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C.M.A.Nos.2824 & 3313 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.Nos.2824 & 3313 of 2019

Raj @ Nagaraj
S/o.Chelladurai.

... Appellant
in C.M.A.No.2824 of 2019

1. Dhanalakshmi @ Saroja
W/o.Sengodan

2. Shanthi
W/o.Chinnannan

... Appellants
in C.M.A.No.3313 of 2019

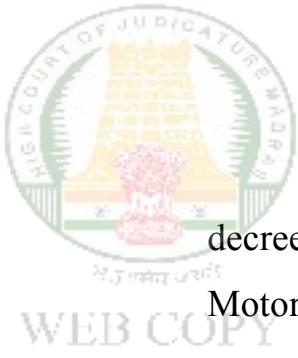
Vs.

1. Basha
S/o.Muthilibai

2. National Insurance Co. Ltd.,
2nd Floor, 81-D, Chetty Street
Opp : Old Bus Stand,
Tiruchengode - 637 211.

... Respondents
in both CMAs

Civil Miscellaneous Appeal No.2824 of 2019 filed under
Section 173 of the Motor Vehicles Act, 1988 against the judgment and



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decree dated 09.04.2018 made in M.C.O.P.No.587 of 2014 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Namakkal.

Civil Miscellaneous Appeal No.3313 of 2019 filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 09.04.2018 made in M.C.O.P.No.710 of 2014 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Namakkal.

For Appellants in both CMAs : Mr.T.S.Arthanareeswaran
For Respondents in both CMAs : Mr.S.Vadivel for R2
R1 - *Ex parte* before the Tribunal

COMMON JUDGMENT

These appeals are directed against the common Award dated 09.04.2018 passed in M.C.O.P.Nos.587 of 2014 and 710 of 2014 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Namakkal.

2. For the purpose of convenience, the parties are described as per their ranking before the Tribunal.



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3. The facts in nutshell are as follows :

(i) On 12.11.2013 at about 8.00 p.m the deceased Kumar @

Rajkumar was riding a two wheeler bearing Registration No.TN 28 P 2293 on Namakkal – Tiruchengode Main Road and the claimant Raj @ Nagaraj (M.C.O.P. No.587 of 2014) is the pillion rider of the said two wheeler. When they were proceeding near Kumaramangalam Milk Society, on the extreme left side of the road, a lorry bearing Registration No.TN 45 Z 2426, belonging to the first respondent and insured with the second respondent, driven by its driver in a rash and negligent manner, without giving proper signals applied a sudden brake, hence, the two wheeler hit rear side of the lorry. Due to the said impact, the deceased Kumar @ Rajkumar succumbed to injuries at the Hospital and the claimant Raj @ Nagaraj sustained fracture on his right thigh and some other multiple injuries all over his body. The accident had occurred only due to rash and negligent driving of the lorry driver, and hence, the Tiruchengode Rural Police had registered a case in Crime No.625 of 2013 against the driver of the lorry.

(ii) The deceased Kumar @ Rajkumar was aged about 34 years



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at the time of accident and he was a painter and earning a sum of Rs.30,000/- per month. Due to the sudden demise of the deceased, his mother and sister filed the claim petition in M.C.O.P.No.710 of 2014 claiming a sum of Rs.25,00,000/- as compensation for the death of the deceased.

(iii) The injured/claimant (Raj @ Nagaraj) was aged about 30 years at the time of accident and he was also a painter and earning a sum of Rs.30,000/- per month. Due to the accident, the claimant sustained multiple injuries and hence, he filed the claim petition in M.C.O.P.No.587 of 2014 claiming a sum of Rs.15,00,000/- as compensation.

4. Before the Tribunal, the first respondent/owner of the lorry bearing Registration No.TN 45 Z 2426 remained *ex-parte*.

5. The claim petitions were resisted by the second respondent/ National Insurance Co. Ltd., by filing counter statements denying the manner of accident as projected by the claimants in the claim petitions. They also denied the avocation and income and other claims mentioned in



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the claim petitions. They also contended that at the time of the accident, the deceased, who rode the two-wheeler did not possess any valid driving licence as per the provisions contemplated under the Motor Vehicles Act. Thus, they sought for dismissal of the claim petitions.

6. A joint trial was conducted in both the claim petitions. On the side of the claimants, P.W.1 to P.W.5 were examined and Ex.P1 to Ex.P13 were marked. On the side of the respondents, R.W.1 to R.W.4 were examined and Ex.R1 was marked and no documents were marked as Court documents.

