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CMA.Nos.2069, 2070, 2071 & 2092 C



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 20.06.2023

Judgment Pronounced on : **17.07.2023**

CORAM :

THE HON'BLE MRS.JUSTICE J.NISHA BANU

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A.Nos.2069, 2070, 2071 & 2092 of 2022 and
CMP.Nos.16039, 16023, 16028 of 2022

C.M.A.No.2069 of 2022

The Manager,
Reliance General Ins. Co. Ltd.
570 Rectifier House, Naigaum Cross Road,
Wadala (W), Mumbai – 400 031.

.. Appellant

Versus

1.Jineesh V.Nair

2.A.Abdul Rashad

.. Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Decree and Judgment dated 30th July



2018 passed in M.C.O.P.No.1056 of 2011, by the Motor Accident Claims Tribunal, Sub Court at Sankagiri.

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C.M.A.No.2070 of 2022

The Manager,
Reliance General Ins. Co. Ltd.
570 Rectifier House, Naigaum Cross Road,
Wadala (W), Mumbai – 400 031.

.. Appellant

Versus

1.Viswa Mohan

2.A.Abdul Rashad

.. Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Decree and Judgment dated 30th July 2018 passed in M.C.O.P.No.1057 of 2011, by the Motor Accident Claims Tribunal, Sub Court at Sankagiri.

C.M.A.No.2071 of 2022

The Manager,
Reliance General Ins. Co. Ltd.
570 Rectifier House, Naigaum Cross Road,
Wadala (W), Mumbai – 400 031.

.. Appellant

Versus

1.Anver @ Mohammed Anver



2.A.Abdul Rashad

.. Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Decree and Judgment dated 30th July 2018 passed in M.C.O.P.No.1050 of 2011, by the Motor Accident Claims Tribunal, Sub Court at Sankagiri.

C.M.A.No.2092 of 2022

Anver @ Mohammed Anver

.. Appellant

Versus

1.A.Abdul Rashad

2.Reliance General Insurance Co. Ltd.,
570 Rectifier House, Naigaum Cross Road,
Wadala (W), Mumbai – 400 031.

..

Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree in MCOP.No.1050 of 2011 dated 30.07.2018, on the file of the Motor Accident Claims Tribunal / Subordinate Judge Court, Sankari.

For Appellants: Mrs.C.Bhuvanasundari
(in CMA.Nos.2069, 2070 & 2071 of 2022 and
For 2nd Respondent in CMA.No.2092 of 2022)

For Respondents : Mr.T.S.Arthanareeswaran, for R1
(in CMA.Nos.2069, 2070 & 2071 of 2022 and
For Petitioner in CMA.No.2092 of 2022)

**COMMON JUDGMENT****D.BHARATHA CHAKRAVARHY, J.**

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These Civil Miscellaneous Appeals arise out of single motor accident and has been filed by the claimants for enhancement and by the insurance company on negligence and quantum. As such, all the appeals are taken up together and disposed of by this common judgment.

2. Arguments relating to negligence in all these appeals are common. The claimants in these cases contend that they started from Perinthalmanna in Kerala on 03.09.2010 at about 10.00 p.m., and on 04.09.2010, at 3.00 a.m., they were travelling on the Salem – Dharmapuri highways near Jodukuzhi Anjaneyar Temple, on account of a vehicle, the particulars of which were not traceable, dashed the car from behind and the Innova car in which they were travelling, being driven in a high speed and rash and negligent manner lost its control and rolled over to the nearby pit, on account of which, the claimants who were travelling in the car suffered various grievous injuries, for which, separate original petitions are filed claiming compensation.

3. The case of the insurance company is that even as per the averment in the First Information Report, it is only the vehicle which dashed on the Innova car from behind was responsible for the accident. Then merely because the said



vehicle remained untraceable, liability cannot be fastened on the insurer of the Innova car or negligence cannot be claimed against the driver of the said Innova car.

4. With this background of rival claims regarding negligence, all these petitions were taken up for joint trial and all the four claimants who were travelling in the Innova car had categorically deposed of the above fact that the Innova car was hit from behind by the untraceable vehicle and because the Innova car was driven in a high speed and rash and negligent manner, it lost its control and resulted in the above said accident.

