



C.M.A.(MD)Nos.647 & 653 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD)Nos.647 & 653 of 2021

and

CMP.(MD)Nos.6171 & 6208 of 2021

C.M.A.(MD)No.647 of 2024

M/s.National Insurance Co. Ltd.,
represented by its Divisional Manager,
12, Aruvi Block, First Floor, St.Pauls Complex,
Bharathiyar Salai, Cantonment,
Trichy – 620 001.

... Appellant

Vs.

1. Anand
2. Senthil
3. Selvi
4. M/s.Thunaivan Bus Service(Firm)
represented by its Managing Partner,
19-C, Thunaivan Illam,
Warners Road, Cantonment,
Tiruchirappalli – 620 001.

... Respondents

For Appellant : Mr.J.S.Murali

For Respondents

R1 to R3 : Mr.N.Sudhagar Nagaraj

R4 : No appearance



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M/s.National Insurance Co. Ltd.,
represented by its Divisional Manager,
12, Aruvi Block, First Floor, St.Pauls Complex,
Bharathiyar Salai, Cantonment,
Trichy – 620 001.

... Appellant

Vs.

1. Muthukrishnan
2. Vijayalakshmi
3. M/s.Thunaivan Bus Service(Firm)
represented by its Managing Partner,
19-C, Thunaivan Illam,
Warners Road, Cantonment,
Tiruchirappalli – 620 001.

... Respondents

For Appellant : Mr.J.S.Murali

For Respondents

R1 to R3 : Mr.N.Sudhagar Nagaraj

R4 : No appearance

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 29.06.2020 made in M.C.O.P.Nos.1194 & 1195 of 2015 on the file of the Motor Accident Claims Tribunal cum Special District Court, Thiruchirappalli and allow these appeals with costs.



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COMMON J U D G M E N T

The above captioned Civil Miscellaneous Appeals have been filed by the Insurance Company against the award, dated 29.06.2020 made in M.C.O.PNo.1194 & 1195 of 2015 passed by the Motor Accidents Claims Tribunal cum Special District Judge, Thiruchirappalli. Since both the appeals have been filed challenging the award of compensation in two claim petitions filed by the injured in the same accident and a common award was passed by the Tribunal, these appeals are taken up together.

2. The respondent/claimants in both the claim petitions stated that while they were travelling in the motorcycle from North to South, a bus insured with the appellant, came in the opposite direction, in a rash and negligent manner, dashed against the motorcycle, as a result of which, both the rider and pillion rider sustained fatal injuries.

3. The owner of the bus remained ex parte before the Tribunal.

4. The appellant filed a counter stating that the accident did not take place due to the negligence of the bus driver; that both the rider and



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pillion rider did not wear helmets and that in any case, the compensation claimed by the claimants was excessive.

5. The claimants examined P.W.1 to P.W.3 and marked Ex.P.1 to Ex.P.19. The appellant examined the driver of the insured vehicle as R.W.1 and marked Ex.R.1.

6. The Tribunal, after taking into account the oral and documentary evidence, held that the accident took place due to the rash and negligent driving of the bus driver and the appellant was liable to pay compensation.

7. The learned Counsel for the appellant submitted that the evidence of R.W.1 would show that the rider of the two-wheeler was guilty of a rash and negligent driving; that P.W.3 examined on the side of the claimants could not have witnessed the occurrence; that in any case, the appellant has established that both the rider and the pillion rider did not wear helmets at the time of accident; and that the award of compensation is excessive.

8. Per contra, the learned Counsel for the respondents submitted



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that the award of compensation is just and reasonable and there is no reason to interfere with the award.

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

- “a. Whether the finding of negligence by the Tribunal is justified?*
- b. Whether the compensation award of the Tribunal is just and reasonable?”*

10. As regards the first question, it is seen that the claimant examined P.W.3, an eye witness to the accident, who had deposed that the accident took place only due to the rash and negligent driving of the bus driver insured with the appellant. The claimants also marked Ex.P.1, which corroborates the version of P.W.3. R.W.1, the bus driver, had stated that the two-wheeler riders had fallen off from the vehicle on their own and it was only thereafter the bus dashed against the riders. Thus the accident has not been totally denied by R.W.1. In the light of the evidence of the P.W.3 and the averments in Ex.P.1 and the admission made by the R.W.1, this Court is of the view that the finding on negligence by the Tribunal is justified. However, it is seen that R.W.1 stated that both the rider and pillion rider did not wear helmets. The



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claimants had not let in any contra evidence. The postmortem report in respect of both the deceased, marked as Ex.P.2 in CMA(MD)No.647 of 2021 and Ex.P.11 in CMA(MD)No.653 of 2021, states that both the deceased had sustained head injuries. Therefore, this Court is inclined to accept the evidence of R.W.1 as regards the fact that the deceased persons did not wear helmets at the time of the accident. Hence, 10% of Contributory Negligence can be fixed on both the deceased persons for riding the two-wheeler without a helmet. Point 1 is answered accordingly.

