



C.M.A.(MD)Nos.1012 to 1015 of 2023, 725 and 1093 to 1095 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : **01.10.2024**

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)Nos.1012 to 1015 of 2023, 725 and 1093 to 1095 of 2024
and C.M.P(MD)Nos.8152,11359, 11361 and 11362 of 2024

C.M.A(MD)No.1012 of 2023:

1.Muthumari

2.Karthikeyan

... Appellants/Petitioners

Vs.

1.Shemi Mohamed Sham

2.United India Insurance Company Limited,
through its Branch Manager,
Neduman Road, Pravanam Heights,
Thiruvananthapuram.

3.M/s.S.A.V.Blue Metals,
Through its Proprietor,
No.1999, Rani Mangammal Salai,
Vadakkankulam – 627 116.

4.The Oriental Insurance Company Limited,
Through its Divisional Manager,
First Floor, D.D.J. Centre,
Opposite to Vadasery Bus Stand,
Nagarkoil.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order made in M.C.O.P.No.335 of 2017 dated 16.02.2023 on the file of the Motor Accident Claims Tribunal, Tirunelveli.



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In CMA(MD)No.1012 of 2023:

For Appellants : Mr.V.R.Shanmuganathan
For R1 : M/s.R.Joseph Thangaraj
For R2 : Mr.J.S.Murali
For R4 : M/s.C.Karthick
R3 : No appearance

COMMON JUDGMENT

C.M.A(MD)Nos.1012 to 1015 of 2023 have been filed by the claimants aggrieved by the finding on negligence and the quantum of compensation. C.M.A(MD)Nos.725 and 1093 to 1095 of 2024 have been filed by the owner of the Car aggrieved by the finding on liability on the ground that he had sold the Car even before the accident i.e on 27.02.2017.

2. The claimants filed the claim petitions stating that they were travelling in an Indica Car bearing Reg.No.KL-01-AE-8192 belonging to one Shemi Mohamed Sham, insured with the United India Insurance Company, Tiruvananthapuram; that the Car had overtaken a bus and hit a lorry coming on the opposite side owned by one S.A.V.Blue Metals and insured with the Oriental Insurance Company, as a result of the said accident, three persons including the Driver died and two persons were seriously injured. The legal representatives of the Driver have not filed any claim petition. The deceased and the injured belong to the same family.



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3. The said Shemi Mohamed Sham, who was shown as the 1st respondent in the claim petitions, filed a counter stating that he had sold the Car to one Syed Khamaruddin and therefore, he is not liable to pay compensation.

4. The United India Insurance Company Limited, the insurer of the Car, filed a counter stating that since the policy was an act-only policy, the occupants of the Car were not covered and therefore, they are not liable to pay compensation.

5. M/s.S.A.V.Blue Metals, the owner of the Lorry remained exparte before the Tribunal.

6. M/s.Oriental Insurance Company, who was shown as the 4th respondent in the claim petitions, the insurer of the lorry, filed a counter before the Tribunal stating that the accident took place only due to the rash and negligent driving of the Car driver; that the first information report, the rough sketch and the other evidence on record would show that the Lorry driver was not at fault; and that they are not liable to pay compensation.



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7. Before the Tribunal, the claimants examined P.W.1 to P.W.5 and marked Ex.P.1 to Ex.P.31. The Oriental Insurance Company examined R.W.1 and R.W.2. The United India Insurance Company marked the policy document as Ex.R.1 to show that it was only an “Act-only” policy.

8. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place only due to the rash and negligent driving of the Indica Car and directed the owner, namely, Shemi Mohamed Sham to pay the compensation.

9(i). Mr.V.R.Shanmuganathan, learned counsel for the appellants in CMA(MD)Nos.1012 to 1015 of 2023/claimants submitted that the finding on negligence by the Tribunal is erroneous; that the Lorry driver had lodged a complaint accusing the car driver of negligence five hours after the accident taking advantage of the fact that all the passengers in the Car were either injured or dead; that further investigation was not continued since the car driver was no more; that the Tribunal ought not to have considered the contents of the first information report against the claimants; that the evidence of R.W.1 and R.W.2, the passengers of the Car, would clearly show that the Lorry driver was at fault; and therefore,



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the finding of the Tribunal is erroneous.