5. The driver of the car viz., one Mohammed Ishrath was examined as P.W.2. He had deposed to the effect that he drove the car at the time of accident. Nine persons were travelling in the said car. While so, without noticing the potholes on the road, he was driving the car in a high speed. While so, upon suddenly noticing a pothole, he applied a sudden brake and on account of which, the lorry which was coming from behind, also hit the car from the rear side and proceeded without stopping. However, he lost control and the vehicle rolled over to the pit on the side of the road. He had admitted that the most proximate reason for the accident is his applying of brake without taking adequate care especially when the vehicles were travelling on the highway. Therefore, from the evidence



of the driver, it is clear that he was primarily responsible for the accident. The First Information Report was initially given as if the driver of the unknown lorry was responsible. But, however, this is not a case of any false implication, and after detailed investigation of the accident and when the driver of the Innova car accepts the above facts, it cannot be said to be a bogus claim and that the findings of the Tribunal that the accident resulted because of the rash and negligent driving of the insured vehicle alone cannot be faulted with. Therefore, we uphold the finding of the Tribunal in respect of the liability and reject the case of the appellant insurance company.

6. There is yet another ground on which the liability is disputed by the insurance company. It is contended that even though the Innova car has a seating capacity of only 7 persons, totally 9 persons had travelled in the said car. But, however, the trial Court considered the evidence of R.W.3, the Manager of the Insurance Company who had admitted that if there has been violation of rules/policy conditions, no compensation would have been granted towards the loss of vehicle. As a matter of fact, in this case already compensation has been granted in respect of the loss of vehicle coupled with the fact that there are only four claim petitions in total therefore, we reject the claim of the insurance company. We do not find any illegality or perversity in the finding of the Tribunal



and accordingly, we reject the contentions of the insurance company regarding the questions of negligence and liability.

7. Now, we shall proceed to consider the cases of each of the claimant separately in respect of the quantum. The claimants have filed appeals aggrieved by the quantum and praying for enhancement of the same. The insurance company has filed an appeal also aggrieved by the quantum and praying to reduce the same.

7.1 : CMA.Nos.2092 & 2071 of 2022, in respect of claimant Anver @ Mohammed Anver.

7.1.1 The claimant Anver @ Mohammed Anver was aged 23 years at the time of accident and claimed that he was working as a Marketing Executive in M/s.Arena Animation and was earning Rs.10,000/- per month and a sum of Rs.5,000/- as allowance. It is further claimed by him that he was also earning another sum of Rs.5,000/- by taking tuition in a private tuition centre and was totally earning a sum of Rs.20,000/-. On account of the accident, it is claimed that he suffered multiple fractures in his vertebral column and disks, on account of which, he got paraplegia and that his entire lower body below his chest has lost action. Even the functioning of kidneys is affected. Therefore, twice a day, his urine as well as stools have to be removed through medical procedure. He requires continuous physiotherapy as his back is completely affected including the



nerves. He is wheelchair bound throughout his life. The Doctor who treated him was examined as P.W.7 and he has certified that his overall body disability is 70%.

However, from the very fact that he will not be able to carry on his avocation and the functional disability is total, the trial Court had taken the disability as 100% and considering the nature of the injuries and the condition of the claimant, we are in agreement with the same.

7.1.2 Even though the learned counsel for the insurance company submitted that there is no proper proof for income in spite of examination of P.W.5 (employer of the injured), still the accident happened in the year 2010 and notional income can be taken as Rs.12,000/- at the relevant point of time. The trial Court also relied upon the judgment in ***M.Premkumar Vs. Palaniappan*** reported in **2017 1 TNMAC (427)** whereby in respect of the relevant period that is even in respect of the accident of the year 2008, the notional income was taken as Rs.12,000/-. Therefore, we are inclined to take the notional income as Rs.12,000/-; adding 40% towards the future prospects as per paragraph 59.4 of ***National Insurance Company Limited Vs. Pranay Sethi and Ors*** ((2017) 16 SCC 680) the income is Rs.12,000/- + Rs.4,800/- = Rs.16,800/-. Since the claimant was aged 23 years, the multiplier is 18. Therefore, loss of dependency is as follows,

