



C.M.A.(MD)Nos.109 & 110 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 05.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)Nos.109 and 110 of 2023
and
C.M.P.(MD)No.6925 of 2022

- 1.Veemaraj
- 2.Eswari
- 3.Mahalakshmi

- 4.Minor Selvakumar
rep by Guardian and father
first appellant

...Appellants in C.M.A.(MD)No.109 of 2022

- 1.Subramanian
- 2.Padma
- 3.Karthick
- 4.Radhika

...Appellants in C.M.A.(MD)No.110 of 2022

Vs.

- 1.Chitharth

- 2.The Branch Manager,
The Oriental Insurance Company Limited.,
No.3607/21, 2nd Floor, Sathyamurthy road,
Pudukkottai District.

...Respondents in both appeals

COMMON PRAYER: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award amount by allowing

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C.M.A.(MD)Nos.109 & 110 of 2022

the Civil Miscellaneous Appeals against the order dated 24.03.2021 in M.C.O.P.Nos.462 and 468 of 2018 on the file of the Motor Accident Claims Tribunal, Additional District Court, Pudukkottai.

In both the appeals:

For Appellants	: Mr.P.Ganapathi Subramanian
For R2	: Mr.C.Karthick
For R1	: No Appearance

COMMON JUDGMENT

The present Civil Miscellaneous Appeals are filed, seeking enhancement of the award passed by the Motor Accident Claims Tribunal, Additional District Court, Pudukkottai, in M.C.O.P.Nos.462 and 468 of 2018, dated 24.03.2021. Since the present appeals had arisen out of a common issue, these appeals are taken up together for final disposal by way of this common judgment.

2.For the sake of convenience, the parties are referred to herein as per their rank before the trial Court.

3.The brief facts leading to the filing of the Civil Miscellaneous Appeal are as follows:



C.M.A.(MD)Nos.109 & 110 of 2022

When the deceased persons were travelling in a TVS Star City two wheeler bearing registration No.TN-55-P-1830 in Trichy to Pudukkottai road, the Maruthi Indica Car bearing registration No.TH-55-AH-0619, which was proceeding in the same direction, dashed against the two wheeler, hence, the rider and the pillion riders of the two wheeler were thrown out of the vehicle. As a result, one Saravanan @ Saravanakumar and Manikandan died on the spot and one Veerapandi was taken to the hospital and succumbed to injuries.

4.It is the case of the respondents before the Tribunal that the first respondent drove the vehicle in a cautious manner. In spite of the driver of the car blew horn, the rider of the two wheeler did not leave the way to the car to go ahead of it. The accident did not take place by the rash and negligent driving of the car. Since there were two pillion riders in the motorcycle, the rider of the two wheeler lost his control and fell down on his own.

5.Before the Tribunal, on the side of the claimants, four witnesses were examined as P.W.1 to P.W.4 and Ex.P.1 to Ex.P.25 were marked. On the side of the respondents, no oral and documentary evidence were marked.



C.M.A.(MD)Nos.109 & 110 of 2022

6.The Tribunal, in both the claim petitions, after perusing the oral and documentary evidence fixed 80% liability on the part of the first respondent and 20% liability on the part of the rider and pillion riders of the two wheeler and awarded a sum of Rs.10,07,200/-, (Rupees Ten Lakhs Seven Thousand and Two Hundred Only) as compensation.

7.Not satisfying with the said compensation, the claimants have filed the present Civil Miscellaneous Appeals on the ground that the monthly income adopted by the Tribunal at Rs.7,500/- is very meager and the same has to be enhanced. Further, the Tribunal had erred in fixing 20% of contributory negligence on the part of the deceased persons.

8.The learned counsel for the second respondent submitted that carrying three persons in a two wheeler itself is a violation. That apart, the rider and the pillion riders had not worn helmet. Hence, the negligence fixed on the part of the rider of the two wheeler does not require any interference. Further, the Tribunal considering the factual aspects, had rightly fixed the monthly income of the deceased persons at Rs.7,500/-. Hence, prays for dismissal of these appeals.



C.M.A.(MD)Nos.109 & 110 of 2022

WEB COPY

9. In view of the above submissions, now the point arise for consideration in this appeal is:

Whether the tribunal was right in fixing the monthly income of the deceased at Rs.7,500/- and contributory negligence at 20% on the part of the deceased persons and 80% on the part of the first respondent/rider of the car?

