



C.M.A.(MD)Nos.569 and 570 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 20.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)Nos. 569 and 570 of 2024

In C.M.A(MD) No.569 of 2024:

S.Kanaga

... Appellant/Petitioner

Vs.

1.Masanamoorthy

2.United India Insurance Company Ltd.,

No.5/1, Alagu Bagavathy Complex,

Kailasapuram,

Middle Street,

Tirunelveli District.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act to modify the judgment and award dated 20.10.2022 in M.C.O.P.No.60 of 2019 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Theni and award further enhancement of compensation Rs.5,00,000/-/

In C.M.A(MD) No.570 of 2024:

Minor S.Harshith

... Appellant/Petitioner

Vs.

1.Masanamoorthy

2.United India Insurance Company Ltd.,

No.5/1, Alagu Bagavathy Complex,

Kailasapuram,

Middle Street,

Tirunelveli District.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act to modify the judgment and award dated 20.10.2022 in M.C.O.P.No.61 of 2019 on the file of the Motor Accidents Claims



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Tribunal/Chief Judicial Magistrate, Theni and award further enhancement of compensation Rs.5,00,000/-.

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In both Appeals:

For Appellant : Mr.N.Sudhagar Nagaraj
For R2 : Mr.I.Suthakaran
R1 : Exparte

COMMON JUDGMENT

Since the instant appeals have been filed seeking enhancement of compensation awarded in two claim petitions filed by the injured persons in the same accident, they are taken up together.

2. The claimants before the Tribunal instituted the claim petitions stating that while they were proceeding in their two-wheeler on the extreme left side of the road, a car insured with the 2nd respondent came in a rash and negligent manner and dashed against the two-wheeler, as a result of which, the claimants fell down and sustained grievous injuries.

3.C.M.A(MD)No.569 of 2024 had been filed seeking enhancement of the award passed in M.C.O.P.No.60 of 2019 filed by the rider of the two-wheeler (hereinafter called 'the mother'). C.M.A(MD)No.570 of 2024 has been filed by the pillion rider (hereinafter called 'the minor son').



4. The 1st respondent remained ex parte before the Tribunal.

Hence, notice to the 1st respondent is dispensed with.

5. The 2nd respondent filed a counter denying the averments in the claim petitions and stated that the accident took place only due to the negligence of the rider of the two-wheeler and that in any case, the compensation claimed was excessive.

6. On the side of the claimants, the mother examined herself as P.W.1 and marked Ex.P.1 to Ex.P.27. On the side of the 2nd respondent, one witness was examined as R.W.1 and Ex.R.1 to Ex.R.4 were marked.

7. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place only due to the negligence of the driver of the insured vehicle and awarded a sum of Rs. 12,39,160/- in M.C.O.P.No.60 of 2019, to the mother and awarded a sum of Rs.9,26,503/- in M.C.O.P.No.61 of 2019, to the pillion rider/minor son.



8. The learned counsel for the appellants/claimants submitted that as regards the compensation awarded to the mother, the Tribunal ought to have adopted the multiplier method and calculated the loss of income, but the Tribunal, by adopting the monthly income of the mother at Rs.15,000/- and by assuming that she could not work for one year, has granted Rs,1,80,000/- towards loss of income; and that the award of compensation under the other heads is also meagre.

9. As regards the compensation granted to the minor son, the learned counsel submitted that the income adopted by the Tribunal is meagre; that no compensation was awarded under the head 'future medical expenses'; and that compensation under other heads also requires enhancement.

10. The learned counsel for the 2nd respondent submitted that the compensation awarded by the Tribunal in both claim petitions is on the higher side; that in respect of the minor son aged about 7 years, the multiplier adopted is '18' which is contrary to the settled position of law; that the compensation under the other heads are in fact excessive and therefore, prayed for dismissal of these appeals.



11. The only question involved in the instant appeals is whether the compensation awarded by the Tribunal is just and reasonable.

