



C.M.A.(MD).Nos.865 & 866 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 24.11.2023

Delivered on: 20.12.2023

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**C.M.A.(MD).Nos.865 & 866 of 2022
and
C.M.P.(MD)Nos.3729, 3730, 8231 & 8232 of 2022**

C.M.A.(MD).No.865 of 2022:

The Manager,
Reliance General Insurance, Sri Meenakshi
Plaza, 1st Floor, Plot No.HIG, 55,
80, Feet Road, Anna Nagar,
Madurai.

.. Appellant / Respondent No.2

Vs.

1. K.Palanivelrajan

.. 1st Respondent / Petitioner

2. V.M.Arunprakash

.. 2nd Respondent/ Respondent No.1

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award passed in M.C.O.P.No.494 of 2017 on the file of the Motor Accident Claims Tribunal - IV Additional Sub Judge Madurai dated 01-02-2022 and allow the civil miscellaneous appeal.



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C.M.A.(MD).Nos.865 & 866 of 2022

For Appellant : Ms.K.R.Shivashankari
For Respondents : Mr.R.S.Shanthanam for R1
: No appearance for R2

CMA(MD)No.866 of 2022

The Manager,

Reliance General Insurance, Sri Meenakshi

Plaza, 1st Floor, Plot No.HIG, 55,

80, Feet Road, Anna Nagar,

Madurai.

.. Appellant / Respondent No.2

Vs.

1.K.Gopal

.. Respondent No.1 / Appellants

2. V.M.Arunprakash

.. 2nd Respondent/ Respondent No.1

Prayer:- Appeal filed under Order 41 Rule 22 of the Code of Civil Procedure, to set aside the award passed in M.C.O.P.No.495 of 2017 on the file of the Motor Accident Claims Tribunal IV Additional Sub Judge Madurai, dated 01-02-2022 and allow the civil miscellaneous appeal.

For Appellant : Ms.K.R.Shivashankari
For Respondents : Mr.R.S.Shanthanam for R1
: No appearance for R2



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C.M.A.(MD).Nos.865 & 866 of 2022

COMMON JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

C.M.A.(MD)No.865 of 2022 is preferred by the Insurance Company, aggrieved by the award in M.C.O.P.No.494 of 2017, on the file of the Motor Accident Claims Tribunal / IV Additional Sub Judge, Madurai, dated 01.02.2022, challenging the award of Rs.24,36,364/- as compensation for the injured claimant – first respondent herein.

2. C.M.A.(MD)No.866 of 2022 is preferred by the Insurance Company, aggrieved by the award in M.C.O.P.No.495 of 2017, on the file of the Motor Accident Claims Tribunal / IV Additional Sub Judge, Madurai, dated 01.02.2022, challenging the award of Rs.19,64,205/- as compensation for the injured claimant – first respondent herein.

3. The first respondent in C.M.A.(MD)No.865 of 2022 as claimant, filed M.C.O.P.No.494 of 2017 on the ground that on 28.06.2015, while he was riding a two wheeler, a lorry insured with the appellant came from behind the first respondent, in a rash and negligent manner and dashed against the claimant's motorcycle. According to the first



C.M.A.(MD).Nos.865 & 866 of 2022

respondent, he was aged 44 years and he was working as a driver, earning Rs.10,000/- per month and compensation of Rs.36,54,500/- was arrived at and restricted to Rs.25,00,000/-.

4. The appellant / Insurance Company in C.M.A.(MD)No.865 of 2022 filed a counter stating that the manner of accident as projected by the first respondent was contrary to the contents of the F.I.R and that both the driver of the offending vehicle as well as the first respondent did not possess valid driving licence. The appellant also denied the various heads under which compensation was sought for on the ground that they are high and exorbitant.

5. The first respondent in C.M.A.(MD)No.866 of 2022 as claimant, filed M.C.O.P.No.495 of 2017 on the ground that on 28.06.2015 while he was travelling as a pillion rider in a two wheeler along with the first respondent in CMA(MD)No.465 of 2022, he suffered injuries in the very same accident. According to the first respondent, he was aged 55 years and he was an agricultural worker, earning Rs.25,000/- per month and he is claiming Rs.25,00,000/- for compensation, injuries suffered by him.