10. I have heard the learned counsel on either side and perused the materials placed on record.

11. The deceased along with two others were proceeding in a motorcycle, at that time the accident had taken place. This aspect had not been disputed. Though it is the contention of the learned counsel for the respondents that the rider and the persons travelled in the bike did not wear helmet, this Court is of the view that admittedly, the accident had taken place not at the fault of the rider of the two wheeler, in fact the offending vehicle had hit the two wheeler from the behind. Therefore, the entire negligence cannot be attributed on the part of the rider of the two wheeler. Of course, if the rider and the pillion riders of the motorcycle were



C.M.A.(MD)Nos.109 & 110 of 2022

helmet, the death would have been averted to some extent. That is also depending upon the nature of the speed and power of the offending vehicle. Therefore, in order to fix some responsibility on the person, who rode the motorcycle without abiding the traffic rules, 10% contributory negligence is fixed on the part of the deceased persons. Merely because of three persons are travelling in a two wheeler, that will not grant license to the driver of the offending vehicle to drive the vehicle casually without sufficient caution to avert the accident. Therefore, 90% contributory negligence is fixed on the driver of the offending car.

12. Admittedly, the deceased in M.C.O.P.No.462 of 2018 had written his 12th examination and was working in Libeya Polymer Bottle Company and the deceased in M.C.O.P.No.468 of 2018 was studying first year of B.Sc., Computer Science. The Tribunal had fixed a sum of Rs.7,500/- as the monthly income of the deceased persons. The accident had taken place in the year 2018 and the deceased persons are the young students. They would have easily earned more than Rs.9,000/- per month by getting employment in a private concern depending upon their future educational qualifications.



C.M.A.(MD)Nos.109 & 110 of 2022

13. Taking note of the year of the accident and fact that the deceased persons are young students, this Court feels that it will be reasonable to fix monthly income of the deceased persons in both the appeals at Rs.9,000/-. Accordingly, this Court fixes a sum of Rs.9,000/- (Rupees Nine Thousand only) as notional monthly income of the deceased persons. Considering the age of the deceased persons, 40% (Rs.3,600/-) future prospects is added. Since the deceased persons are bachelors, half of their income is deducted towards their personal expenses. Hence, the monthly income of the deceased persons in both the appeals is fixed at Rs.6,300/- (Rupees Six Thousand Three Hundred only). If the multiplier '18' is adopted in both the appeals, as per the dictum laid down by the Hon'ble Supreme Court in the case of *National Insurance Company Ltd., vs. Pranay Sethi and others* [CDJ 2017 SCC 1220], the loss of income of the deceased persons in both the appeals would come around Rs.13,60,800/- (6,300/-*12*18) (Rupees Thirteen Lakhs Sixty Thousand and Eight Hundred only) each. The compensation awarded by the Tribunal in both claim petitions under all other heads remains unaltered. In the result, the claimants in both the appeals are entitled to the compensation as stated below:



C.M.A.(MD)Nos.109 & 110 of 2022

S.No.	Head	Amount
1	For Loss of Income	Rs.13,60,800/-
2.	Loss of love and affection	Rs. 1,00,000/-
3.	Ambulance charges	Rs. 15,000/-
4.	Funeral Expenses	Rs. 15,000/-
	Total	Rs.14,85,800/-
	After deduction 10% (i.e., Rs. 1,48,580/-) of contributory negligence	Rs.13,37,220/-

14. Accordingly, these Civil Miscellaneous Appeals are allowed and the compensation awarded by the Tribunal in both the claim petitions is enhanced as stated above.

15. The Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.13,37,220/- (Rupees Thirteen Lakhs Thirty Seven Thousand Two Hundred and Twenty only) in C.M.A.(MD)No.109 of 2022 and a further sum of Rs.13,37,220/- (Rupees Thirteen Lakhs Thirty Seven Thousand Two Hundred and Twenty only) in C.M.A.(MD)No.110 of 2022, as modified by this Court, with interest at the rate of 7.5%, to the credit of M.C.O.P.Nos.462 and 468 of 2018, on the file of the Motor Accident Claims Tribunal /Additional District Court, Pudukkottai within a period of six weeks from the date of receipt of



C.M.A.(MD)Nos.109 & 110 of 2022

a copy of this judgment, less the amount, if any already deposited. On such deposit, the major claimants in both the appeals are permitted to withdraw the amount as apportioned by the Tribunal, less the amount if any already withdrawn, by making necessary application before the Tribunal. The Tribunal shall deposit the share of the minor claimant in C.M.A.(MD)No.109 of 2022 in a Fixed Deposit in any one of the Nationalized Banks, till the minor claimant attains majority. The guardian of the minor claimant is permitted to withdraw the interest accrued thereon once in three months directly from the bank. No costs. Consequently, connected miscellaneous petition is closed.

05.06.2023

NCC : Yes/No

Index : Yes/No

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To

1.The Motor Accident Claims Tribunal /
Additional District Court, Pudukkottai.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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C.M.A.(MD)Nos.109 & 110 of 2022

N.SATHISH KUMAR, J.

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C.M.A.(MD)Nos.109 and 110 of 2022

05.06.2023