7. After analysing the entire evidence, the Tribunal came to the conclusion that as the accident had occurred due to the rash and negligent driving of the driver of the lorry and also the rider of the two wheeler and hence, fixed contributory negligence at 50% on the rider of the two wheeler and fixed contributory negligence at 50% on the driver of the lorry. By coming to such conclusion, the Tribunal has passed an award for a sum of **Rs.4,18,200/-** [50% of total award] in M.C.O.P.No.710 of 2014; and a sum of **Rs.1,16,133/-** [50% of total award] in M.C.O.P.No.587 of 2014. Since



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there was a violation of policy conditions, the Tribunal granted an order of pay and recovery. Therefore, the second respondent/Insurance Company has to pay the compensation at first instance and thereafter, recover the same from the first respondent/owner of the lorry. The break-up details of the compensation awarded by the Tribunal in each of the M.C.O.Ps are as under :

(i) In M.C.O.P.No.710 of 2014

<i>S. No.</i>	<i>Heads under which the amount is awarded by the Tribunal</i>	<i>Amount awarded by the Tribunal in Rs.</i>
1.	Loss of Dependency	5,76,000
2.	Future Prospects 40%	2,30,400
3.	Loss of Estate	15,000
4.	Funeral Expenses	15,000
	Total	8,36,400
	Less 50 % contributory negligence	4,18,200

(ii) In M.C.O.P.No.587 of 2014



S. No.	<i>Heads under which amounts are awarded</i>	<i>Amounts awarded by the Tribunal in Rs.</i>
1.	Partial Permanent Disability	70,000
2.	Medical Expenses	1,55,266
3.	Pain and sufferings	5,000
4.	Extra Nourishment	2,000
	Total	2,32,266
	Less 50% contributory negligence	1,16,133

8. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appeals have been filed by the claimants for enhancement of the compensation amount.

9. So far as the liability is concerned, it is the submission of the learned counsel for the appellants/ claimants that the deceased Kumar @ Rajkumar was riding the two wheeler bearing Registration No.TN 28 P 2293 along with the pillion rider namely Raj @ Nagaraj with due care and caution on the extreme left side of the road, however, the driver of the lorry bearing Registration No.TN 45 Z 2426, who drove the lorry in a rash and negligent manner applied a sudden brake, without following road traffic



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rules due to that, the deceased, who drove the two wheeler hit the rear side of the lorry and caused accident. Therefore, the driver of the lorry was solely responsible for the accident and the First Information Report was also registered against him. The injured claimant/P.W.4, who was the pillion rider of the said two-wheeler on the date of accident had clearly narrated the said accident and the negligence on the part of the driver of the lorry. Further, the negligence on the part of the driver of the lorry was proved from the evidence of P.W.2, P.W.4 and Ex.P1/FIR. Though there is no contributory negligence on the part of the deceased and the injured claimant, without proper appreciation the Tribunal fixed 50% negligence on the part of the deceased, which warrants interference of this Court. Therefore, the entire liability has to be fixed on the driver of the lorry and as an insurer the second respondent/Insurance Company is liable to pay compensation to the claimants.

10. Per contra, the learned counsel for the second respondent/Insurance Company contended that even if it is assumed that the driver of the lorry applied a sudden brake, if the deceased, who rode the



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two-wheeler, would have kept sufficient distance to forgoing vehicle, he would have averted the accident. However, the deceased without even following the road traffic rules and failed to maintain sufficient distance between the vehicle, which was proceeding ahead of him had dashed his vehicle against the said lorry and invited the accident by his rash and negligent riding, for which, the driver of the lorry cannot in any way be held responsible for the accident. To prove the same on the side of the second respondent the driver of the lorry himself was examined as R.W.1. Therefore, the Tribunal has rightly fixed 50% negligence on the deceased. He further contended that the owner of the lorry allowed the driver to drive the vehicle without any valid driving licence and the same was proved from the evidence of R.W.3 and Ex.P2/MVI Report. Therefore, the Tribunal rightly ordered pay and recovery.

11. This Court considered the rival submissions and perused the materials available on record.

12. On a reading of the entire oral and documentary evidence,



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it is clear that, even if the driver of the lorry drove the vehicle in a rash and negligent manner, if at all the deceased rode the two-wheeler with due care, diligent manner, keeping with sufficient distance from the fore-going vehicle, he could have averted the accident. Hence, the deceased has also contributed negligence and the Tribunal has rightly fixed 50% negligence on the deceased and there is no perversity in fixing the liability in the ratio of 50% : 50% by the Tribunal. Since there is a violation of policy conditions, the Tribunal has rightly ordered pay and recovery.

