



C.M.A.(MD)Nos.990 of 2021 etc., batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)Nos.990 to 992 of 2021 and 1090 to 1092 of 2022
and
C.M.P.(MD)Nos.9287, 9289 and 9290 of 2021

C.M.A.(MD)No.990 of 2021:

United India Insurance Company Limited.,
Rep by its Divisional Manager,
No.19, Aandiyappa Kiramani Street,
Rayapuram, Chennai-600 013.

...Appellant

Vs.

1.Nafeel Ahamed

2.Tamil Nadu State Express Transport Corporation,
Through its Managing Director,
Pallavan Road, Chennai-600 002.

3.M/s.B.L.Transports Private Limited,
Through its Managing Director,
No.61/69, Athipattu Village,
Ponneri Taluk,
Thiruvalluvar District-601 204.

...Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 10.03.2021

1/20



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passed in M.C.O.P.No.32 of 2016 on the file of the Motor Accidents Claims Tribunal and Principal District Court, Tirunelveli.

For Appellant : Mr.I.Suthakaran

COMMON JUDGMENT

Against the judgment and decree made in M.C.O.P.Nos.32, 33 and 1490 of 2016 on the file of the Motor Accident Claims Tribunal and Principal District Court, Tirunelveli, the Insurance Company had preferred appeals in C.M.A.(MD) Nos.990 to 992 of 2021 on the ground that 50% negligence fixed on the part of the Insurance Company is not proper and the entire negligence has to be fixed only on the part of the driver of the offending vehicle and the claimants have preferred appeals in C.M.A.(MD)Nos.1090 to 1092 of 2022 seeking enhancement of compensation. Since all the appeals are arising out of a common judgment, 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.



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

On 20.10.2015 at about 9.20 p.m., one Vinod and the injured claimants in M.C.O.P.Nos.32 and 33 of 2016 along with others, were travelled in the bus belonging to Tamil Nadu State Express Transport Corporation / first respondent in all the claim petitions bearing Registration No.TN-01-N-4910 from Chennai to Tirunelveli. When the said bus was nearing to SRM Medical College Hospital, the bus hit the lorry bearing registration No.TN-18-6939, which was loaded with iron rods and parked in the highway without any reflector and signal. As a result, the claimants in M.C.O.P.Nos.32 and 33 have sustained multiple injuries and one Vinod succumbed to injuries. Hence, the injured claimants and the legal heirs of the deceased Vinod have filed claim petitions before the Tribunal.

4.The Transport Corporation took a stand before the Tribunal that the entire accident was due to the negligence on the part of the driver of the lorry, who had parked the lorry on the middle of the road without any reflector, particularly in the area, where no lighting is available.



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5.The Insurance Company of the lorry took a stand that the driver of the offending bus dashed against the lorry, which was parked in the extreme left side of the road abiding traffic rules. Further, the driver of the lorry did not have any valid license at the time of accident.

5.Before the Tribunal, on the side of the claimants, five witnesses were examined as P.W.1 to P.W.5 and Ex.P1 to Ex.P54 were marked. On the side of the respondents, R.W.1 to R.W3 were examined and Ex.R1 to Ex.R4 were marked.

6.The Tribunal tried all the claim petitions jointly and disposed of the same by way of a common judgment. The Tribunal after considering the evidence of P.W.1 and P.W.2 had found that both the drivers, namely, the driver of the offending vehicle and the driver of the lorry were negligent, which resulted in the accident and hence, the Tribunal fixed the negligence 50% on both the drivers and awarded the compensation as follows:

M.C.O.P.No.32 of 2016:

S.No.	Head	Amount
1	Partial disability	Rs.12,96,000/-
2.	Pain and sufferings	Rs. 50,000/-
3.	Medical expenses	Rs. 8,16,800/-



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4.	Transportation charges	Rs. 50,000/-
5.	Attendant charges	Rs. 25,000/-
6.	Nutritious Food and loss of belongings	Rs. 25,000/-
	Total	Rs.22,62,000/-

M.C.O.P.No.33 of 2016:

S.No.	Head	Amount
1	Partial disability	Rs.11,34,000/-
2.	Pain and sufferings	Rs. 40,000/-
3.	Medical expenses	Rs. 3,92,800/-
4.	Transportation charges	Rs. 40,000/-
5.	Attendant charges	Rs. 25,000/-
6.	Nutritious Food and loss of belongings	Rs. 25,000/-
	Total	Rs.16,56,800/-

In M.C.O.No.1490 of 2016:

S.No.	Head	Amount
1	Loss of Income	Rs.13,26,000/-
2.	Funeral Expenses	Rs. 15,000/-
3.	Loss of estate	Rs. 15,000/-
4.	Loss of love and affection	Rs. 20,000/-
5.	Transportation charges	Rs. 10,000/-
	Total	Rs.13,86,000/-



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Challenging the same, the present civil miscellaneous appeals have been filed by the claimants as well as the Insurance Company.

