



C.M.A.(MD) Nos.1856 of 2013 & 57 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.10.2024

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THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) Nos.1856 of 2013 & 57 of 2015

and

M.P.(MD)No.2 of 2013

In C.M.A.(MD)No.1856 of 2013:

The Branch Manager,
The Oriental Insurance Co. Ltd.,
24-E/12/A, Sivasakthi Shopping Complex,
S.N.High Road,
Tirunelveli.

... Appellant

Vs.

1. Manokar,
2. Saravanan.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 11.09.2012 passed in M.C.O.P.No.208 of 2011, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Tirunelveli.

For Appellant : Mr.S.Veeranasamy

For Respondents

for R1 : Mr.T.Selvakumaran

for R2 : No appearance



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In C.M.A.(MD)No.57 of 2015:

Manokar

... Appellant

Vs.

1. Saravanan,
2. The Oriental Insurance Co. Ltd.,
Through its Divisional Manager,
24/E/12/A, Sivasakthi Shopping Complex,
S.N.High Road,
Tirunelveli.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 11.09.2012 passed in M.C.O.P.No.208 of 2011, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Tirunelveli.

For Appellant : Mr.T.Selvakumaran

For Respondents

for R1 : Dispensed with

for R2 : Mr.S.Veeranasamy

COMMON JUDGMENT

The insurance company has filed the appeal in C.M.A.(MD)No. 1856 of 2013 challenging the findings on negligence and quantum of compensation. The claimant has filed the appeal in C.M.A.(MD)No.57 of 2015 seeking enhancement of the compensation.



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2. For the sake of convenience, the parties are referred to as per the ranking in C.M.A.(MD)No.1856 of 2013.

3. The claimant filed a claim petition stating that while he was riding his two wheeler in the Ambasamudram-Palayamkottai road on the extreme left hand side of the road, a car, insured with the appellant/ Insurance Company, came in the opposite direction in a rash and negligent manner and caused head-on collision, as a result of which the claimant sustained grievous injuries.

4. The owner of the insured car remained *ex parte* before the Tribunal.

5. The appellant/Insurance Company filed a counter stating that the accident took place only due to the negligence of the claimant; that the injured claimant was on the wrong side of the road, i.e., the accident took place on the southern side of the road, when the injured claimant was travelling from west to east; and that the rough sketch and observation mahazar prepared by the Police also substantiate the said fact and hence prayed for dismissal of the appeal.



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6. Before the Tribunal, the injured claimant examined P.W.1 to P.W.3 and marked Exs.P1 to P7. The appellant/Insurance Company examined R.W.1 and RW2 and marked Exs.R1 to R3.

7. The Tribunal, after taking into consideration the oral and documentary evidence, had fixed the contributory negligence on the injured claimant at 30% and on the driver of the car at 70%, directing the appellant/Insurance Company to pay the total compensation of Rs.1,02,200/-, being 70% of Rs.1,46,000/-.

8. The learned counsel for the appellant/Insurance Company submitted that the observation mahazar, rough sketch and the evidence of R.W.1 would clearly show that the injured claimant was on the wrong side of the road, who invited the accident and no contributory negligence ought to have been fixed on the insured vehicle and hence prayed for setting aside the award.

9. The learned counsel for the claimant, per contra, submitted that the compensation fixed by the Tribunal is very meagre, inasmuch as only Rs.2,000/- was awarded for a percentage of disability and the meagre



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compensation was awarded under the other heads and hence prayed for enhancement of the compensation.

10. The points for consideration in the instant appeal are as follows:

'a. Whether the finding on negligence by the Tribunal is justified?

b. Whether the quantum of compensation awarded by the Tribunal is just and reasonable?'

11. As regards the first point, it is seen that the appellant/Insurance Company had examined R.W1-Sub inspector of Police, who had prepared the rough sketch and observation mahazar, pursuant to the complaint given against the driver of the car. The rough sketch and the observation mahazar clearly indicate that the two wheeler, which proceeded from west to east, was on the wrong side as the accident took place on the southern side of the road. Though the claimant had examined himself and stated that he was travelling on the left hand side of the road, evidence of R.W.1 and other evidence on record indicate that his evidence cannot be accepted. However, this Court is of the view that the driver of the car also ought to have driven the car with due care and



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caution to avoid the accident. Therefore, from the evidence adduced before the Tribunal, this Court is of the view that 50% of the contributory negligence can be apportioned on the claimant and 50% of the contributory negligence on the driver of the car insured with the appellant/Insurance Company. Point No.1 is answered accordingly.

12. As regards the quantum of compensation, it is seen that the claimant had proved through the evidence of doctor-P.W2 that he had suffered disability at 45% and the same was accepted by the Tribunal as the evidence of doctor has not been discredited. However, considering the year of the accident, a sum of Rs.3,000/- can be awarded for a percentage of disability and hence, the compensation under the head 'disability' is enhanced to Rs.1,35,000/-.

13. As regards the compensation under the 'pain and sufferings', it is seen that the claimant had suffered fractures in the right hand. The claimant was working as a mason at the time of accident. Considering the nature of the injury, this Court is of the view that it would be just and reasonable to award Rs.50,000/- under the head 'pain and sufferings'. Considering the age, avocation of the deceased and the year of accident,



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this Court is of the view that the notional income of the deceased can be fixed at Rs.7,000/- p.m. The evidence suggests that the claimant would have suffered loss of income for a period of six months and hence, a sum of Rs.42,000/- has to be awarded under the head 'loss of income'. Thus, the compensation awarded by the Tribunal is enhanced in the following manner:

<i>Sl. No</i>	<i>Description</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed, enhanced or granted</i>
1	Loss of income	Rs. 24,000/-	Rs. 42,000/-	Enhanced
2	Partial permanent disability	Rs. 90,000/-	Rs. 1,35,000/-	Enhanced
3	Transportation charges	Rs. 3,000/-	Rs. 3,000/-	Confirmed
4	Extra nourishment	Rs. 4,000/-	Rs. 4,000/-	Confirmed
5	Attendant charges	Rs. 5,000/-	Rs. 5,000/-	Confirmed
6	Pain and sufferings	Rs. 20,000/-	Rs. 50,000/-	Enhanced
Total		Rs. 1,46,000/-	Rs.2,39,000/-	Enhanced by Rs.93,000/-
50% of contributory negligence			(-) Rs.1,19,500/-	
Total			Rs.1,19,500/-	

14. The appellant in C.M.A.(MD)No.1856 of 2013/Insurance Company is directed to pay the enhanced compensation of **Rs.1,19,500/-** (Rupees One Lakh Nineteen Thousand and Five Hundred only) together



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with interest at 7.5% p.a., from the date of the claim petition till the date of realization and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this order.

15. On such deposit, the respondent in C.M.A.(MD)No.1856 of 2013/claimant is permitted to withdraw the award amount with interest and costs, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal.

These Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

17.10.2024

Index: Yes/ No

NCC: Yes / No

Speaking Order / Non-Speaking Order
apd

To:

1. The Motor Accidents Claims Tribunal, Chief Judicial Magistrate,
Tirunelveli.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

apd

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