$$\text{Loss of Dependency} = \text{Rs.16,800/-} \times 12 \times 18$$



= Rs.36,28,800/-

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7.1.3 The Tribunal after considering Ex.P.38 to P.53 (medical bills) had taken a total sum of Rs.9,20,000/- towards medical expenses bills and another sum of Rs.4,10,000/- towards physiotherapy charges by taking into account Ex.P.89 (medical bill). Since the bills are seriously disputed on behalf of the insurance company, as their serial numbers are fresh and the explanation of the claimant that the old bills are lost ought not to have been accepted by the Tribunal, we accept the plea of the appellant insurance company and reject the bills relating to physiotherapy to the tune of Rs.4,10,000/-. But given the nature of injury, it goes without saying that the claimant need physiotherapy and notionally a sum of Rs.50,000/- is awarded towards the same.

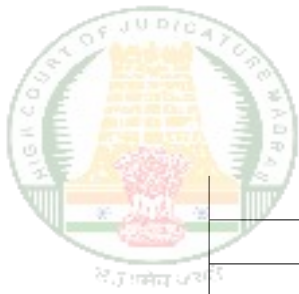
7.1.4 As far as the pain and sufferings is concerned, the Hon'ble Supreme Court of India in ***Divya Vs. National Insurance Co. Ltd (2023 (1) TN MAC 30 (SC))*** has held that the claimant would be entitled for a sum of Rs.3,00,000/- towards pain and sufferings and Rs.3,00,000/- towards loss of amenities, as in this case also, the lower part of the body below the chest has totally lost its action. In this case, a sum of Rs.3,00,000/- is awarded by the trial Court as attender charges. The Hon'ble Supreme Court of India in above case



viz., the *Divya's* case (cited supra), held that the attender charges has to be calculated by adopting the multiplier method. Since the petitioner is wheel-chair bound, even calculating at any point, attender charges at the rate of Rs.3,000/- per month would come to Rs.3,000 x12x18 = Rs.6,48,000/- and accordingly, the same is awarded. A sum of Rs.2,00,000/- is awarded towards extra nourishment by the trial Court is confirmed. The tribunal after considering the nature of injury, since physiotherapy is essential, has awarded a sum of Rs.2,75,000/- towards future physiotherapy expenses and considering the fact that the condition of the petitioner would involve continuous monitoring of his health as he is prone to infection and procedure involved in removing his urine and stools everyday till his death, awarded a sum of Rs.5,00,000/- towards future medical expenses, which we also confirm.

7.1.5 In view of the fact that sum of Rs.3,00,000/- has been awarded towards loss of amenities and Rs.3,00,000/- towards pain and sufferings, the petitioner will not be entitled for any other sum for other heads. Therefore, the total compensation which is payable to the claimant - Anver @ Mohammed Anver can be as follows,

PARTICULARS	AMOUNT
1. Loss of earnings	Rs.36,28,800/-
2. Medical Expenses	Rs.9,70,000/-
3. Pain and Sufferings	Rs.3,00,000/-



4. Loss of Amenities	Rs.3,00,000/-
5. Transportation Charges	Rs.3,00,000/-
6. Extra Nourishment	Rs.2,00,000/-
7. Attender Charges	Rs.6,48,000/-
8. Future Medical Expenses	Rs.7,75,000/-
Total	Rs.71,21,800/-

Therefore, compensation amount granted in respect of Anver @ Mohammed Anver is enhanced to Rs.71,21,800/-.

7.2 CMA.No.2069 of 2022, claimant Jineesh V. Nair.

7.2.1 As far as the claimant Jineesh V.Nair is concerned, he was aged about 27 years at the time of the accident and he was also working as Marketing Executive in the same company known as Arena Animation. The nature of injuries sustained by him is injuries on C5, C6 cervical vertebra leading to surgery and fixing the bones by implantation of steel plate and screws and that there will be difficulty for him to turn around or to see sideways. This apart, on account of the injuries in the vertebral column, the functions relating to his joints have reduced by 30 degree and whenever he uses his upper or lower limbs beyond 30 degrees, there will be pain. This apart, on his left hip, the crest bone is taken for grafting and therefore, there is a disability on account of the same. Over all his percentage of disability was assessed as 30%. However, while calculating the loss of earning at Rs.6,75,000/-, the Tribunal did not make any addition towards future



prospects and also took only Rs.11,000/- as the notional income; on that basis, the Tribunal awarded a sum of Rs.6,75,000/- towards loss of earnings, towards the medical expenses on the basis of the bills awarded a sum of Rs.1,42,000/-, Rs.75,000/- towards pain and sufferings, Rs.10,000/- towards transport expenses, Rs.25,000/- towards extra nourishment, Rs.10,000/- towards attender charges, Rs.20,000/- towards future medical expenses, Rs.3,000/- towards loss of amenities and granted a total compensation of Rs.9,60,000/-.