7.The learned counsel for the appellant/Insurance Company in C.M.A.(MD)Nos.990 to 992 of 2021 contended that the driver of the bus drove the bus in a heavy speed negligently and dashed the lorry, which was parked in the left side of the road. Even though the lorry was parked in the main road, if the driver of the bus had driven the bus in a reasonable speed and in a cautious manner, he could have averted the accident. The fact that the bus hit the halted lorry clearly proves the negligence on the part of the driver of the Transport Corporation. Therefore, it is the contention of the learned counsel for the Insurance company that 50% negligence fixed on the Insurance Company is high and the same has to be reduced. Further, he contended that the Tribunal had adopted multiplier method for the injured claimants. Hence, he prays for allowing the appeal.

8.The learned counsel for the appellant/claimants in C.M.A.(MD)No. 1090 to 1092 of 2022 contended that the injured claimants have suffered serious injuries. They had been treated in various hospitals. The injured claimants are the Engineering students at the relevant point of time and their future is affected by



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the accident. Further, the deceased was working as a mechanic at the time of accident. But, the Tribunal had fixed the notional income of the injured claimants only at the rate of Rs.15,000/- and the deceased at the rate of Rs.10,000/-, which are very low and the same has to be enhanced. Further, in the case of the deceased, the Tribunal had granted only a sum of Rs.20,000/- under the head of loss of love and affection and a sum of Rs.15,000/- under the head of loss of estate. The same are very meager and have to be enhanced.

9.The learned counsel appearing for the Transport Corporation would submit that the lorry was parked in the highway without any signal or reflector in the backside of the lorry. Even the bus was driven in a reasonable speed, it is not possible to control the bus, when there is no indicator or reflector to show that the lorry is parked on the road. If the reflector in the lorry is on, the accident would have been averted. Therefore, parking a lorry in the middle of road with heavy load itself is a clear negligence on the part of the driver of the lorry. The Tribunal had rightly fixed the negligence on both the drivers of the vehicle and the said finding does not warrant any interference.



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10. In view of the above submissions, now the points arise for consideration in these appeals are:

1. Whether the Tribunal is right in fixing the negligence on both the drivers of the vehicle?

2. Whether the Tribunal is right in fixing the monthly income of the injured claimants at the rate of Rs.15,000/- and adopting multiplier method in awarding the compensation?

3. Whether the Tribunal is right in fixing the income of the deceased at the rate of Rs.10,000/- per month?

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

12. The contention of the Insurance Company that 50% negligence cannot be fixed on the part of the driver of the lorry, which was parked on the highway, cannot be countenanced for the simple reason that the evidence on record makes it very clear that the lorry had been loaded with iron rods and was



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parked in a highway without any signal or reflector. P.W.1 and P.W.2, who are the eyewitnesses of the occurrence, had also spoken about this factual aspect. Highway is meant for free flowing of the vehicles. It is a normal conduct of a person to drive the vehicle in a highway in a reasonable speed, particularly, when the vehicles are driven during night hours. The visibility during night hours will be only up to the level of the head light, beyond that it will be very difficult for the driver of the vehicle to see anything. Such being the position, the heavy vehicle drivers driving the vehicle in a highway should be very careful in handling the vehicles.

13.In all the highways, specific areas have been earmarked as parking place. If any driver of the transport vehicle, particularly lorries, wants to take rest, he can park the vehicle in the place earmarked for parking and then take rest. Such being the position, parking of the lorry loaded with iron roads casually in the highway, that too without any signal or reflector is nothing but a clear negligence on the part of the lorry driver. It is not the case of the lorry driver that the lorry broke down and got repaired and suddenly stopped in the high way. No such evidence is also available on record. The drivers of the lorry, while parking a loaded vehicle in a highway, where the other vehicles are normally operated in a



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reasonable speed, ought to have taken some care atleast to put reflectors or signals, which had not been done so in the present case.

