IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

CMA.Nos.1704 to 1706 of 2021 and 224 to 226 of 2024
CMP.Nos.2286, 2288 and 2289 of 2023

1. Minor S.Moulikannan	Appellant-CMA.1704/2021 R1-CMA.226 of 2024
2. Minor M.Vimal	Appellant-CMA.1705/2021 R1-CMA.225 of 2024
3. Sumathi 4. Raja	Appellants-CMA.1706/2021 RR1&2-CMA.224 of 2024
Vs	
1. C.Prabakaran	R1-CMA.1704-1706/2021 R3-CMA.224/2024 R2-CMA.225-226/2024
2. The Manager, United India Insurance Company Limited Salem 636001	R2-CMA.1704-1706/2021 Appellant-CMA.224-226/2024

Prayer:- These Civil Miscellaneous Appeal have been filed, against the common judgement and decree, dated, 22.12.2020, made in MCOPs.No.147 of 2019, 365 of 2018, 23 of 2019, by the Sub Judge (MACT) Rasipuram.

For Appellants : Ms.D.Jeevitha-CMA.1704 to 1706 of 2021

For Respondents : Mrs.I.Malar-R2-CMA.1704 to 1706 of 2021

COMMON JUDGEMENT

1. These Civil Miscellaneous Appeal have been filed, by the claimants and the Insurance Company, against the common judgement and decree, dated,

22.12.2020, made in MCOPs.No.147 of 2019, 365 of 2018, 23 of 2019, by the Sub Judge (MACT) Rasipuram.

2. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the claim petitions, namely, claimant, claimants, 1st Respondent and the 2nd Respondent Insurance Company.

3. The above claim petitions have been filed by the injured claimants and the mother and father of the deceased minor Bathrinath, respectively, before the Tribunal, seeking a compensation of Rs.5,00,000/-, Rs.5,00,000/- and Rs.30,00,000/- respectively, on various heads, for the injuries sustained by the injured claimants and for the death of the deceased, who died in a motor road accident, which had happened on 18.11.2018. The 1st Respondent herein/owner of the offending lorry remained exparte. The claim petitions were resisted, on various grounds, by the 2nd Respondent/ Insurance Company, by filing separate counters. In all the claim petitions, a joint trial was conducted. On the side of the claimants, PW.1 to PW.7 were examined and Ex.P1 to Ex.P24 were marked. On the side of the 2nd Respondent Insurance Company, Ex.R1 was marked. Ex.X1 to X6 were marked.

4. Finding that the accident had occurred only due to the rash and negligent driving of the driver of the offending lorry, belonged to the 1st Respondent and insured with the 2nd Respondent Insurance Company, the Tribunal, by the impugned common judgement and decree, has awarded compensation amounts of Rs.3,70,782/- Rs.92,810 /- and Rs.19,33,633/-, on various heads, to the respective claimants, with interest at 7.5% p.a. from the date of

the claim petitions till the date of realization, first to be payable by the 2nd Respondent Insurance Company and then to be recovered from the 1st Respondent, owner of the offending lorry, as detailed below:-

(a) MCOP.No.147 of 2019:-

S.No	Category	Award Amount (Rs.)
1	Permanent Disability	155000
2	Pain and Suffering	25000
3	Attender Charges	10000
4	Transportation Expenses	5000
5	Extra Nourishment	10000
6	Damage to Clothes	5000
7	Medical Expenses	160782
	Total Compensation	**370782**

(b) MCOP.No.365 of 2018:-

S.No	Category	Award Amount (Rs.)
1	Permanent Disability	25000
2	Pain and Suffering	25000
3	Attender Charges	10000
4	Transportation Expenses	5000
5	Extra Nourishment	10000
6	Damage to Clothes	5000
7	Medical Expenses	12810
	Total Compensation	**92810**

(c) MCOP.No.23 of 2019:-

S.No	Category	Award Amount (Rs.)
1	Pecuniary Loss	1296000
2	Funeral Expenses	15000
3	Loss of Consortium	40000
4	Loss of Estate	15000
5	Medical Expenses	567633
	Total Compensation	**1933633**

Challenging the common impugned judgement and decree in all respects, namely, negligence, liability and quantum of compensation, the 2nd Respondent Insurance Company has filed their respective appeals. The claimants have filed their respective appeals, seeking for enhancement of impugned compensation amounts.

