



C.M.A(MD)Nos.365 and 366 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

RESERVED ON : 01.02.2023

PRONOUNCED ON : 23.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A(MD)Nos.365 and 366 of 2022

and

C.M.P(MD)Nos.3297, 3298, 11750, 3300, 3301 and 11752 of 2022

C.M.A(MD)No.365 of 2022

The Branch Manager,
United India Insurance Company Limited,
Having its office at No.30,
K.A.R.Valagam, Railway Station Road,
Dindigul. ... Appellant/2nd Respondent

Vs

1.Mariyammal ...1st Respondent/Petitioner

2.Muthiah ...2nd Respondent/1st Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act to set aside the fair and decreetal order passed by the learned Motor Accident Claims Tribunal/Principal District Court, Dindigul in M.C.O.P.No.363 of 2018, dated 02.01.2020.

For Appellant : M/s.P.Ajitha
For Mr.N.Dilip Kumar
For R1 : Mr.S.Pugalendhi
For R2 : No Appearance



C.M.A(MD)Nos.365 and 366 of 2022

C.M.A(MD)No.366 of 2022

The Branch Manager,
United India Insurance Company Limited,
Having its office at No.30,
K.A.R.Valagam, Railway Station Road,
Dindigul.

... Appellant/2nd Respondent

Vs

1.Maruthamuthu (Died)

2.Saroja

3.Muthiah

4.Selvi

5.Dhanalakshmi

5.Loganathan

7.Dinesh

8.Revathi

... Respondents

*(R4 to R8 are brought on record as LRS
of the deceased 1st respondent vide Court
order dated 06.01.2023 made in
C.M.P(MD)No.12901 of 2022 in
C.M.A(MD)No.366 of 2022)*

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act to set aside the fair and decreetal order passed by the learned Motor Accident Claims Tribunal/Principal District Court, Dindigul in M.C.O.P.No.367 of 2018, dated 02.01.2020.

For Appellant : M/s.P.Ajitha

For Mr.N.Dilip Kumar

For R2, R4 & R8 : Mr.S.Pugalendhi

For R1 : Died

For R3 : No Appearance



C.M.A(MD)Nos.365 and 366 of 2022

COMMON JUDGMENT

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The above appeals are filed against common judgment and decree of the Tribunal, dated 02.01.2020 in M.C.O.P.Nos.363 and 367 of 2018. Since common issues arise in the appeal which arises out of the common order, the appeals are disposed of by this common order.

2. The facts are that the deceaseds travelled in Pulsor motor cycle bearing Registration No.TN-57-AQ-7830 as a pillion rider with one Saravanan on 28.09.2017 at 06.00 p.m. While so, at Jammen Athoor of Kombur road, a tipper lorry bearing Registration No.TN-47-U-7576 belonging to the first respondent came in the opposite direction in a rash and negligent manner, dashed against the motor cycle, due to the impact, the deceased's sustained severe head injury and died on the spot. The mother of the deceased, Deepak in M.C.O.P.No.363 of 2018 filed a claim petition claiming compensation of Rs.20,00,000/-. According to the claimant, the deceased was aged 21 years at the time of the accident, worked as an agricultural coolie and was earning a sum of Rs.15,000/- per month. The parents of the deceased Marimuthu, the claimants in M.C.O.P.No.367 of 2018 filed the claim petition claiming Rs.20,00,000/- as compensation. According to the claimants, the deceased Marimuthu was earning Rs.15,000/- per month



C.M.A(MD)Nos.365 and 366 of 2022

and aged 21 years at the time of the accident.

3. The first respondent, the owner of the lorry filed counter in both the petitions stating that the accident occurred only due to the rash and negligent driving of the two wheeler rider and that his driver had driven the vehicle slowly and carefully by following road traffic Rules. Hence, according to the 1st respondent the accident occurred only due to the rash and negligent driving of the two wheeler rider.

4. The second respondent insurance company filed a counter generally denying all the averments made in the claim petition and further specifically stated that as three persons rode in the motor cycle at the time of the accident, there was violation of the policy conditions and hence it was not liable to pay the compensation amount.

5. The claimant in M.C.O.P.No.363 of 2018 examined himself as P.W.1 and the claimant in M.C.O.P.No.367 of 2017 examined himself as P.W.2 and eye witness Manikandan was examined as P.W.3 on the side of the claimants and Exhibit P.1 to P.8 were marked. On the side of the respondents, no evidence either oral or documentary was filed.