14. Similarly, the driver of the Transport Corporation also ought to have maintained some reasonable speed. If the driver of the Transport Corporation drove the bus in a safe manner, he could have avoided the accident on seeing the parked vehicle within the visibility of the headlight. However, the same has not occurred in this case. That itself clearly shows that the driver of the bus also drove the vehicle in a high speed and in a casual manner and therefore, the negligence fixed on the side of the Transport Corporation at the ratio of 50% cannot be found fault. Accordingly, the contention of the Insurance Company in this regard is rejected and the finding of the Tribunal fixing the negligence on the part of both drivers is well reasonable and the same does not require any interference.

15. The learned counsel appearing for the claimants contended that the injured claimants in C.M.A.(MD)No.1090 and 1091 of 2022 are the Engineering students. They have been in the hospital for more than two years. Their future had also been affected. Perusal of the award passed by the Tribunal makes it clear that the Tribunal had granted all the medical expenses spent by the injured



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claimants. Further, taking note of the prolonged treatment taken in various hospitals, the Tribunal had adopted multiplier method and fixed the notional income of the injured claimants at the rate of Rs.15,000/-. The disability certificate filed by them clearly shows that the injured claimants only suffered partial permanent disability at the ratio of 40% and 35%, respectively and no functional disability is established. Further, there is no evidence on record to show that such partial permanent disability had affected their education and other works. Considering the nature of injuries sustained by the injured claimants, the Tribunal had adopted the multiplier method instead of disability percentage.

16.In such view of the matter, this Court is of the view that the approach adopted by the Tribunal is well reasonable and the income fixed by the Tribunal does not require any interference. However, the Tribunal had awarded only a sum of Rs.50,000/- in M.C.O.P.No.32 of 2016 and Rs.40,000/- in M.C.O.P.No.33 of 2016 towards pain and sufferings. This Court is of the view that considering the nature of the treatment underwent by the injured claimants in various hospitals, the amount awarded under the head 'pain and sufferings' has to be increased. Accordingly, a sum of Rs.2,00,000/- (Rupees Two Lakhs only) is awarded under the head of pain and sufferings in M.C.O.P.No.32 of 2016 and a sum of Rs.



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1,00,000/- (Rupees one lakh only) is awarded in M.C.O.P.No.33 of 2016. Except this, the compensation awarded by the Tribunal under the other heads in both the claim petitions remains unaltered. In the result, the claimants in M.C.O.P.Nos.32 and 33 of 2016 are entitled to the compensation as follows:

M.C.O.P.No.32 of 2016:

S.No.	Head	Amount
1	Partial disability	Rs.12,96,000/-
2.	Pain and sufferings	Rs. 2,00,000/-
3.	Medical expenses	Rs. 8,16,000/-
4.	Transportation charges	Rs. 50,000/-
5.	Attendant charges	Rs. 25,000/-
6.	Nutritious Food and loss of belongings	Rs. 25,000/-
	Total	Rs.24,12,000/-
	After deduction of 50% (i.e., Rs.12,06,000/-) of contributory negligence	Rs.12,06,000/-



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M.C.O.P.No.33 of 2016:

S.No.	Head	Amount
1	Partial disability	Rs.11,34,000/-
2.	Pain and sufferings	Rs. 1,00,000/-
3.	Medical expenses	Rs. 3,92,800/-
4.	Transportation charges	Rs. 40,000/-
5.	Attendant charges	Rs. 25,000/-
6.	Nutritious Food and loss of belongings	Rs. 25,000/-
	Total	Rs.17,16,800/-
	After deduction of 50% (i.e., Rs.8,58,400/-) of contributory negligence	Rs.8,58,400/-

17.As far as the appeal in respect of the fatal case is concerned, in the claim petition itself it has been pleaded that the deceased was earning a sum of Rs.10,000/- per month by working as a mechanic. But, no evidence was produced by the claimants to substantiate the same. The Tribunal had in fact awarded the amount claimed by the claimants considering the nature of work and the educational qualifications of the deceased. Hence, this Court is of the view that the income fixed by the Tribunal is well reasonable and the same does not require



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any interference. However, the Tribunal had only awarded a sum of Rs.20,000/- under the head 'loss of love and affection', in the considered view of this Court, the amount awarded under loss of love and affection is meager and the same has to be increased. Hence, this Court awards a further sum of Rs.60,000/- (Rupees Sixty Thousand only) towards loss of love and affection. The compensation awarded by the Tribunal under other heads are hereby confirmed. In the result, the claimant in M.C.O.P.No.1490 of 2016 are entitled to the compensation as stated below:

S.No.	Head	Amount
1	Loss of Income	Rs.13,26,000/-
2.	Funeral Expenses	Rs. 15,000/-
3.	Loss of estate	Rs. 15,000/-
4.	Loss of love and affection	Rs. 80,000/-
5.	Transportation charges	Rs. 10,000/-
	Total	Rs.14,46,000/-
	After deduction of 50% (i.e., Rs. 7,23,000/-) of contributory negligence	Rs.7,23,000/-

18.Accordingly, the Civil Miscellaneous Appeals in C.M.A.(MD)Nos. 990 to 992 of 2021 are dismissed and C.M.A.(MD)Nos.1090 and 1092 of 2022 are



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allowed and the compensations awarded by the Tribunal in all the claim petitions are enhanced as stated above.

19.The respondents 1 and 3 in all the claim petitions are directed to deposit the enhanced compensation amount i.e., Rs.12,06,000/- (Rupees Twelve Lakhs and Six Thousand only) in C.M.A.(MD)No.1090 of 2022, a sum of Rs.8,58,400/- (Rupees Eight Lakhs Fifty Eight Thousand and Four Hundred only) in C.M.A.(MD)No.1091 of 2022 and a sum of Rs.7,23,000/- (Rupees Seven Lakhs and Twenty Three Thousand only) in C.M.A.(MD)No.1092 of 2022, as modified by this Court, with interests and costs, to the credit of M.C.O.P.Nos.32, 33 and 1490 of 2016, respectively on the file of the Motor Accident Claims Tribunal /Principal District Court within a period of six weeks from the date of receipt of a copy of this judgment, less the amount, if any already deposited. On such deposit, the claimants in C.M.A.(MD)Nos.1090 and 1091 of 2022 are permitted to withdraw their respective amount, less the amount if any already withdrawn, by making necessary application before the Tribunal and the first claimant in C.M.A.(MD)No.1092 of 2021 is permitted to withdraw a sum of Rs. 8,46,00,000/- (Rupees Eight Lakhs and Forty Six Thousand only) and the second claimant is permitted to withdraw a sum of Rs.6,00,000/- (Rupees Six Lakhs



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only), less the amount if any already withdrawn, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

08.06.2023

NCC : Yes/No
Index : Yes/No
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To

1.The Motor Accident Claims Tribunal /
Principal District Court, Tirunelveli.

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



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N.SATHISH KUMAR, J.

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C.M.A.(MD)Nos.990 to 992 of 2021
and 1090 to 1092 of 2022

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**C.M.A.(MD) Nos.990 to 992 of 2021 &
1090 to 1092 of 2022**

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N. SATHISH KUMAR, J.

Today, the matter has been listed under the caption “for being mentioned” at the instance of the learned counsel for the appellants in C.M.A.(MD) Nos.1090 to 1092 of 2022.

2.Heard Mr.T.Selvakumaran, learned counsel for the appellants in C.M.A.(MD) Nos.1090 to 1092 of 2022, through video conferencing.

3.Having regard to the submissions made by the learned counsel, the following corrections shall be effected in the common judgment passed in C.M.A.(MD) Nos.990 to 992 of 2021 & 1090 to 1092 of 2022, dated 08.06.2023.

- i. At Para No.16, in the Tabular Column under the heading “M.C.O.P.No.32 of 2016”, the last row “After deduction of 50% (i.e., Rs.12,06,000/-) of contributory negligence” and its corresponding value “Rs.12,06,000/-” shall be deleted.
- ii. At Para No.16, in the Tabular Column under the heading “M.C.O.P.No.33 of 2016”, the last row “After deduction of 50% (i.e., Rs.8,58,400/-) of



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contributory negligence” and its corresponding value “Rs.8,58,400/-” shall be deleted.

iii. At Para No.17, in the Tabular Column at the end of the paragraph relating to M.C.O.P.No.1409 of 2016, the last row “After deduction of 50% (i.e., Rs. 7,23,000/-) of contributory negligence” and its corresponding value “Rs. 7,23,000/-” shall be deleted.

iv. The following paragraph shall be added immediately after Para No.17.

“17.1. All the above said amounts arrived at in respect of M.C.O.P.Nos.32, 33 and 1490 of 2016 shall be paid equally by the Insurance Company and the Transport Corporation.”

4.Registry is directed to carry out the aforesaid corrections and issue fresh copy of the judgment to the parties.

16.08.2023

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N. SATHISH KUMAR, J.

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**C.M.A.(MD) Nos.990 to 992 of 2021 &
1090 to 1092 of 2022**

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