11. As regards the quantum of compensation, the learned Counsel for the appellant was unable to point out any infirmity except stating that though consortium was awarded as Rs.40,000/- to three claimants, Rs.1,00,000/- was awarded under the head of Love and Affection, in addition to the said amount, which is excessive. This Court is of the view that having awarded compensation under the head of consortium, the Tribunal was not justified in awarding the compensation under the head of Love and Affection also. Therefore, a sum of Rs.1,00,000/- awarded in both the claim petitions under the said head has to be set aside. Thus the award of Tribunal in CMA(MD)No.647 of 2021 (MCOP.No.1194 of 20215) is modified as follows:



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Sl. No	Description	Amount awarded by the Tribunal	Amount awarded by this Court	Award confirmed, enhanced or granted
1	Loss of Dependency	Rs.3,19,980/-	Rs.3,19,980/-	Confirmed
2	Filial consortium to the petitioners No.1 to 3, the sons and daughter of the deceased (Rs.40,000 x3)	Rs.1,20,000/-	Rs.1,20,000/-	Confirmed
3	Pain and suffering	Rs.25,000/-	Rs.25,000/-	Confirmed
4	Medical Expenses	Rs.1,55,411/-	Rs.1,55,411/-	Confirmed
4	Love and Affection	Rs.1,00,000/-	-	Deleted
5	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
6	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
7	Transportation expenses	Rs.6,000/-	Rs.6,000/-	Confirmed
Total		Rs.7,56,391/-	Rs.6,56,391/-	
10% towards contributory negligence		---	(-) Rs.65,639/-	
Total		Rs.7,56,391/-	Rs.5,90,752/-	Reduced by Rs.1,65,639/-

12. The award of Tribunal in CMA(MD)No.653 of 2021 (MCOP.No.1195 of 2015) is modified as follows:



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Sl. No	Description	Amount awarded by the Tribunal	Amount awarded by this Court	Award confirmed, enhanced or granted
1	Loss of Dependency	Rs.10,12,500/-	Rs.10,12,500/-	Confirmed
2	Filial consortium to the petitioners No.1 & 2, the father and mother of the deceased (Rs.40,000 x 2)	Rs.80,000/-	Rs.80,000/-	Confirmed
3	Loss of Love and Affection	Rs.1,00,000/-	-	Deleted
4	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
5	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
6	Transportation Expenses	Rs.6,000/-	Rs.6,000/-	Confirmed
Total		Rs.12,28,500/-	Rs.11,28,500/-	
10% towards contributory negligence		---	(-) Rs. 1,12,850/-	
Total		Rs.12,28,500/-	Rs.10,15,650/-	Reduced by Rs.2,12,850/-

13. The appellant Insurance Company shall deposit the modified compensation amount of **Rs.5,90,752/-** (Rupees Five Lakh Ninety Thousand Seven Hundred and Fifty Two only) to claimants 1 to 3 in CMA(MD)No.647 of 2021 and **Rs.10,15,650/-** (Rupees Ten Lakh Fifteen Thousand Six Hundred and Fifty only) to claimants 1 and 2 in CMA(MD)No.653 of 2021 with the interest @ 7.5% p.a from the date of the claim petition till the date of realization (excluding the period of dismissal for default if any) and costs, less the amount already deposited, if any, within a period of two (2) weeks from the date of receipt of a copy of this Judgment.



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14. On such deposit, the respondents/claimants are entitled to withdraw the aforesaid amount together, equally, less the amount already withdrawn, if any, as per the apportionment fixed by the Tribunal, by filing an appropriate application before the Tribunal.

15. In the result, these Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

29.08.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order

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To:

The Motor Accident Claims Tribunal Cum Special District Judge,
Thiruchirappalli.



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SUNDER MOHAN, J.

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