C.M.A(MD)Nos.365 and 366 of 2022

6. The Tribunal on an assessment of the entire evidence on record found that the Driver of the lorry was negligent and hence mulcted the liability on the second respondent. The Tribunal awarded a sum of Rs.15,41,200/- along with 7.5% interest in M.C.O.P.No.363 of 2018 and awarded a sum of Rs.11,88,400/- along with 7.5% interest in M.C.O.P.No.367 of 2018.

7. Aggrieved by the common judgment and decree of the Tribunal, the insurance company has filed the above appeal challenging the award of the Tribunal on the ground of negligence and quantum.

8. The learned counsel for the appellant submitted that as the deceased's were riding triples in the motor cycle, the deceased contributed to the accident and therefore, the Tribunal ought to have made appropriate deductions towards the contributory negligence of the deceased. The learned counsel further submitted that the Tribunal in M.C.O.P.No.363 of 2018 erred in deducting only 1/3 towards the personal expenses of the deceased who admittedly died as a Bachelor. The learned counsel further submitted that the Tribunal having awarded Rs.40,000/- towards loss of consortium in both the cases erred in awarding a further sum of Rs.50,000/- towards loss of love and affection. Therefore, the learned counsel submitted that the quantum of



C.M.A(MD)Nos.365 and 366 of 2022

compensation awarded by the Tribunal had to be modified.

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9. The learned counsel for the respondents on the other hand submitted that merely because three persons travelled in the motor cycle contributory negligence cannot be automatically inferred in the absence of any evidence to establish that because of the triple riding the vehicle could not be controlled and the same resulted in the accident. The learned counsel further submitted that the amount of compensation awarded by the Tribunal under the facts and circumstances of the case was reasonable and the same deserved to be confirmed.

10. I have heard both the learned counsels and have perused the entire materials on record.

11. The undisputed facts are that the accident occurred on 28.09.2017 at 06.00 p.m, when the two wheeler in which the deceaseds were riding pillion dashed against the tipper lorry which came in the opposite direction. According to the claimants, it was the lorry driver, who was rash and negligent and in support of the plea they examined eye witness P.W.3 and



C.M.A(MD)Nos.365 and 366 of 2022

marked FIR exhibit P.1. The appellant on the other side did not file any evidence either oral or documentary to substantiate its plea of negligence. It is pertinent to note that the insurance company had not raised the issue of contributory negligence. The only plea raised by the appellant was that the negligence was that of the two wheeler rider as he was triple riding the motor cycle at the time of the accident. In the absence of any evidence to show that because of triple riding the accident occurred, I am of the view that the finding of the Tribunal on the issue of negligence cannot be interfered.

12. On the issue of quantum in C.M.A(MD)No.365 of 2022 it is seen that the deceased was aged about 21 years at the time of the accident and was a bachelor. Hence, the Tribunal ought to have deducted 1/2 towards personal expenses of the deceased whereas the Tribunal deducted 1/3. If 50% of the amount is deducted towards the deceased's own expenses then the amount towards loss of income comes to Rs.10,48,400/-. It is further seen that the Tribunal has awarded Rs.50,000/- towards loss of love and affection, which is incorrect in the light of the Judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Vs Pranay Sethi***. The Tribunal awarded Rs.40,000/- towards loss of consortium and hence the tribunal ought not to have awarded further sum of Rs.50,000/- towards loss of love and



C.M.A(MD)Nos.365 and 366 of 2022

affection in both M.C.O.Ps, I am therefore of the view that the award of the Tribunal needs to be modified on the said ground also. Hence the award of the Tribunal is modified is as follows:

In C.M.A(MD)No.365 of 2022

Particulars	Tribunal	Court
Loss of dependency	Rs.14,11,200/-	Rs.10,58,400/-
Loss of Estate	Rs.15,000/-	Rs.15,000/-
Loss of love and affection for petitioner	Rs.50,000/-	-
Loss of consortium	Rs.40,000/-	Rs.40,000/-
Funeral expense	Rs.15,000/-	Rs.15,000/-
Transport expenses	Rs.10,000/-	Rs.10,000/-
Total	Rs.15,41,200/-	Rs.11,38,400/-