In CMA.No.2824 of 2019 (MCOP No.587 of 2014)

13. So far as quantum of compensation is concerned, it is the submission of the learned counsel for the appellant/injured claimant that the evidence of P.W.5/Doctor, discharge summary/Ex.P9 and disability certificate/Ex.P11 would reveal that on account of the accident, the appellant/injured claimant sustained injuries such as i) mild swelling (right thigh with hip) present over the right hip with joint line tenderness, ii) mild swelling present over the middle part of right thigh, iii) bony thickening present and bony tenderness present over the middle part of right femur



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bone and log steel nails upper end and screws fixed inside the right femur bone are felt and are tender on palpation. Though the claimant had sustained permanent disability of 50%, the Doctor assessed the disability of the claimant at 35% and had given disability certificate/Ex.P11. Further, the Tribunal ought to have fixed a sum of Rs.3,000/- per percentage of disability, but the Tribunal fixed a sum of Rs.2,000/-. At the time of accident, the injured claimant was working as a painter and earning a sum of Rs.30,000/-, per month, due to the said accident, he is not able to continue his work and he had lost his entire earning power in his young age. Further, the Tribunal ought to have adopted multiplier method, while calculating the earning power of the claimant. Thus, the learned counsel for the appellant prays for enhancement of the compensation amount under the head "loss of earning power".

14. That apart, the learned counsel for the appellant/injured claimant submitted that the Tribunal ought to have awarded compensation under the heads "Transportation", "Attendant charges" "Extra Nourishment" "Damages to clothes and articles" and "Loss of amenities", and hence, this



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Court may award proper compensation under the said heads.

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15. Per contra, the learned counsel for the second respondent/Insurance Company made his submissions supporting the award passed by the Tribunal.

16. It is the submission of the learned counsel for the appellant that the appellant/injured claimant was working as a painter and earning a sum of Rs.30,000/- per month and the Tribunal ought to have adopted multiplier method, but there is no independent oral and documentary evidence to prove the avocation and earning capacity of the injured claimant. On a perusal of the disability certificate, this Court finds that it is not a permanent irrecoverable disability and also in the absence of documentary evidence to prove the loss of avocation and income, the multiplier method need not be applied. Further, the Tribunal fixed the partial permanent disability of the injured claimant at 35% and awarded a sum of Rs.2000/- per percentage of the disability. Considering the fact that the accident had occurred during 2013 and also considering the avocation of



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the claimant as per the decisions of the Hon'ble Apex Court, a sum of Rs.3,000/- may be fixed for per percentage of disability. However, the Tribunal had taken only a sum of Rs.2,000/- per percentage. Thus, a sum of Rs.3,000/- is fixed for per percentage of partial permanent disability and the amount comes to Rs.1,05,000/- [Rs.3000 x 35].

17. Further, the amounts awarded by the Tribunal under all the other heads are fair and reasonable, and hence, they are confirmed.

18. Thus, the total compensation payable to the injured claimant is re-calculated and tabulated below:

<i>S. No.</i>	<i>Heads under which amounts are awarded</i>	<i>Amounts awarded by the Tribunal in Rs.</i>	<i>Amounts awarded by this Court in Rs.</i>
1.	Partial Permanent Disability	70,000	1,05,000
2.	Medical Expenses	1,55,266	1,55,266
3.	Pain and sufferings	5,000	5,000
4.	Extra Nourishment	2,000	2,000
	Total	2,32,266	2,67,266
	Less 50% contributory	1,16,133	1,33,633



S. No.	<i>Heads under which amounts are awarded</i>	<i>Amounts awarded by the Tribunal in Rs.</i>	<i>Amounts awarded by this Court in Rs.</i>
	negligence		

19. Thus, the total compensation of Rs.1,16,133/- awarded by the Tribunal is hereby enhanced to Rs.1,33,633/-, which shall carry interest at 7.5% per annum from the date of claim petition till the date of payment. The second respondent/Insurance Company is directed to deposit the total compensation awarded by this Court before the Tribunal, after adjusting the amount if any already deposited within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal is directed to credit the compensation to the Bank Account of the injured claimant, by following the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016 (reported in 2016 (2) LW 561 - The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others). On such deposit, the appellant/injured claimant is permitted to withdraw the entire amount in accordance with law before the Tribunal. The claimant shall pay necessary Court fee, on the enhanced



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compensation. Since there is a violation of policy conditions, the second respondent/Insurance Company is directed to pay the compensation at the first instance and thereafter, recover the same from the first respondent/owner of the lorry.

