head disability has to be assessed as follows.

$$\text{Rs.12,000} + (12000 + 40\%) \times 12 \times 18 \times 25/100 = \text{Rs.9,07,200/-}.$$

As regards medical expenses, it is seen from the evidence of R.W.1 that the claimant had paid Rs.2,06,000/- and there was balance due of Rs.56,169/-. The compensation can be granted only for the amount paid by the claimant. Hence, the compensation under the head medical expenses is reduced to Rs.2,06,000/-. Further, this Court finds that the compensation awarded by the Tribunal under the heads pain and suffering, future medical expenses and loss of amenities are meagre. In the facts and circumstances of the case, it would be just and reasonable to award Rs.50,000/- each towards pain and sufferings and loss of amenities and Rs.25,000/- towards future medical expenses. It is seen that the claimant had taken treatment in the hospital for 32 days and hence, the compensation under the head attender charges is enhanced to Rs.30,000/- . Similarly, award under the head transportation is enhanced to Rs.10,000. Since this Court adopted multiplier method for awarding



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compensation, the compensation awarded by the Tribunal under the head partial loss of income is set aside. The amount awarded by the Tribunal under other heads is just and reasonable and the same are confirmed. Thus, the compensation awarded by 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.	Disability	2,40,000	9,07,200	Enhanced
2.	Medical Expenses	3,91,416	2,06,000	Reduced
3.	Future Medical Expenses	5,000	25,000	Enhanced
4.	Pain and Sufferings	5,000	50,000	Enhanced
5.	Loss of Amenities	5,000	50,000	Enhanced
6.	Extra Nourishment	5,000	5,000	Confirmed
7.	Attender Charges	5,000	30,000	Enhanced
8.	Transportation	1,000	10,000	Enhanced
9.	Partial Loss of Income	16,000	-	Set aside
	Total	6,73,416	12,83,200	Enhanced by Rs.5,18,316/-
	15% contributory negligence	1,01,012	1,92,480	
	Net compensation payable	5,72,404	10,90,720	



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15. With the above modification, (i) C.M.A.No.1559 of 2022 is partly allowed by reducing the compensation in respect of medical expenses and setting aside the amount awarded towards partial loss of income. (ii) C.M.A.No.1502 of 2023 is partly allowed by enhancing the compensation awarded by the Tribunal from Rs.5,72,404/- to Rs.10,90,720/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. (iii) The 2nd respondent/Insurance Company 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 four (4) weeks from the date of a receipt of copy of this Judgment. (iv) On such deposit, the claimant is permitted to withdraw the entire award amount through his father along with interest and costs, less the amount already withdrawn, if any. The claimant is directed to pay the necessary Court fee, if any on the enhanced award amount. No costs. Consequently, connected miscellaneous petition is closed.

23.08.2023



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rst/dpa

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

- 1.The Motor Vehicle Accident Tribunal,
Additional District Judge,
Hosur, Krishnagiri District
- 2.The Section Officer,
VR Section,
High Court, Madras.



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SUNDER MOHAN, J.

rst/dpa

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