



WEB COPY



CMA Nos.2100, 773, 774 and 2056 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal Nos.2100, 773, 774 and 2056 of 2022
and
C.M.P.Nos.5606 and 5607 of 2022

C.M.A.No.2100 of 2022

1.Rajewari

2.K.Umapathy

... Appellants/Petitioners

Versus

1.Sridharan

2.United India Insurance Co, Ltd.,
No.134, Greams Road, Silingi Building
Chennai.

... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 15.11.2021 made in M.C.O.P.No.899 of 2018 on the file of Motor Accident Claims Tribunal, (Small Causes Court, Special Sub Judge No.2) Chennai.

For Appellants : Mr.K.Varadhakamaraj
For Respondents : R1 – vacated



CMA Nos.2100, 773, 774 and 2056 of 2022

R2 - Mr.J.Michael Visuvasam

C.M.A.No.2056 of 2022

1.Santhi

2.Balakrishnan

...Appellants/Petitioners

Versus

1.Sridharan

2.United India Insurance Co, Ltd.,
No.134, Greams Road, Silingi Building,
Chennai.

... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 15.11.2021 made in M.C.O.P.No.223 of 2018 on the file of Motor Accident Claims Tribunal, (Small Causes Court, Special Sub Judge No.2) Chennai.

For Appellants : Mr. K.Varadha Kamaraj

For Respondents : R1 - Left
R2 – Mr. J.Michael Visuvasam

C.M.A.No.773 of 2022

M/s.United India Insurance Company Limited,
Sillingi Building,
No.134, Greams Road,
Chennai.

...Appellant

Versus

1.Santhi



CMA Nos.2100, 773, 774 and 2056 of 2022

2.Balakrishnan

3.Sridharan

... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 15.11.2021 passed in M.C.O.P.No.223 of 2018, by the Motor Accidents Claims Tribunal (Special Sub. Court No.2 to deal with MCOP Cases), Court of Small Causes, at Chennai.

For Appellants : Mr. J.Michael Visuvasam

For Respondents : R1 and R2 - Mr.K.Varadha Kamaraj
R3- unclaimed

C.M.A.No.774 of 2022

M/s. United India Insurance Company Limited,
Sillingi Building,
No.134, Greams Road,
Chennai.

...Appellant

Versus

1.Rajeshwari

2.K.Umapathy

3.Sridharan

...Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment dated 15.11.2021 passed in M.C.O.P.No.899 of 2018, by the Hon'ble Motor Accident Claims Tribunal, (Special Sub. Court No.2, to deal with MCOP Cases) Court of Small Causes, at Chennai.

For Appellants : Mr.J.Michael Visuvasam



WEB COPY



CMA Nos.2100, 773, 774 and 2056 of 2022

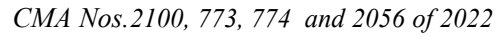
For Respondents : R1 & R2 – Mr.K.Varadhakamaraj
R3 - unclaimed

COMMON JUDGMENT

(Parties are referred to as Claimants and Insurance company)

The Insurance Company has preferred C.M.A.Nos.773 and 774 of 2022 challenging the findings with regard to negligence and the claimants have preferred the C.M.A.Nos.2056 and 2100 of 2022 seeking enhancement of compensation.

2. The rider and the pillion rider died in the accident. Hence, two claim petitions were filed in M.C.O.P.Nos.223 and 899 of 2018, before the Tribunal stating that on 01.12.2017 at about 11.30 hours, while the deceased (rider and pillion rider) were travelling in the two wheeler bearing Reg.No.TN-20-BM-5847 on the Puzhal to Tambaram bypass, a Mini Tanker Lorry bearing Reg.No.TN-18-AB-2002, insured with the Insurance Company was parked in a no parking area on the National Highway without any signal or any indicator, as a result of which two wheeler hit the backside of the lorry and caused fatal injuries to both the rider and the pillion rider.



4. The Insurance Company filed a counter stating that the accident took place only due to the negligence of the two-wheeler rider as he dashed against the stationary lorry hence, they were not liable to pay compensation; and that in any case, the compensation claimed in both the petitions were excessive and prayed for dismissal of the claim petitions.

5. Before the Tribunal, the claimants examined P.W.1 to P.W.3 and marked twelve documents as Exs.P.1 to P12. The Insurance Company neither examined any witness nor marked any document.

6.The Tribunal after considering the oral and documentary evidence held that the accident occurred due to the negligent act of the driver of the mini lorry belonging to the first respondent and awarded a compensation of Rs.16,97,600/- for the claimants in M.C.O.P.No.223 of 2018, which is under challenge by the Insurance Company in C.M.A.No.773 of 2022. The Tribunal awarded Rs.16,97,600/- to the claimants in M.C.O.P.No. 899 of 2018 which is under challenge by the Insurance Company in C.M.A.No.774 of 2022. The claimants have



CMA Nos.2100, 773, 774 and 2056 of 2022

preferred C.M.A.No.2100 of 2022 and C.M.A.No.2056 of 2022 seeking enhancement of compensation.

