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Civil Miscellaneous Appeal Nos.1193 & 1820 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal Nos.1193 & 1820 of 2024

Vaitheeswaran
S/o.Ponnusamy ... Appellant in C.M.A.No.1193/24

Minor Gobinath
S/o.Suntharesan
minor represented by his guardian/
next friend father Suntharesan ... Appellant in C.M.A.No.1820/24
Vs.

1.M.Samuvel
S/o.Muthu

2.National Insurance Company Limited,
represented by its Manager, 1st Floor,
Karthikeya Complex, 403, B10,
Mettur Main Road, Bhavani,
Erode District. ... Respondents in both appeals

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.09.2022 made in M.C.O.P.No.199 of 2019 on the file of Motor Accident Claims Tribunal, IV Additional District Judge, Erode at Bhavani and the judgment and decree dated 19.10.2022 made in M.C.O.P.No.200 of 2019 on the file of Motor Accident Claims Tribunal, IV Additional District Judge, Erode at Bhavani.



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For Appellants : Mr.S.P.Yuaraj
[in both appeals]
For Respondents : Mr.S.Senthilkumar [R2]
[in both appeals]

COMMON JUDGMENT

Both these appeals arise out of a single accident and hence, they are taken up together, heard and disposed of through this common judgment,

2. The claimants, not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, IV Additional District Judge, Erode at Bhavani, in M.C.O.P.No.199 of 2019, dated 29.09.2022 and M.C.O.P.No.200 of 2019, dated 1910.2022, have filed these appeals.

3. The case of the claimants is that claimant in C.M.A.No.1193 of 2024 was riding a two wheeler on 24.03.2019 and the claimant in C.M.A.No.1820 of 2024 was the pillion rider. The vehicle was going at Chithar to Kurichi road and at about 6.30 p.m., the offending vehicle, an auto, was coming in the opposite direction and it was driven in a rash and



negligent manner and it dashed the two wheeler as a result of which both the rider and the pillion rider fell down and sustained injuries.

4. Insofar as the claimant in C.M.A.No.1193 of 2024 is concerned, he sustained the following injuries viz., (i)pain and swelling in right thigh, X.ray right femur, fracture shaft of femur right (ii)pain and swelling in right foot, fracture neck of 5th metatarsal (iii)abrasion 2 x 1 cm right toe (iv)abrasion 1 x 0.5cm left knee (v)abrasion 2 x 1 cm right elbow (vi)abrasion 3 x 2 cm right hip.

5. Insofar as the claimant in C.M.A.No.1820 of 2024 is concerned, he sustained the following injuries viz., (i)pain and swelling in right thigh, X.ray right femur, fracture shaft of femur right (ii)pain and swelling in right foot, fracture neck of 5th metatarsal (iii)abrasion 2 x 1 cm right toe (iv)abrasion 1 x 0.5cm left knee (v)abrasion 2 x 1 cm right elbow (vi)abrasion 3 x 2 cm right hip.

6. The claimant in C.M.A.No.1193 of 2024 underwent treatment as an inpatient for nearly 12 days and the claimant in C.M.A.No.1820 of



2024 underwent treatment as an inpatient for nearly 16 days. The Medical Board assessed the disability at 16% for the claimant in C.M.A.No.1193 of 2024 and 10% for the claimant in C.M.A.No.1820 of 2024. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking compensation.

7. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle. However, after having rendered such a finding, the Tribunal found that there was no indication that the rider of the two wheeler in C.M.A.No.1193 of 2024 was possessing a valid driving license. Accordingly, attributed 35% contributory negligence. In view of the same, the Tribunal proceeded to fix the total compensation at Rs.2,10,230/- [M.C.O.P.No.199 of 2019] and Rs.2,71,870/- [M.C.O.P.No.200 of 2019] under various heads as follows:

M.C.O.P.No.199 of 2019:



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Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Pain and suffering	50,000/-
2.	Partial Permanent Disability	64,000/-
3.	Medical Expenses	66,230/-
4.	Partial loss of earnings	20,000/-
5.	Transport to hospital and extra nourishment	8,000/-
6.	Damage to clothing and articles	2,000/-
	Total	2,10,230/-

M.C.O.P.No.200 of 2019:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Pain and suffering	60,000/-
2.	Permanent Disability	50,000/-
3.	Medical Expenses	1,50,870/-
4.	Transport to Hospital	5,000/-
5.	Extra Nourishment	4,000/-
6.	Damage to clothing and articles	2,000/-
	Total	2,71,870/-

Out of the above compensation, 65% of the compensation to the tune of Rs.1,36,649/- and Rs.1,76,715/- respectively was directed to be paid along with interest at 7.5% p.a.

8. The appellants/claimants, not being satisfied with the quantum of compensation and also fixing 35% contributory negligence against the



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rider of the two wheeler, have filed these appeals.

9. Heard Mr.S.P.Yuaraj, learned counsel for appellants/claimants and Mr.S.Senthilkumar, learned counsel for second respondent insurance company.