5. This Court heard the learned counsel for the claimants and the 2nd Respondent Insurance Company, considered their submissions and also perused the entire materials placed on record.
6. The claimants, in their respective appeals, have sought for enhancement of the compensation, on various grounds. The 2nd Respondent Insurance Company has disputed the entire impugned judgement and decree, in respect of negligence, liability and quantum of compensation.
7. In so far as the negligence aspect and fixation of liability issue in all the MCOPs, are concerned and in order to decide the said issues, the manner of the accident has to be necessarily narrated. According to the claimants, the accident had happened on 18.11.2018, when the injured claimant in MCOP.No.147 of 2018 was riding his two wheeler, bearing Reg.No.TN 28 AS 8542 along with the injured claimant in MCOP.No.365 of 2018 and the deceased in MCOP.No.23 of 2019, as pillion riders, from East to West on the Ooduvankurichi Kaiyamman Temple Pirivu Road, the lorry belonged to the 1st Respondent, bearing Reg.No.TN 36 E 9502 and insured with the 2nd Respondent Insurance Company, came from North to South driven by its driver in a rash and negligent manner and dashed against the said two wheeler.
8. According to the claimants, though at the time of the accident, the rider of the two wheeler was a minor and he did not possess a valid driving licence,

he was good in driving the two wheeler and the accident had happened only due to the rash and negligent driving of the driver of the lorry, coming in the opposite direction and hence, the Tribunal was right in fixing negligence on the part of the driver of the lorry and consequently fixing liability aspect on the part of the 2nd Respondent Insurance Company.

9. Per contra, it is the stand of the learned counsel for the 2nd Respondent Insurance Company that there were three persons travelled in the two wheeler, namely, one rider and two pillion riders, which is in violation of the relevant provisions of the Motor Vehicles Act and Rules and that due to travelling of three persons in the two wheeler, due to overload, the driver lost balance and control and suddenly crossed the road, as a result of which, he dashed against the lorry and hence, he alone was responsible for the accident. Further, at the time of the accident, the rider of the two wheeler was a minor and he did not possess a valid driving licence and the driver of the lorry also did not possess a valid driving licence and hence, the findings of the Tribunal in respect of negligence and liability aspects, fixing the same on the part of the driver of the lorry and the 2nd Respondent Insurance Company respecively, are not sustainable.

10. In the present case, admittedly, there were three persons travelling in the two wheeler, which met with the accident and they were minors at that point of time. The rider of the two wheeler and a pillion rider sustained injuries and another pillion rider died.

11. On considering the submissions of the learned counsel on either side and on

perusal of the entire evidence, it is seen that though PW.1 to PW.3, who are related to the injured claimant and the deceased, have rendered oral evidence in respect of the manner, in which the accident had occurred, as stated by the claimants, they are not the direct eye witnesses to the accident. However, it is seen from their evidence that the rider of the two wheeler was good in driving and since, at the time of the accident, the rider of the two wheeler was a minor, he was not issued with a valid driving licence.

12.However, PW.4, who is an independent eye witness to the occurrence, in his chief examination, has deposed that on seeing the accident, he only gave intimation to 108 Ambulance and further deposed in respect of the manner of the accident, as stated in the claim petitions. Ex.P1 is the First Information Report filed against the driver of the lorry, who was examined as RW.2, who in his oral evidence has admitted that a final report in the criminal case registered against him was filed and that admitting the offence, he had also paid the fine amount. From the evidence of the said independent eye witness, it is proved that the accident had occurred in the manner as stated in the claim petitions and that the driver of the lorry alone was responsible for the accident.

13.While fastening negligence aspect on the part of the driver of the lorry and fixing liability on the part of the 2nd Respondent Insurance Company, the Tribunal has taken into consideration the law laid down by the Honourable Supreme Court rendered in the case **Mohammed Siddique and another Vs. National Insurance** Company **(Civil Appeal No.79 of 2020,** judgement **dated**

08.01.2020) wherein it was held as follows:-

> "But the above reason, in our view, is flawed. The fact that the deceased was riding on a motorcycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two wheeled motorcycle, not to carry more than one person on the motorcycle. Section 194-C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding with two others, contributed either to the accident or to the impact of the accident upon the victim."

14.A rider, riding along with two persons as pillion riders in a two wheeler and not having a valid driving licence may be violation of provisions of the relevant Act, for which fine will be imposed. Unless and otherwise, specifically it is established and proved in a manner known to law that the facts narrated by them have contributed directly to the accident, the negligence cannot be fasted against the rider of the two wheeler for the violation of the provisions of the Act.

15.In this case, the 2nd Respondent Insurance Company has not proved that due to over load, the rider of the two wheeler lost his control and invited the accident, by letting in valid evidence, in a manner known to law. On the other hand, before the Tribunal, it has been proved by adducing oral and documentary evidence that the accident had occurred only due to the rash and negligent driving on the part of the driver of the lorry, which was insured with the appellant Insurance Company.