7.2.2 We find that already the Tribunal didn't award 40% towards future prospects and also the notional income was taken as Rs.11,000/- instead of Rs.12,000/-. Therefore, there is no question of interference on the sum of Rs.9,60,000/- awarded by the tribunal, which is very reasonable and accordingly, the CMA.No.2069 of 2022 stands dismissed and the compensation of Rs.9,60,000/- stands confirmed.

7.3 CMA No.2070 of 2022, claimant Viswa Mohan

7.3.1 The claimant Viswa Mohan was aged 25 years at the time of accident and was also working as Marketing Executive in Arena Animation and claimed a monthly income of Rs.15,000/-. The nature of injury sustained by him is fractures in Tarsal bone Nos.5, 6, 7, 8, 9 & 10. On account of which, he had undergone surgery and he will have difficulties in bending forward, climbing



stairs, lifting his legs, lifting any weight or any other hard to work tasks.

Therefore, he was assessed with 30% permanent disability. Considering the nature of injury and the functional disability, the Tribunal assessed 30% functional disability and since it was proved that he was a partner in Arena Animation and he was having academic head cum faculty and was earning a sum of Rs.15,000/- + Rs.4,500/- as allowance, the Tribunal took a sum of Rs.15,000/- as his income and awarded a sum of Rs.8,65,000/- towards permanent disability. Even though the medical expenses of Rs.2,00,000/- were claimed, bills to the tune of Rs.10,295/- were only marked and therefore Rs.11,000/- was awarded. A sum of Rs.75,000/- was awarded towards pain and sufferings; sum of Rs.10,000/- towards cost of attender charges; Rs.25,000/- towards nutrition and a sum of Rs.4,000/- towards loss of his property such as his dress, etc. The Tribunal thus awarded a total compensation of Rs.10,00,000/- as compensation.

7.3.2 In this case also, it can be seen that while calculating the loss of earnings as per the multiplier method, future prospects have not been considered and therefore the sum of Rs.10,00,000/- which is awarded by the Tribunal cannot be in any event termed to be excessive or unreasonable and in that view of the matter, CMA.No.2070 of 2022 also stands dismissed.



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8. In the result,

(i) CMA.Nos.2069, 2070 & 2071 of 2022 stand dismissed;

(ii) CMA.No.2092 of 2022 stands partly allowed by enhancing the compensation from Rs.64,70,000/- to Rs.71,21,800/- and the respondents are directed to pay the enhanced compensation of Rs. 71,21,800/- with interest at the rate of 7.5% per annum from the date of petition till date of realization and costs;

(iii) The Insurance company is directed to deposit the balance sum after deducting the sum if any already deposited with in a period of six weeks from the date of receipt of a copy of this order. Upon deposit of such sum, the claimants will be entitled to withdraw the entire sum along with accrued interest; The claimants will also be entitled to the proportionate costs in the appeals as well as in the original petitions;

(iv) The connected miscellaneous petitions stand closed.

(J.N.B., J.)

(D.B.C., J.)

17.07.2023

Index : yes/no

Speaking/Non-speaking order

Neutral Citation : yes/no

mpl



CMA.Nos.2069, 2070, 2071 & 2092 C



To

The Motor Accident Claims Tribunal,
Sub Court at Sankagiri.



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CMA.Nos.2069, 2070, 2071 & 2092 C



**J.NISHA BANU, J.
AND
D.BHARATHA CHAKRAVARTHY, J.**

mpl

Pre-Delivery Judgment in

C.M.A.Nos.2069, 2070, 2071 & 2092 of 2022 and
CMP.Nos.16039, 16023, 16028 of 2022

17.07.2023