



C.M.A.(MD)Nos.1264 and 1265 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 14.10.2024

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)Nos.1264 and 1265 of 2024

In CMA(MD)No.1264 of 2024:

C.Sigappi

... Appellant/Petitioner

Vs.

1.C.Singaram

2.The Manager,

New India Assurance Company Ltd.,

No.70 Feet Road, Ellis Nagar,

Near BSNL Telephone Exchange Complex,

Madurai – 625 016.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 to modify the judgment and decree dated 11.01.2024 made in MCOP.No.473 of 2022 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, Madurai.

In CMA(MD)No.1265 of 2024:

S.Asharaf Ali

... Appellant/Petitioner

Vs.

1.C.Singaram

2.The Manager,

New India Assurance Company Ltd.,

No.70 Feet Road, Ellis Nagar,

Near BSNL Telephone Exchange Complex,

Madurai – 625 016.

... Respondents/Respondents



C.M.A.(MD)Nos.1264 and 1265 of 2024

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 to modify the judgment and decree dated 11.01.2024 made in MCOP.No.477 of 2022 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, Madurai.

In both appeals:

For Appellant : Mr.N.Sudhagar Nagaraj
For R2 : Mr.I.Robert Chandrakumar

COMMON JUDGMENT

The instant appeals have been filed by the claimants seeking enhancement of compensation.

2. The appellants/claimants filed the claim petitions stating that while they were travelling in a two-wheeler on the left hand side of the road, a Car insured with the 2nd respondent herein came in a rash and negligent manner and dashed against the two-wheeler, as a result of which, both the claimants sustained grievous injuries.

3. The 1st respondent/owner of the vehicle remained exparte before the Tribunal.



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4. The 2nd respondent filed a counter stating that three persons travelled in the two-wheeler in violation of traffic rules; that the accident took place only due to the negligence of the claimants; that the claimants did not wear helmets; that the 2nd respondent is not liable to pay compensation; and that in any case, the compensation claimed is excessive and prayed for dismissal of the claim petitions.

5. The claim petitions filed by the appellant in both the appeals were tried along with the claim petition filed by another person, who travelled in the two-wheeler.

6. Before the Tribunal, the claimants examined P.W.1 to P.W.5 and marked Ex.P.1 to Ex.P.20. The respondents neither examined witnesses nor marked documents. The disability certificates of the claimants and another injured person were marked as Ex.C.1 to Ex.C.3.

7. The Tribunal, after taking into consideration the oral and documentary evidence, fixed contributory negligence at 20% on the appellant in CMA(MD)No.1264 of 2024 since he was a pillion rider in the two-wheeler and fixed contributory negligence at 30% on the



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appellant in CMA(MD)No.1265 of 2024 since he had ridden the vehicle at the time of the accident.

8. The learned counsel for the appellants/claimants submitted that their only grievance is with regard to fixation of contributory negligence on the part of the claimants at 20% and 30%; that they are not otherwise aggrieved by the quantum of compensation; and that the 2nd respondent did not produce any evidence to show that the claimants did not wear helmets and the accident took place only because of triples riding of the claimants.

9. Since the 1st respondent remained exparte before the Tribunal, notice to the 1st respondent is dispensed with.

10. The learned counsel for the 2nd respondent, per contra, submitted that the claimants suffered head injury, which would clearly show that they did not wear helmets at the time of the accident; that the contributory negligence fixed for triples riding is justified; and relied upon the judgments of this Court in **CMA.Nos.4648 to 4650 of 2019 dated 23.11.2023** and **CMA(MD)No.358 of 2016 dated 04.02.2024**.



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11. This Court gave its anxious consideration to the submissions made on either side and carefully perused the materials available on record.

12. The points for consideration are as follows:

- i) Whether the contributory negligence fixed on the claimants at 20% and 30% respectively is justified; and
- ii) Whether the quantum of compensation granted by the Tribunal is just and reasonable.

13. On a perusal of records, it is seen that the Tribunal had fixed 10% of contributory negligence for not wearing helmet and 20% of contributory negligence for triples riding on the appellant in CMA(MD)No.1265 of 2024. The Tribunal had fixed 20% of contributory negligence for triples riding on the appellant in CMA(MD)No.1264 of 2024.

14. It is an admitted fact that three persons travelled in the two-



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wheeler. The 2nd respondent had not produced any evidence to show that the claimants did not wear helmets at the time of the accident. In the absence of any evidence, the Tribunal erred in assuming that the claimants did not wear helmets. Hence, the finding of the Tribunal on that aspect is liable to be set aside. As regards triples riding, it is the case of the claimants that the accident took place only due to the rash and negligent driving of the insured/offending vehicle. The 2nd respondent had not produced contra evidence. On the basis of the complaint, the police have registered first information report against the driver of the offending vehicle. Therefore, this Court is of the view that the accident took place only due to the rash and negligent driving of the insured vehicle. There is no evidence adduced before the Tribunal to suggest that the accident took place because of triples riding of the claimants. However, this Court is of the view that in the facts and circumstances of the case, 10% of contributory negligence can be fixed on both the claimants. Thus, the contributory negligence on the claimants is reduced to 10% in both the appeals. The point No.1 is answered accordingly.

16. As regards quantum of compensation, the Tribunal while adopting percentage method for partial permanent disability granted



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Rs.6000/- for a percentage of disability. Since the accident took place in the year 2021, this Court is of the view that Rs.7000/- can be granted for a percentage. Under the other heads, the compensation amount granted by the Tribunal is confirmed in both appeals.

17. In CMA(MD)No.1264 of 2024, the appellant/claimant suffered 10% of partial permanent disability. By granting Rs.7000/- for a percentage, the appellant is entitled to (Rs.7000 X 10) Rs.70,000/- under the head "partial permanent disability" instead of Rs.60,000/- granted by the Tribunal. The Tribunal has granted total compensation of Rs.1,94,600/-. By increasing Rs.10,000/- under the head "partial permanent disability", the total compensation has to be (Rs.1,94,600 + Rs.10,000) **Rs.2,04,600/-**.

18. In CMA(MD)No.1265 of 2024, the appellant/claimant suffered 18% of partial permanent disability. By granting Rs.7000/- for a percentage, the appellant is entitled to (Rs.7000 X 18) Rs.1,26,000/- under the head "partial permanent disability" instead of Rs.1,08,000/- granted by the Tribunal. The Tribunal has granted total compensation of Rs.4,92,800/-. By increasing Rs.18,000/- under the head "partial



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permanent disability", the total compensation has to be (Rs.4,92,800 + Rs.18,000) **Rs.5,10,800/-**. The point No.2 is answered accordingly.

19. The compensation awarded by this Court at 90% has to be (Rs.2,04,600/- – Rs.20460) **Rs.1,84,140/- in CMA(MD)No. 1264 of 2024** and (Rs.5,10,800/- – Rs.51080) **Rs.4,59,720/- in CMA(MD)No. 1265 of 2024.**

20. The 2nd respondent insurance company shall deposit the modified compensation amount within a period of six weeks from the date of receipt of a copy of this order, less the amount already deposited. On such deposit, the claimants are entitled to withdraw the compensation amount fixed by this Court with interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.

21. In fine, these Civil Miscellaneous Appeals are partly allowed.

No costs.

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

1. Motor Accidents Claims Tribunal, Special Sub Judge, Madurai.

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



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SUNDER MOHAN, J.

CM

Common Judgment made in
C.M.A(MD)Nos.1264 and 1265 of 2024

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