C.M.A.(MD).Nos.865 & 866 of 2022

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6.The appellant / Insurance Company in C.M.A.(MD)No.866 of 2022 filed a counter on the very same line on which the claim in CMA(MD)No.865 of 2022, was objected to.

7. Both the claim petitions in M.C.O.P.Nos.494 and 495 of 2017 were tried together. 6. Before the Tribunal, the petitioners examined themselves as P.W.1 and P.W.2 and one Chokkalingam was examined as P.W.3, and 24 documents were marked as Ex.P1 to Ex.P24, on the side of the claimants. On the side of the respondents, no oral or documentary evidence was adduced. Through P.W.3, Ex.X1 and X2, namely, treatment records of the claimants were marked. Disability certificates issued by the District Medical Board were marked as Ex.C1 and Ex.C2.

8. The Tribunal, after considering the oral and documentary evidence, found that the accident occurred only because of the rash and negligent driving of the offending lorry and that evidence of the claimants, namely, first respondent in both the appeals, was probable and believable, held that the Insurance Company was liable to compensate the claimants.



C.M.A.(MD).Nos.865 & 866 of 2022

However, the Tribunal fixed 10% as contributory negligence in the case of rider of the two wheeler.

9. Insofar as the quantum, in C.M.A.(MD)No.865 of 2022 (M.C.O.P.No.494 of 2017), the Tribunal fixed the notional income at Rs.10,000/- and adding 25% future prospects, applying multiplier '14' and Rs.2,00,000/- towards pain and sufferings, Rs.1,00,000/- towards loss of amenities, Rs.2,67,071/- towards medical expenses, Rs.5,000/- towards transport expenses, Rs.25,000/- towards extra nourishment and Rs.10,000/- towards attender charges and awarded Rs.27,07,071/- as compensation.

10. Similarly, in C.M.A.(MD)No.866 of 2022 (M.C.O.P.No.495 of 2017), the Tribunal fixed the notional income at Rs.10,000/- and adding 10% future prospects, applying multiplier '14' and Rs.2,00,000/- towards pain and sufferings, Rs.2,00,000/- towards loss of amenities, Rs.3,31,205/- towards medical expenses, Rs.5,000/- towards transport expenses, Rs.25,000/- towards extra nourishment, Rs.5,000/- towards damage to vehicle and Rs.10,000/- towards attender charges and awarded Rs.19,64,205/- as compensation.



C.M.A.(MD).Nos.865 & 866 of 2022

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11. The appellant, aggrieved by the said awards, has preferred the above Civil Miscellaneous Appeals challenging the fixation of notional income, award of Rs.2,00,000/- towards pain and sufferings and Rs.1,00,000/- and Rs.2,00,000/- respectively towards loss of amenities, in the two cases.

12. We have heard Ms.K.R.Shivashankari, learned counsel for the appellant in both the appeals and Mr.R.S.Shanthanam, learned counsel for the claimant in both the appeals. We have perused the records, including the awards impugned before us.

13. At the outset, even though the appellant / Insurance Company has challenged the finding of negligence on the part of the offending lorry driver, we have gone through the evidence and findings of the tribunal, we have satisfied ourselves with the fixation of liability on the ground of negligence on the part of the offending lorry, the finding of the Tribunal, therefore, does not warrant any interference. However, the Tribunal taking into account the admission of the rider of the two wheeler that he did not possess valid Driving Licence, fixed 10% towards



C.M.A.(MD).Nos.865 & 866 of 2022

contributory negligence on his part. We do not find any grounds to interfere with the well considered finding of the Tribunal, insofar as the fixation of negligence is concerned.

14. With regard to the quantum, we find force in the submission of the learned counsel for the appellant / Insurance Company, though the Tribunal has relied on the report of the Medical Board, regarding the disability of the claimants in both the cases, the Tribunal erred in awarding Rs.2,00,000/- towards pain and sufferings and Rs.2,00,000/- towards loss of amenities. Insofar as the fixation of notional income, the Tribunal has followed the ratio laid down by this Court in *Andal and others V. Avinav Kannan and another* reported in *2019-1-TNMAC-54* as well as the judgment of the Hon'ble Supreme Court in *Syed Sadiq V. United India Insurance Co. Ltd* reported in *2014-1-TNMAC-459*, where the Hon'ble Supreme Court taking into account cost of inflation index for the year 2014-2015, fixed the notional income of a vegetable vendor for the accident occurred in the year 2007-2008 at Rs.12,093/- per month. The Tribunal has rightly taken Rs.10,000/- alone towards notional income of the claimants in both the cases, which we do not find to be excessive or arbitrary. Considering the age of the deceased, the Tribunal has also



C.M.A.(MD).Nos.865 & 866 of 2022

awarded 25% and 10% respectively towards future prospects and the same is just and proper and we do not propose to interfere with the same. Therefore, we confirm the fixation of notional income and future prospects.