In CMA.No.3313 of 2019 (MCOP No.710 of 2014)

20. It is the submission of the learned counsel for the appellants/claimants that at the time of accident, the deceased was aged about 34 years and he was working as a painter and earning a sum of Rs.30,000/- per month. Due to the accident, he succumbed to injuries. The first claimant is the mother and second claimant is the sister of the deceased. The deceased was the only bread-winner of the family. Due to the accident they lost their entire livelihood. He further submitted that the amounts awarded by the Tribunal under various heads are not adequate, and hence, they need proper enhancement.

21. Per contra, the learned counsel for the second



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respondent/Insurance Company made his submissions supporting the award passed by the Tribunal.

22. Though it is contended by the learned counsel for the appellants/claimants that the deceased, was aged about 34 years, working as a painter and earning a sum of Rs.30,000/- per month, the claimants have not produced any independent oral and documentary evidence to prove the avocation and income of the deceased. Though there was lack of materials to prove the employment and earning capacity of the deceased, the Tribunal has fixed a sum of Rs.6,000/- as notional income and resultantly, the annual income of the deceased was arrived at a sum of Rs.72,000/- [6,000 x 12]. Since the deceased died as a bachelor, the Tribunal deducted 1/2 of the amount towards personal and living expenses of the deceased and arrived at the annual loss of contribution at Rs.36,000/- [72,000 - 36,000]. Considering the age of the deceased being 34 at the time of the accident, the Tribunal by applying multiplier "16", arrived at the "Loss of Dependency" at Rs.5,76,000/- [36,000 x 16]. This Court finds that the amount awarded under the head "Loss of Dependency" is just and fair and hence, there is no



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reason to enhance the same. Further, the Tribunal awarded 40% of future prospects and arrived at a sum of Rs.2,30,400/- and the same is just and fair.

23. Similarly, a sum of Rs.50,000/- each [Rs.1,00,000/-] is awarded towards “Loss of Love and Affection”.

24. Further, a sum of Rs.15,000/- awarded by the Tribunal under the head "Loss of estate" is hereby set aside. Since no amount was awarded under the head “Transportation”, a sum of Rs.15,000/- is awarded under such head.

25. Further, the amounts awarded by the Tribunal under all the other heads are fair and reasonable, and hence, they are confirmed.

26. Thus, the total compensation payable to the claimant is re-calculated and tabulated below :



S. No.	Heads under which amounts are awarded	Amounts awarded by the Tribunal in Rs.	Amounts awarded by this Court in Rs.
1.	Loss of Dependency	5,76,000	5,76,000
2.	Future prospects 40%	2,30,400	2,30,400
3.	Loss of Estate	15,000	-
4.	Funeral Expenses	15,000	15,000
5.	Loss of Love and Affection	-	1,00,000
6.	Transportation	-	15,000
	Total	8,36,400	9.36,400
	Less 50% contributory negligence	4,18,200	4,68,200

27. Thus, the total compensation of Rs.4,18,200/- awarded by the Tribunal is hereby enhanced to Rs.4,68,200/-, which shall carry interest at 7.5% per annum from the date of claim petition till the date of payment. The second respondent/Insurance Company is directed to deposit the total compensation awarded by this Court before the Tribunal, after adjusting the amount if any already deposited within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal is directed to credit the compensation to the Bank Account of the injured claimant, by following the judgment of a Division Bench of this Court in



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C.M.A.No.428 of 2016, dated 11.03.2016 (reported in 2016 (2) LW 561 -

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The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others). On such deposit, the appellant/injured claimant is permitted to withdraw the entire amount in accordance with law before the Tribunal. The claimant shall pay necessary Court fee, on the enhanced compensation. Since there is a violation of policy conditions, the second respondent/Insurance Company is directed to pay the compensation at the first instance and thereafter, recover the same from the first respondent/owner of the lorry.

28. With the above modifications, these Civil Miscellaneous Appeals are partly allowed. There shall be no order as to costs.

15.09.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1.Principal District Judge,
Motor Accident Claims Tribunal,
Namakkal.

2.The Section Officer,
V.R.Section,
High Court, Madras.



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P.VELMURUGAN, J.

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