10. This Court carefully considered the submissions made by learned counsel on either side and the materials available on record.

11. This Court also carefully went through the award passed by the Tribunal.

12. The first issue which is to be gone into is the contributory negligence that was attributed against the rider of the two wheeler. The rider of the two wheeler in C.M.A.No.1193 of 2024 was aged about 20 years and he was a student. The pillion rider was aged about 12 years and he was the relative of the rider of the two wheeler. The Tribunal, on appreciation of evidence, came to the categoric conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle. To arrive at such finding,



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the Tribunal had relied upon the evidence of PW-2 and Ex.P1 - First Information Report. Having rendered such a finding, the Tribunal has fixed 35% contributory negligence against the rider of the two wheeler only on the ground that the rider did not prove that he possessed a valid driving license. It is now too well settled that the mere fact that the driver of the vehicle did not possess a valid driving license by itself is not a ground to attribute contributory negligence unless not possessing the license has actually contributed towards negligence. In view of the same, the finding of the Tribunal attributing 35% contributory negligence against the rider of the two wheeler is hereby set aside.

13. The nature of injuries sustained by the claimants and the treatment underwent by them have already been taken note of by this Court. The compensation fixed under some of the heads requires enhancement.

14. Insofar as C.M.A.No.1193 of 2024 is concerned, this Court is inclined to award Rs.7,000/- per percentage of disability. Accordingly, the compensation payable under the head 'Partial Permanent Disability'



would be Rs.1,12,000/- [7000 * 16]. This Court finds that a sum of Rs.8,000/- is granted under the head 'transport to hospital and extra nourishment', the same can be modified as compensation under the head 'transport to hospital' and a sum of Rs.15,000/- is separately granted under the head 'extra nourishment'. This Court is inclined to grant a sum of Rs.15,000/- under the head 'attender charges'.

15. The compensation awarded under other heads is justified and the same does not require the interference of this Court.

16. In view of the same, the compensation awarded in M.C.O.P.No.199 of 2019 [C.M.A.No.1193 of 2024] is modified as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount awarded by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
1.	Pain and suffering	50,000/-	50,000/-
2.	Partial Permanent Disability	64,000/-	1,12,000/-
3.	Medical Expenses	66,230/-	66,230/-
4.	Partial loss of earnings	20,000/-	20,000/-
5.	Transport to hospital and	8,000/-	-



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<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount awarded by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
	extra nourishment		
6.	Damage to clothing and articles	2,000/-	2,000/-
7.	Transport to hospital	-	8,000/-
8.	Extra nourishment	-	15,000/-
9.	Attender charges	-	10,000/-
	Total	2,10,230/-	2,83,230/-

The compensation awarded by the Tribunal at Rs.2,10,230/- is enhanced to Rs.2,83,230/-.

17. Insofar as C.M.A.No.1820 of 2024 is concerned, this Court is inclined to award Rs.7,000/- per percentage of disability. Accordingly, the compensation payable under the head 'Permanent Disability' would be Rs.70,000/- [7000 * 10]. This Court is inclined to enhance the compensation under the heads 'transport to hospital' and 'extra nourishment' to a sum of Rs.10,000/- and 15,000/- respectively. This Court is inclined to grant a sum of Rs.15,000/- under the head 'attender charges'.



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18. The compensation awarded under other heads is justified and the same does not require the interference of this Court.

19. In view of the same, the compensation awarded in M.C.O.P.No.200 of 2019 [C.M.A.No.1820 of 2024] is modified as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount awarded by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
1.	Pain and suffering	60,000/-	60,000/-
2.	Permanent Disability	50,000/-	70,000/-
3.	Medical Expenses	1,50,870/-	1,50,870/-
4.	Transport to Hospital	5,000/-	10,000/-
5.	Extra Nourishment	4,000/-	15,000/-
6.	Damage to clothing and articles	2,000/-	2,000/-
7.	Attender charges	-	15,000/-
	Total	2,71,870/-	3,22,870/-

The compensation awarded by the Tribunal at Rs.2,71,870/- is enhanced to Rs.3,22,870/-.

20. The second respondent insurance company is directed to



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deposit the compensation awarded by this Court, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six (6) weeks from the date of receipt of this judgment. Insofar as the enhanced compensation is concerned, the appellant/claimant in C.M.A.No.1193 of 2024 will not be entitled for interest for the period of delay of 334 days as was ordered by this Court in C.M.P.No.6976 of 2024 in C.M.A.Sr.No.7987 of 2024 dated 25.04.2024 and the appellant/claimant in C.M.A.No.1820 of 2024 will not be entitled for interest for the period of delay of 313 days as was ordered by this Court in C.M.P.No.4044 of 2024 in C.M.A.Sr.No.8030 of 2024 dated 20.06.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellants. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, the Civil Miscellaneous Appeals are partly allowed.

No costs.

26.07.2024

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No



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N.ANAND VENKATESH, J.

gm

To

The Motor Accident Claims Tribunal,
IV Additional District Judge,
Erode at Bhavani.

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