In C.M.A(MD)No.366 of 2022

Particulars	Tribunal	Court
Loss of dependency	Rs.10,58,400/-	Rs.10,58,400/-
Loss of Estate	Rs.15,000/-	Rs.15,000/-
Loss of love and affection for petitioner	Rs.50,000/-	-
Loss of consortium	Rs.40,000/-	Rs.40,000/-
Funeral expense	Rs.15,000/-	Rs.15,000/-
Transport expenses	Rs.10,000/-	Rs.10,000/-
Total	Rs.11,88,400/-	Rs.11,38,400/-



C.M.A(MD)Nos.365 and 366 of 2022

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13. For all the said reasons, the appeal is partly allowed. The Insurance company is directed to deposit the entire amount within a period of eight months from the date of receipt of copy of the order, if not already deposited. On such deposit being made, the claimants are entitled to withdraw the same. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

23.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
sn/ah

To

- 1.The Motor Accident Claims Tribunal/
Principal District Court, Dindigul.
- 2.The Section Officer, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



C.M.A(MD)Nos.365 and 366 of 2022

N.MALA, J

sn/ah

C.M.A(MD)Nos.365 and 366 of 2022

23.03.2023



C.M.A(MD)Nos.365 and 366 of 2022

CMA.(MD).No.365 and 366 of 2022
and

C.M.P.(MD).Nos.3297, 3298, 11750, 3300, 3301, 11752 and 12901 of 2022

N.MALA, J.,

This matter came up for hearing today under the caption "For Being Mentioned" at the instance of the learned counsel appearing on behalf of the respondents.

2. The learned counsel appearing on behalf of the respondents submits that in the Judgment passed by this Court on 23.03.2023 in C.M.A(MD).Nos. 365 and 366 of 2022, in paragraph No.13 the period for making deposit is typed as eight months instead of eight weeks.

3. Accordingly, the paragraph No.13 of the Judgment dated 23.03.2023, in the above Civil Miscellaneous Appeal shall be modified as follows:

"13. For all the said reasons, the appeal is partly allowed. The Insurance company is directed to deposit the entire amount within a period of **eight (8) weeks** from the date of receipt of copy of the order, if not already deposited. On such deposit being made, the claimants are entitled to withdraw the same. There shall be no order as to costs. Consequently, connected miscellaneous



C.M.A(MD)Nos.365 and 366 of 2022

petitions are closed."

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4. The learned counsel appearing for the appellant has no objection to the above said correction.

5. Registry is directed to issue the fresh order copy after incorporating the necessary corrections in the above said Judgment dated 23.03.2023.

12.06.2023

dsn/sn

Index: Yes/No

Speaking Order: Yes/No

Neutral citation: Yes/No

CMA.(MD).No.365 and 366 of 2022



C.M.A(MD)Nos.365 and 366 of 2022

CMA.(MD).Nos.365 and 366 of 2022
and

C.M.P.(MD).Nos.3297, 3298, 11750, 3300, 3301, 11752 of 2022

N.MALA, J.,

This matter came up for hearing today under the caption "For Being Mentioned" at the instance of the learned counsel appearing on behalf of the respondents.

2. It is stated by the learned counsel for the respondents/claimants that this Court passed the Judgment dated 23.03.2023 in C.M.A.(MD).Nos.365 and 366 of 2022, in which paragraph number 13, the rate of interest is not mentioned and he prayed to modify the same.

3. The learned counsel appearing for the appellant/Insurance Company has no objection to the above said correction.

4. Accordingly, paragraph No.13 of the Judgment dated 23.03.2023, in the above Civil Miscellaneous Appeal shall be modified as follows:

"13. For all the said reasons, the appeal is partly allowed. The Insurance company is directed to deposit the entire amount along with 7.5% interest



C.M.A(MD)Nos.365 and 366 of 2022

from the date of claim petition till the date of deposit, less, if any already deposited within a period of eight (8) weeks from the date of receipt of copy of the order. On such deposit being made, the claimants are entitled to withdraw the same. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed."

5. Registry is directed to issue fresh order copy to the parties forthwith.

In other aspects, the Judgment dated 23.03.2023 shall remain unaltered.

09.08.2023

dsn/sn

Index: Yes/No

Speaking Order: Yes/No

Neutral citation: Yes/No

CMA.(MD).No.365 and 366 of 2022