7. The learned counsel for the Insurance Company submitted that though the evidence discloses that the driver of the Mini Tanker Lorry insured with them had parked in a National Highway, the Tribunal erred in fixing the entire negligence on the driver of the Mini Tanker Lorry. The learned counsel further submitted that the two-wheeler rider also ought to have been careful as the accident took place in a broad day light. The learned counsel relied upon the Judgment of the Hon'ble Supreme Court in *Raj Rani and others Vs.Oriental Insurance Co. Ltd., and others* reported in *2009 ACJ 2003*, in support of his submission and submitted that the Tribunal ought to have fixed contributory negligence on the rider of the two-wheeler. Further, the learned counsel submitted that the pillion rider is also guilty of the contributory negligence for not wearing helmet and hence, prayed for fixing contributory negligence on him as well.

8. The learned counsel for the claimants in all the appeals submitted that the accident took place only due to the negligence of the



CMA Nos.2100, 773, 774 and 2056 of 2022

driver of the Mini Tanker Lorry who had parked the vehicle in a National Highway without any signal or indication. The learned counsel relied upon the Judgment of the Supreme Court in *Mohammed Siddique and another Vs. National Insurance Co.Ltd. and another* reported in *2020 ACJ 751* and the Judgment of this Court in *United India Insurance Company Ltd., Vs. Sundaram and others* reported in *2007 (2) TN MAC 518* in support of his submission. The learned counsel further submitted that though the accident took place in the year 2017, the Tribunal had taken a meagre notional income of Rs.10,500/- per month in both the M.C.O.Ps and prayed for enhancement of compensation.

9. Heard both sides.

10. The questions involved in the instant appeals are :

(a) Whether the Tribunal ought to have fixed contributory negligence on the rider and the pillion rider of the two-wheeler/deceased involved in the claim petitions.

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



CMA Nos.2100, 773, 774 and 2056 of 2022

reasonable.

WEB COPY

11. **C.M.A.Nos.773 and 2056 of 2022** have been filed challenging the negligence and the award of compensation in **M.C.O.P.No.223 of 2018**, wherein the claimants are dependents of the deceased/rider of the two-wheeler. The claimants had examined P.W.3 eyewitness to prove the manner of the accident. However, the driver of the mini tanker lorry was not examined by the Insurance Company. The admitted facts are that the mini tanker lorry was parked on an National Highway and that the rider hit the lorry from behind, as a result of which the accident took place. In the Judgments relied upon by the learned counsel for the claimants, this Court and the Hon'ble Apex Court had held that when the accident takes place during the night hours, it cannot be said that the driver of the vehicle which had dashed the stationary vehicle had contributed to the accident as the visibility during night hours is bad due to the headlights of the vehicle coming on the opposite side. However, in the instant case, it is seen that the accident took place in broad day light at 11.30 a.m. In this regard, the Judgment of the Hon'ble Apex Court in ***Raja Rani and others Vs. Oriental Insurance***



CMA Nos.2100, 773, 774 and 2056 of 2022

Co. Ltd. and others reported in **2009 ACJ 2003** wherein, the Hon'ble

Apex Court had held that both the driver of the stationary vehicle and the driver of the vehicle which had hit the stationary vehicle are guilty of negligence would be relevant.

12. In the instant case, it is seen from the evidence that the lorry was parked on the National Highway without any indicator lights. Therefore, this Court is of the view that the accident took place, predominantly due to the driver of the stationary lorry who had parked the vehicle recklessly on the National Highway. At the same time, the contribution of the deceased rider to the accident cannot be ruled out. The rider of the two - wheeler ought to have been careful and if he had exercised due care and caution, the accident could have been averted. Therefore, in these circumstances, this Court is of the view that it would be just and reasonable to fix the contributory negligence on the part of the driver of the mini tanker lorry as 60% and the contribution on the part of the rider/deceased as 40%.

13. As regards quantum of compensation, it is seen that the accident took place in the year 2017. The claimants had examined P.W.1



CMA Nos.2100, 773, 774 and 2056 of 2022

to prove the avocation of the deceased as a carpenter. However, no document was produced either to prove the income of the deceased.