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9(ii). The learned counsel further submitted that :

a) In M.C.O.P.No.335 of 2017, which culminated in C.M.A (MD)No.1012 of 2023, the quantum of compensation is meagre and that loss of consortium was awarded only to one claimant.

b) In M.C.O.P.No.344 of 2017, which culminated in C.M.A(MD) No.1015 of 2023, though the income tax returns were filed, the Tribunal ignored the evidence and fixed a meagre notional income of Rs.9,000/- and did not consider future prospects while calculating loss of income.

c) In M.C.O.P.No.336 of 2017, which culminated in C.M.A(MD) No. 1013 of 2023 though the disability was assessed by the Doctor at 58%, the Tribunal had awarded compensation for the disability on the percentage method instead of multiplier method and no compensation under the head loss of income was awarded.

d) In M.C.O.P.No.337 of 2017, which culminated in C.M.A(MD) No. 1014 of 2023, very meagre amount of Rs.1,25,077/- was awarded as total compensation and prayed for enhancement.

10(a). The learned counsel for the appellant in C.MA.(MD)Nos.



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725 and 1093 to 1095 of 2024 submitted that though the appellant filed a counter before the Tribunal stating that the Car was sold to Syed Khamaruddin, the Tribunal had directed the appellant to pay compensation, which is erroneous and prayed for setting aside the award.

10(b). The learned counsel also produced the registration certificate of the Car to establish the fact that the Car was transferred to the said Syed Khamaruddin with effect from 14.02.2017, (i.e) two weeks before the accident.

11. The learned counsel for the Oriental Insurance Company Limited/the insurer of the Lorry submitted that the finding of the Tribunal as regards negligence is based on the oral evidence and the averments in the first information report besides the report of the Motor Vehicle Inspector and therefore, there is no infirmity in the award of the Tribunal. The learned counsel relied upon the following three Division Bench judgments, wherein, negligence was fixed on the owner of the vehicle, which had gone on the wrong side to overtake another vehicle and dashed against the vehicle coming on the opposite side:

i)New India Assurance Co. Ltd., Tiruchengode Vs. Poongodi



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and 3 others in 2022 (2) TN MAC 452 (DB);

WEB COPY ii)New India Assurance Co. Ltd., Chennai vs. Gracelyn

Davidson and 3 others in 2016(1) TN MAC 53 (DB); and

iii)S.Thangaiah Vs.P.Ananth and 3 others in CMA(MD)Nos. 149 and 150 of 2015 and batch.

12. The learned counsels appearing for both the Insurance Companies submitted that even as regards the quantum of compensation, there is no infirmity and the award of the Tribunal has to be confirmed.

13. This Court gave its anxious consideration to the rival submissions and carefully perused the materials available on record.

14. The points for consideration in the instant appeals are as follows:

- i)Whether the finding on negligence by the Tribunal is justified;
- ii)Whether the quantum of compensation awarded by the Tribunal is just and reasonable; and
- iii) Whether the said Shemi Mohamed Sham is liable to pay compensation?



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15. As regards the 1st point, it is seen that the Lorry driver had lodged a complaint before the police and based on the same, the first information report was registered, which accused the driver of the Car of rash and negligent driving. The investigation was dropped since the driver of the Car was no more. Therefore, this Court is of the view that merely because the first information report has been registered against the driver of the Car, it cannot be treated as conclusive proof of negligence on his part. The claimants had examined P.W.1 and P.W.2, who were the passengers in the Car. They have stated that the accident took place due to the rash and negligent driving of the Lorry driver. Per contra, R.W.1, the Lorry driver was examined to show that the Car driver had overtaken a bus and lost control and dashed against the Lorry, which was proceeding in the right direction. The rough sketch was not marked before the Tribunal. However, during the hearing of these appeals, the rough sketch was produced by both the counsels for the claimants and the Insurance Company. Since the genuineness is not in dispute, the said document is marked as an additional document by this Court under Order 41 Rule 27 C.P.C as Ex.C.1. The rough sketch would show that the Lorry was proceeding from west to east and the Car was proceeding from east to west. The accident took place on the northern side of the road, which



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shows that the Lorry was proceeding on the right direction. The manner in which the accident took place would show that the Car was completely damaged, resulting in the deaths of three persons and causing injuries to two persons. The Car had proceeded on the wrong direction. However, this Court is of the view that the driver of the Lorry also ought to have exercised due care and caution, which could have averted the accident.

16. As regards the judgments cited by the learned counsel for the Insurance Company, this Court is of the view that the finding on negligence would depend upon the facts and circumstances of each case. In the instant appeals, considering all the evidences and documents referred to by the parties and considering the fact that the accident took place predominantly due to the rash and negligent driving of the Car and partly because of the Lorry driver, this Court is of the view that the contributory negligence on the Lorry driver can be fixed at 25%. The 1st point is answered accordingly.

17(i) As regards the quantum of compensation, it is seen that M.C.O.P.No.335 of 2017, which culminated in C.M.A(MD)No.1012 of 2023, the Tribunal had fixed the notional income at Rs.8,000/- for the



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deceased, who was a minor. The compensation fixed under the head loss of income is just and reasonable and no interference is called for.