12. As regards the mother, the appellant in C.M.A(MD)No.569 of 2024, it is seen that the appellant had examined herself and marked the medical records. The Medical Board had assessed disability at 35% and the disability certificate was marked as Ex.P.26. The appellant was working as a Teacher. No evidence was adduced on her side to show that she had suffered functional disability. In the light of the evidence adduced and considering the nature of injuries and the period of treatment, the Tribunal had assessed loss of income for a period of one year and awarded Rs.1,80,000/- towards loss of income. In the absence of any evidence to prove that the appellant suffered functional disability, the award under this head is reasonable. The award of compensation under the other heads, namely, pain and suffering, attendant charges, extra nourishment, transport charges and damages for clothes is reasonable and the same is confirmed. However, the appellant had suffered injuries on the head and on the right foot and no compensation was awarded for her future medical expenses. Considering the nature of injury namely, the fracture in the head and crush injuries in the right foot, this Court is of



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the view that it is just and reasonable to fix compensation at Rs.50,000/-

towards future medical expenses and therefore, the compensation in

C.M.A(MD)No.569 of 2024 is modified as follows:

<i>Sl. No.</i>	<i>Heads of Compensation in</i>	<i>Amount awarded by Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>	<i>Amount confirmed, enhanced or reduced</i>
1.	Pain and suffering	50,000.00	50,000.00	Confirmed
2.	Attendant Charges	5,000.00	5,000.00	Confirmed
3.	Extra nourishment	10,000.00	10,000.00	Confirmed
4.	Transport Charges	10,000.00	10,000.00	Confirmed
5.	Damages to clothes	1,000.00	1,000.00	Confirmed
6.	Medical Expenses	8,08,160.00	8,08,160.00	Confirmed
7.	Disability	1,75,000.00	1,75,000.00	Confirmed
8.	Loss of income	1,80,000.00	1,80,000.00	Confirmed
9.	Future medical expenses	-	50,000.00	Granted
Total :		12,39,160.00	12,89,160.00	Enhanced

13. As regards the minor son, the appellant in C.M.A(MD)No.570 of 2024, this Court finds that the Tribunal had adopted multiplier '18' which is not correct and the correct multiplier is '15'. It is also further seen that though medical board has assessed the disability at 40%, the Tribunal fixed the disability at 35% without any basis. In the circumstances, considering the age of the minor, the nature of injuries and its impact on his life, the functional disability can be fixed at 40%. The Tribunal had adopted the monthly income at Rs.5000/- which is



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reasonable. Therefore, the compensation under the head loss of income has to be (Rs.5000 X 12 X 15 X 40/100) Rs.3,60,000/-. The Tribunal had not awarded any compensation towards future medical expenses. The minor son/the appellant had suffered grievous injuries and underwent a surgery for correction of foot and jess fixator system. In the circumstances, this Court is of the view that the Tribunal ought to have awarded a compensation for future medical expenses for the treatment of the injuries suffered by the claimant. It would be just and reasonable to award compensation at Rs.1 lakh towards future medical expenses, considering the fact that another surgery was required for the appellant. That apart, in the facts and circumstances, the compensation under the head transport expenses and attendant charges can be enhanced by Rs. 10,000/- each and therefore, the compensation in C.M.A(MD)No.570 of 2024 is modified as follows:

<i>Sl. No.</i>	<i>Heads of Compensation in</i>	<i>Amount awarded by Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>	<i>Amount confirmed, enhanced or reduced</i>
1.	Pain and suffering	1,00,000.00	1,00,000.00	Confirmed
2.	Attendant Charges	10,000.00	20,000.00	Enhanced
3.	Extra nourishment	15,000.00	15,000.00	Confirmed
4.	Transport Charges	10,000.00	20,000.00	Enhanced
5.	Damages to clothes	1,000.00	1,000.00	Confirmed
6.	Medical Expenses	4,12,503.00	4,12,503.00	Confirmed



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<i>Sl. N o.</i>	<i>Heads of Compensation in</i>	<i>Amount awarded by Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>	<i>Amount confirmed, enhanced or reduced</i>
7.	Future opportunities and loss of income	3,78,000.00	3,60,000.00	Reduced
8.	Future medical expenses	-	1,00,000.00	Granted
Total :		9,26,503.00	10,28,503.00	Enhanced

14. The 2nd respondent shall deposit the enhanced compensation amount with accrued interest as awarded by the Tribunal within a period of four weeks from the date of receipt of a copy of this judgment. The claimants are permitted to withdraw the same by filing a suitable application. The claimants are not entitled for interest for the delayed period of 386 days. As regards the amount awarded for the minor claimant, the same shall be deposited in a nationalized bank and the guardian of the minor is permitted to withdraw interest once every three months directly from the bank till they attain majority.

15. In fine, the appeals are partly allowed. No costs.

20.08.2024

Index : Yes / No
Neutral Citation : Yes / No
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To

1. The Motor Accidents Claims Tribunal/Chief Judicial Magistrate,
Theni

2. The Section Officer,

V.R.Section,

Madurai Bench of Madras High Court, Madurai.



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SUNDER MOHAN, J.

CM

Judgment made in
C.M.A(MD)Nos. 569 and 570 of 2024

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