Considering the age, the avocation of the deceased and the year of the accident, this Court is of the view that it would be just and reasonable to fix 15,000/- as notional monthly income of the deceased. Since the deceased was aged 23 years at the time of the accident, the claimants are entitled to 40% enhancement towards future prospects. The multiplier applicable is '18'. Since the deceased was bachelor at the time of the accident, 50% of his income has to be deducted towards personal expenses. Therefore, the award under the head Loss of Income has to be:

$$\text{Rs.15,000/-} + \text{Rs.6000/-} - (40\% \times \text{Rs.15,000/-}) \times 12 \times 18 \times 1/2 =$$

Rs. 22,68,000/-

14. The award under the other heads is just and reasonable and hence, 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 or



CMA Nos.2100, 773, 774 and 2056 of 2022

				reduced
1.	Loss of Dependancy	15,87,600/-	22,68,000/-	Enhanced
2.	Loss of Consortium	80,000/-	80,000	Confirmed
3.	Loss of Estate	15,000/-	15,000	Confirmed
4	Funeral Expenses	15,000/-	15,000	Confirmed
	Total	16,97,600/-	23,78,000/-	
	Less Contributory Negligence @ 40%	-	9,51,200/-	
	Net Compensation payable	16,97,600/-	14,26,800/-	Reduced by Rs.2,70,800/-

15. **C.M.A.Nos.774 and 2100 of 2022** relate to the claim petitions filed for the death of the pillion rider. It is case of the Insurance Company that the deceased did not wear helmet at the time of the accident. Considering the nature of the injuries and the other evidence on record, it is seen that the deceased (pillion rider) did not wear helmet at the time of the accident. Therefore, this Court is of the view that it would be just and reasonable to fix 10% contributory negligence on the



CMA Nos.2100, 773, 774 and 2056 of 2022

deceased for the aforesaid violation.

WEB COPY

16. As regards quantum of compensation, it is seen that the claimants had examined P.W.2 to prove the avocation of the deceased as "Carpenter". However, the claimants had not produced any document to prove the income of the deceased. Considering the age, avocation and the year of the accident, this Court is of the view that it would be just and reasonable to fix Rs.15,000/- as notional monthly income of the deceased. Since the deceased was aged 25 years at the time of the accident, the claimants are entitled to 40 % enhancement towards future prospects. The multiplier applicable is '18'. Since the deceased was a bachelor at the time of the accident, 50% of his income has to be deducted towards personal expenses. Therefore, the award under the head Loss of Dependency has to be:

$$\text{Rs.15,000/-} + \text{Rs.6000/-} (40\% \times \text{Rs.15,000/-}) \times 12 \times 18 \times 1/2 =$$
$$\text{Rs. 22,68,000/-}$$



CMA Nos.2100, 773, 774 and 2056 of 2022

17. The award under the other heads is just and reasonable and hence, 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 or reduced
1.	Loss of Dependency	15,87,600/-	22,68,000/-	Enhanced
2.	Loss of Consortium	80,000/-	80,000	Confirmed
3.	Loss of Estate	15,000/-	15,000	Confirmed
4	Funeral Expenses	15,000/-	15,000	Confirmed
	Total	16,97,600/-	23,78,000/-	
	Less : Contributory Negligence @ 10%	-	2,37,800/-	
	Net Compensation payable	Rs.16,97,600/-	21,40,200/-	Enhanced by Rs.4,42,600/-

18. In the result :-

(i) C.M.A.No.773 of 2022 is partly allowed by fixing 40% negligence on the rider of the two wheeler and reducing the



CMA Nos.2100, 773, 774 and 2056 of 2022

compensation from Rs.16,97,600/- to Rs.14,26,800/- together with interest @ 7.5 % p.a. (excluding the default period if any) from the date of petition till the date of deposit.

(ii) C.M.A.No.2056 of 2022 is partly allowed with respect to enhancing the compensation by fixing Rs.15,000/- as notional monthly income of the deceased/rider and enhancing the compensation from Rs.15,87,600/- to Rs.22,68,000/- under the head Loss of Dependency.

(iii) C.M.A.No.774 of 2022 is partly allowed by fixing 10% contributory negligence on the deceased/pillion rider.

(iv) C.M.A.No.2100 of 2022 is partly allowed by enhancing the compensation from Rs.16,97,600/- to Rs.21,40,200/- together with interest @ 7.5 % p.a. (excluding the default period if any) from the date of petition till the date of deposit.

(v) The Insurance Company is directed to deposit the modified award amount now determined by this Court i.e., Rs.14,26,800/- in CMA No.773 of 2022 & 2056 of 2022 and Rs.21,40,200/- in CMA No.774 of 2022 & 2100 of 2022 along with interest and cost, less the amount already deposited if any, within a period of six (6) weeks from the date of receipt of a copy of this Judgment.



CMA Nos.2100, 773, 774 and 2056 of 2022

WEB COPY (vi) On such deposit, the claimants are permitted to withdraw their share of the award amount along with proportionate interest and cost as per the apportionment fixed by the Tribunal after adjusting the amount already withdrawn if any.

(vii) The Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.223 of 2018, if the entire award amount has already been deposited by them. No costs. Consequently, the connected Miscellaneous Petitions are closed.

19.09.2023

dk

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

Copy to:-

1. The Special Sub Judge No.2,
Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.



CMA Nos.2100, 773, 774 and 2056 of 2022

2. The Section Officer
VR Section
High Court of Madras.

SUNDER MOHAN, J.

dk

C.M.A.Nos.2100, 773, 774 and 2056 of 2022