However, the Tribunal had awarded only Rs.50,000/- towards loss of consortium. Both the petitioners are entitled to loss of consortium at Rs.40,000/- each. Hence, the compensation under the head loss of the consortium is enhanced to Rs.80,000/-. The compensation under the other heads is confirmed. The modified compensation is tabulated herein under:

<i>Sl. No.</i>	<i>Heads of Compensation</i>	<i>Amount awarded by Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>	<i>Award confirmed or enhanced or granted</i>
1.	Loss of income	12,09,600.00	12,09,600.00	Confirmed
2.	Loss of consortium	50,000.00	80,000.00	Enhanced
3.	Loss of Estate	20,000.00	20,000.00	Confirmed
4.	Funeral expenses	20,000.00	20,000.00	Confirmed
5.	Transport expenses	10,000.00	10,000.00	
Total :		13,09,600.00	13,39,600.00	Enhanced

17(ii). As regards the compensation in M.C.O.P.No.344 of 2017, which culminated in C.M.A(MD)No.1015 of 2023, it is seen that the claimants had established that the deceased was running a waste paper



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store. They had marked Ex.P.30 and Ex.P.31 to show that the deceased was an income tax assessee and was earning substantially during the assessment years 2014 to 2016. The Tribunal had however adopted the notional income of Rs.9,000/-. In order to assess the exact income of the deceased, it would be desirable to find the average income for at least three years and also find out the source of income. In the absence of the same, it would be desirable to adopt the notional income for the purpose of computing the loss of income. This Court is of the view that considering the age of the deceased, his avocation and the year of accident, Rs.15,000/- can be fixed as notional income of the deceased. The deceased was aged 47 years at the time of the accident and hence, 25% has to be added towards future prospects. The multiplier applicable is '13'. Since there were three dependents, 1/3 rd has to be deducted for personal expenses. Therefore, the compensation under the head of loss of income has to be $(Rs.15,000 + 3,750 \times 12 \times 13 \times \frac{2}{3}) = 19,50,000/-$. The Tribunal has awarded only Rs.50,000/- towards loss of love and affection. The compensation under the head loss of love and affection has to be enhanced Rs.1,20,000/- (Rs.40,000/- each to the 3 claimants). The compensation under the head loss of estate has not been awarded by the Tribunal. Hence, Rs.15,000/- is granted under the said head. The



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compensation under the head funeral expenses is reduced to Rs.

15,000/-. The modified compensation is tabulated herein under:

<i>Sl. No.</i>	<i>Heads of Compensation</i>	<i>Amount awarded by Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>	<i>Award confirmed or enhanced or granted</i>
1.	Loss of income	9,36,000.00	19,50,000.00	Enhanced
2.	Loss of love and affection	50,000.00	1,20,000.00	Enhanced
3.	Funeral expenses	20,000.00	15,000.00	Reduced
4.	Transport expenses	10,000.00	10,000.00	Confirmed
5.	Loss of estate	Nil	15,000.00	Granted
Total :		10,16,000.00	21,10,000.00	Enhanced

17(iii). As regards the compensation in M.C.O.P.No.336 of 2017, which culminated in C.M.A(MD)No.1013 of 2023, the claim petition was filed by the injured claimant. The disability assessed by the medical board was at 58%. The Tribunal, after noting that the claimant had not established the functional disability, awarded the compensation by adopting percentage method. This Court finds no infirmity in the said finding. However, since the accident is of the year 2017, this Court is of the view that a sum of Rs.6,000/- for a percentage of disability can be granted. Hence, the compensation under the head permanent disability is



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enhanced to (58 X Rs.6000) Rs.3,48,000/-. The Tribunal has awarded only Rs.35,000/- under the head pain and sufferings. The compensation under the head pain and sufferings can be enhanced to Rs.50,000/-. The Tribunal has not awarded compensation under the head loss of amenities and Rs.25,000/- can be awarded under the said head. It is the case of the claimant that she had also assisted her husband in his business and she was admitted in the hospital for nearly one month and hence she suffered loss of income. However, no compensation was awarded by the Tribunal under the head loss of income. The fact that the claimant took treatment as inpatient from 27.02.2017 to 23.03.2017 is established by Ex.P.13 to Ex.P.20, the discharge summary produced by the claimant. Considering the age and avocation of the injured, the notional income is fixed at Rs.15,000/-. Hence, a sum of Rs.30,000/- is granted towards loss of income for two months. The compensation under the other heads is confirmed. The modified compensation is as follows:

<i>Sl. No.</i>	<i>Heads of Compensation</i>	<i>Amount awarded by Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>	<i>Award confirmed or enhanced or granted</i>
1.	Permanent disability	2,32,000.00	3,48,000.00	Enhanced
2.	Pain and sufferings	35,000.00	50,000.00	Enhanced



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<i>Sl. No.</i>	<i>Heads of Compensation</i>	<i>Amount awarded by Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>	<i>Award confirmed or enhanced or granted</i>
3.	Extra nourishment	5,000.00	5,000.00	Confirmed
4.	Medical expenses	74,633.00	74,633.00	Confirmed
5.	Attendant charges	5,0000	5,000.00	Confirmed
6.	Transportation	5,000	5,000.00	Confirmed
7.	Loss of amenities	Nil	25,000.00	Granted
8.	Loss of income for two months	Nil	30,000.00	Granted
Total :		3,56,633.00	5,42,633.00	Enhanced

17(iv). As regards the compensation in M.C.O.P.No.337 of 2017, which culminated in C.M.A(MD)No.1014 of 2023, this Court finds no infirmity in the quantum of compensation and the same is confirmed. The point No.2 is answered accordingly.

18. As regards the 3rd point, the appellant in C.M.A(MD)Nos.725 and 1093 to 1095 of 2024, had filed a counter before the Tribunal stating that he had sold the Car to one Syed Khamaruddin on 21.02.2017. However, no document was produced by the appellant before the Tribunal to substantiate this averment made in the counter. Thereafter, he



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had not participated in the trial proceedings before the Tribunal and therefore, no infirmity can be found in the finding of the Tribunal holding that the appellant is liable to pay compensation.

19. However, during the hearing of the said appeals, the learned counsel for the appellant had produced the original registration certificate of the Car, which reveals that the Car was sold to the said Syed Khamaruddin on 21.02.2017. This Court is of the view that the issue as to whether the Car stood in the name of Shemi Mohamed Sham or Syed Khamaruddin at the time of accident has to be decided by the Tribunal afresh, after giving sufficient opportunity to the parties concerned. Therefore, for the limited purpose of deciding that issue alone, the matter is remitted back to the Tribunal. After deciding the issue of ownership of the Car at the time of the accident, the Tribunal shall direct the concerned person liable to pay 75% of the compensation since 25% is fixed by this Court towards contributory negligence against the Lorry driver.

20. The Oriental Insurance Company/insurer of the Lorry shall pay 25% of the modified compensation amount to the appellants which is as follows:



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(i) In CMA(MD)No.1012 of 2023, the claimants are entitled to **(Rs.13,39,600/- X 25/100) Rs.3,34,900/-;**

(ii) In CMA(MD)No.1013 of 2023, the claimants are entitled to **(Rs.5,42,633/- X 25/100) Rs.1,35,658.25/-;**

(iii) In CMA(MD)No.1014 of 2023, the claimants are entitled to **(Rs.1,25,077/- X 25/100) Rs.31,269.25/-;** and

(iv) In CMA(MD)No.1015 of 2023, the claimants are entitled to **(Rs.21,10,000/- X 25/100) Rs.5,27,500/-.**

The abovesaid compensation shall be deposited with interest at the rate of 7.5% from the date of petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of the judgment. On such deposit, the claimants are permitted to withdraw the said compensation amount as apportioned by the Tribunal.

21. The Tribunal shall determine as to who was the owner of the Car at the time of the accident. The Tribunal shall decide the issue within a period of four weeks from the date of receipt of a copy of this judgment. After such determination, the remaining 75% of the modified compensation amount shall be paid by the owner of the Car with interest at the rate of 7.5% from the petition till the date of deposit.



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22. In fine, the appeals are partly allowed. No costs. Consequently, connected miscellaneous petitions are closed. The order made in M.C.O.P.No.335 of 2017 dated 16.02.2023 on the file of the Motor Accident Claims Tribunal, Tirunelveli, is set aside only with regard to the finding as regards the ownership of the Car. It is made clear that the matter is remitted back to the Tribunal to decide the issue relating to the ownership of the Car alone, as other issues have been adjudicated by this Court in these appeals.

01.10.2024

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

1. Motor Accident Claims Tribunal, Tirunelveli.

2. The Section Officer,

V.R.Section,

Madurai Bench of Madras High Court,

Madurai.



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C.M.A.(MD)Nos.1012 to 1015 of 2023, 725 and 1093 to 1095 of 2024

SUNDER MOHAN, J.

CM

Judgments made in
C.M.A(MD)Nos.1012 to 1015 of 2023,
725 and 1093 to 1095 of 2024
and C.M.P(MD)Nos.8152,11359,
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