16.The Tribunal, ultimately, after considering entire evidence, as stated above, particularly, Ex.P1 First Information Report and the evidence of RW.4, who is the driver of the lorry and PW.4, an independent eye witness to the occurrence and finding no evidence to show that due to over loading, the rider of the two wheeler had lost his control and invited the accident and applying the ratio laid down by the Honourable Supreme Court in the decision as stated above, has held that travelling by three persons in a two wheeler and not possessing valid driving licence by both the two wheeler were not the cause for the accident and that the accident had occurred only due to the rash and negligent driving of the driver of the lorry and accordingly, fastened the negligence on the part of the driver of the lorry and consequently fastened entire liability on the 2nd Respondent Insurance Company. This Court does not find any error or infirmity in the said findings of the Tribunal in respect of the negligence aspect and liability issue and hence, the same are liable to be confirmed and accordingly, confirmed.

17.Now, coming to the dispute with regard to the quantum compensation, raised by both the claimants and the 2nd Respondent Insurance Company in all the claim petitions, each of the petitions are dealt with separately, as under:-

18.MCOP.No.147 of 2019:-

(a) According to the claimant, at the time of the accident, the injured claimant was a student, aged about 16 years old and the accident had occurred in the year 2018 and as per Ex.P12 wound certificate, he sustained swelling tenderness over right knee right leg and ankle left shoulder, abrasion on right ankle and laceration over right check and the first two injuries are grievous in nature and though the Tribunal fixed the disability at 35%, while calculating the compensation towards permanent disability, it erroneously applied 31%. Hence, the impugned compensation is to be redetermined and enhanced.

(b) Per contra, the learned counsel for the 2nd Respondent Insurance Company would submit that the impugned compensation is on the higher side and hence, it needs to be reduced.

(c) Considering the nature of injuries sustained by the claimant and the entire evidence, it is seen that though the Tribunal arrived at 35% and Rs.5000/- per percentage disability, it applied 31% erroneously while calculating the compensation towards permanent disability. Hence, it is redetermined at Rs.1,75,000/- (Rs.5000x35%). The compensation amount towards medical expenses, which is borne out by medical records and the compensation amounts awarded under the other heads are reasonable and hence, they are confirmed. Thus, the total compensation is redetermined at Rs.3,90,782/-, which shall carry interest 7.5% p.a. from the date of the claim petition till the date of realisation.

19.MCOP.No.365 of 2018:-

(a) According to the claimant, at the time of the accident, the claimant was aged 16 years old and due to the accident, he sustained lacerated injuries on right side of forehead, left knee and abrasion on left side of face and left elbow and tenderness and deformity left foot. As per Ex.P15 wound certificate, the said injuries are simple in nature and the Tribunal assessed permanent disability at 5% for such injuries.

(b) Though the learned counsel for the claimant would submit that some more amount may be awarded under all heads, considering the nature of injuries and the entire evidence, including the medical records, this Court is of the considered view that the impugned compensation amounts awarded by the Tribunal for all other heads are just and reasonable and hence, they shall stand unaltered. Accordingly, the claimant is entitled to the compensation of Rs.92,810/-, which shall carry interest 7.5% p.a. from the date of the claim petition till the date of realisation, as awarded by the Tribunal.

<u>20.MCOP.No.23 of 2019:-</u>

(a) According to the learned counsel for the claimants, at the time of the accident, the deceased was a XII Standard student, aged about 17 years old and the accident had occurred in the year 2018. Hence, the monthly notional income arrived at Rs.6,000/- by the Tribunal appears to be on the lower side. No compensation was awarded towards transportation expenses. Further, the compensation amounts awarded under the other heads are also not reasonable. Hence, the impugned compensation is to be redetermined and enhanced.

(b) Per contra, the learned counsel for the 2nd Respondent Insurance Company would submit that since the deceased was a bachelor at the time of the accident and that there was no permanent income for the deceased, proper and just addition of compensation towards future prospects would be 40%, instead of 50% adopted by the Tribunal and deduction of 1/3rd towards personal expenses arrived at by the Tribunal is also not proper and 50% deduction towards personal expenses would be reasonable and accordingly, appropriate orders may be passed in the facts and circumstances of the case, redetermining the impugned compensation.