15. The Tribunal has adopted the right multiplier, considering the age and disability caused to both the claimants and we do not propose to interfere with the same also. However, the Tribunal has awarded Rs.2,00,000/- towards pain and suffering, which is highly excessive. Considering the fact that the claimants had to be hospitalized for a long period and the fact that both of them had also lost their left leg above knee level, by way of amputation, we fix the compensation towards pain and sufferings at Rs.1,00,000/- to the each of the claimants. Insofar as the loss of amenities, the Tribunal has awarded Rs.1,00,000/- and Rs.2,00,000/- respectively, which is also highly excessive. Considering the facts and circumstances of the case, we fix the loss of amenities at Rs.50,000/- to each of the claimant. Insofar as the other head of compensation, we do not find any of the amounts awarded by the Tribunal to be excessive or arbitrary and therefore, the same are confirmed. In view of the above discussion, the compensation is reworked in the manner hereunder:



In CMA(MD)No.865 of 2022

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Head	Awarded by the Tribunal	Awarded by this Court	Enhanced/ reduced/ confirmed
1. Loss of income	Rs. 21,00,000/-	Rs. 21,00,000/-	confirmed
2.Pain and sufferings	Rs. 2,00,000/-	Rs. 1,00,000/-	reduced
3.Loss of amenities	Rs. 1,00,000/-	Rs. 50,000/-	reduced
4. Medical expenses	Rs. 2,67,071/-	Rs. 2,67,071/-	confirmed
5.Transport expenses	Rs. 5,000/-	Rs. 5,000/-	confirmed
6.Extra nourishment	Rs. 25,000/-	Rs. 25,000/-	confirmed
7. Attender charges	Rs. 10,000/-	Rs. 10,000/-	confirmed
Compensation	Rs. 27,07,071/-	Rs. 25,57,071/-	Reduced
10% towards Contributory negligence	Rs. 2,70,707/-	Rs.2,55,707/-	
Total compensation	Rs. 24,36,364/-	Rs.23,01,364/-	Reduced

In CMA(MD)No.866 of 2022

Head	Awarded by the Tribunal	Awarded by this Court	Enhanced/ reduced/ confirmed
1. Loss of income	Rs. 11,88,000/-	Rs. 11,88,000/-	confirmed
2.Pain and sufferings	Rs. 2,00,000/-	Rs. 1,00,000/-	reduced
3.Loss of amenities	Rs. 2,00,000/-	Rs. 50,000/-	reduced
4. Medical expenses	Rs. 3,31,205/-	Rs. 3,31,205/-	confirmed
5.Transport expenses	Rs. 5,000/-	Rs. 5,000/-	confirmed
6.Extra nourishment	Rs. 25,000/-	Rs. 25,000/-	confirmed
7. Attender charges	Rs. 10,000/-	Rs. 10,000/-	confirmed
8.Damage to vehicle	Rs. 5,000/-	Rs. 5,000/-	confirmed
Total Compensation	Rs. 19,64,205/-	Rs. 17,14,205/-	reduced



C.M.A.(MD).Nos.865 & 866 of 2022

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costs, less the amount if any already withdrawn by him, after filing appropriate application before the Tribunal. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

(T.K.R.J.) & (P.B.B.J)
20.12.2023

Internet : Yes

Index: Yes/No

Neutral Citation: Yes/No

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To

1.The Motor Accident Claims Tribunal -

IV Additional Sub Judge, Madurai.

2.The Section Officer,

VR Section, Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD).Nos.865 & 866 of 2022



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C.M.A.(MD).Nos.865 & 866 of 2022

RMT.TEEKAA RAMAN, J.,
and
P.B.BALAJI,J

Ls

judgment in
C.M.A.(MD).Nos.865 & 866 of 2022
and
C.M.P.(MD)Nos.3729& 2730 of 2022

20.12.2023