(c) Considering the submissions of the learned counsel on either side and the materials available on record and the facts and circumstances of the case and considering the age of the deceased at the time of the accident, i.e. 17 years, the cost of living due to inflation rate at the relevant point of time, the notional monthly income arrived at by the Tribunal at Rs.6000/- is not just and proper. Even after finishing his school education, he would have earned at least not less than Rs.9,000/- p.m. even as a coolie and hence, even in the absence of evidence to show the permanent income of the deceased, in the light of catena of decisions of the Honourable Supreme Court, it would be just and appropriate to fix the monthly notional income of the deceased at Rs.9000/-. After adding 40% future prospects and deducting 50% towards personal expenses, as the deceased was a student and bachelor, the loss of monthly dependency would come to Rs.6300/-. Since the deceased was aged 17 years old at the time of the accident, the multiplier of 18 would be proper, as adopted by the Tribunal. Thus, the total compensation under the head of loss of dependency is redetermined at Rs.13,60,800/-(9000+3600)x1/2x12x18).

(d) Considering the age of the deceased, the compensation amount of Rs.20,000/- each awarded under the head of loss of consortium to the parents of the deceased, is enhanced to Rs.40,000/- each (totally Rs.80,000/-). The compensation amount towards medical expenses, which is borne out by medical records and the compensation amount awarded under the other head of loss of estate are reasonable and hence, they are confirmed. In addition to the above, a further sum of Rs.10,000/- is hereby awarded towards transportation expenses. In all, the total compensation is redetermined at Rs.20,48,433/-, which shall carry interest 7.5% p.a. from the date of the claim petition till the date of realisation.

21. In fine, the Civil Miscellaneous Appeals, in respect of MCOP.Nos.147 and 23 of 2019 filed by the claimants, are partly allowed. The Civil Miscellaneous Appeal filed by claimant in respect of MCOP.No.365 of 2018 is dismissed. The Civil Miscellaneous Appeals filed by the 2nd Respondent Insurance Company are dismissed.

22. In all, the claimant in MCOP.No.147 of 2019 is entitled to a total compensation of Rs.3,90,782/-, (Rupees three lakhs ninety thousand seven hundred and eighty two only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation, as redetermined below:-

S.No	Category	Award Amount (Rs.)
1	Permanent Disability	175000
2	Pain and Suffering	25000
3	Attendants Charges	10000
4	Transportation Expenses	5000
5	Extra Nourishment	10000
6	Damage to Clothes	5000
7	Medical Expenses	160782
	Total Compensation	**390782**

23.The claimant in MCOP.No.365 of 2018 is entitled to the compensation of Rs.92,810/-, which shall carry interest 7.5% p.a. from the date of the claim petition till the date of realisation, as awarded by the Tribunal.

24.In all, the claimants in MCOP.No.23 of 2019 are entitled to a total compensation of Rs.20,48,433/- (Rupees twenty lakhs forty eight thousand four hundred and thirty three only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation, as redetermined below:-

S.No	Category	Award Amount (Rs.)
1	Loss of Dependency (9000+40%)x50/100x18x12)	1360800
2	Funeral Expenses	15000
3	Loss of Consortium	80000
4	Loss of Estate	15000
5	Transportation Expenses	10000
6	Medical Expenses	567633
	Total Compensation	**2048433**

25.The respective claimants shall pay proper court fee for their respective enhanced compensation amounts. In MCOP.No.23 of 2019, the claimants therein, who are the parents of the deceased, are each entitled 50% share in the total compensation awarded. In all other aspects, the impugned judgement and decree shall stand confirmed.

26.In all the claim petitions, the 2nd Respondent / Insurance Company is directed to deposit the entire award amounts with interest at 7.5% p.a. from the date of the claim petition till the date of deposit, after deducting the amount, if any already, deposited and also the interest for the delay in filing the appeals if any for the enhanced compensation, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer, by way of RTGS, the respective compensation amounts with proportionate interest directly to the respective bank accounts of the claimants, within a period of three weeks thereafter. Thereafter, in all the claim petitions, the 2nd Respondent/ Insurance Company is entitled to recover the entire award amounts with interest from the 1st Respondent, in accordance with law, in view of the categoric finding of the Tribunal that the driver of the offending lorry did not possess valid driving licence at the time of the accident, thereby violated the terms and conditions of the insurance policy, which is not assailed or impeached by him. No costs. Consequently, the connected MP are closed.

19.02.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation
Srcm

To

1. The Special District Court (MACT) Dharmapuri.

2. The Record Keeper, VR Section, High Court, Madras

KRISHNAN RAMASAMY, J.

Srcm

CMA.Nos.1704 to 1706 of 2021
and 224 to 226 of 2024

19.02.2024