



CMA.Nos.3611, 3615 and 3629 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 11.03.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA.Nos.3611, 3615 and 3629 of 2021

CMA.No.3611 of 2021:

New India Assurance Company Limited,
1st Floor, Tharayil Chambers, Opp to HP Petrol Pump,
NH Bye Pass, Vyttila, Kochi, Kerala – 682 019.
Branch Office-Ponnusamy Gounder Complex,
Tiruchengode Main Road, Sankari Post,
Salem – 637 301.

... Appellant

Vs.

1.Ravi
2.Ajesh Kumar

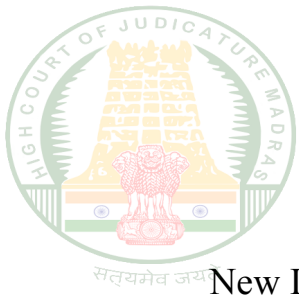
... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the decree and judgment dated 29.04.2019 passed in MCOP.No.145 of 2016 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Sankagiri, Salem District.

For Appellant :M/s.S.R.Sumathy
For Respondents :Mr.S.P.Yuaraj for R1
M/s.Deepa Hari Govind for R2

CMA.No.3615 of 2021:

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New India Assurance Company Limited,
1st Floor, Tharayil Chambers, Opp to HP Petrol Pump,
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Branch Office-Ponnusamy Gounder Complex,
Tiruchengode Main Road, Sankari Post,
Salem – 637 301.

... Appellant

Vs.

1.Rajaganapathi
2.Ajesh Kumar

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the decree and judgment dated 29.04.2019 passed in MCOP.No.149 of 2016 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Sankagiri, Salem District.

For Appellant :M/s.S.R.Sumathy
For Respondents :Mr.S.P.Yuaraj for R1
M/s.Deepa Hari Govind for R2

CMA.No.3629 of 2021:

New India Assurance Company Limited,
1st Floor, Tharayil Chambers, Opp to HP Petrol Pump,
NH Bye Pass, Vyttila, Kochi, Kerala – 682 019.
Branch Office-Ponnusamy Gounder Complex,
Tiruchengode Main Road, Sankari Post,
Salem – 637 301.

... Appellant

Vs.

1.Sasikumar
2.Ajesh Kumar



CMA.Nos.3611, 3615 and 3629 of 2021

... Respondents

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Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the decree and judgment dated 29.04.2019 passed in MCOP.No.148 of 2016 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Sankagiri, Salem District.

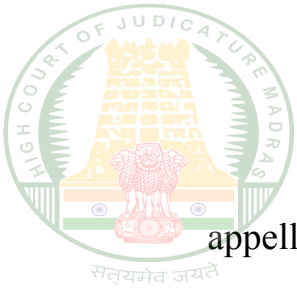
For Appellant :M/s.S.R.Sumathy
For Respondents :Mr.S.P.Yuaraj for R1
M/s.Deepa Hari Govind for R2

COMMON JUDGMENT

The appellant/Insurance Company filed these appeals, challenging the award passed by the Motor Accidents Claims Tribunal in O.P.Nos.145, 149 and 148 of 2016.

2. Since all these appeals are arising out of same accident and issue involved in these appeals are connected, all these appeals are taken together for hearing.

3. Heard the arguments of the learned counsel appearing for the

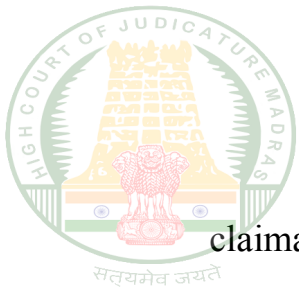


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appellant/Insurance Company and the learned counsel appearing for the respondents.

4. It is the case of the claimants on 26.01.2016, the claimants travelled in a two wheeler in Sangakiri to Salem road, when they approached Seeragapadi bus stop proceeding in left side extreme of the road, the Innova Car bearing registration No.KL-05T-5827 insured with the appellant/Insurance Company owned by the second respondent came in a rash and negligence manner and hit the two wheeler, as a result of the accident, the claimants fell down and sustained grievous injuries. Therefore, the claim petitions were filed by the claimants respectively, seeking compensation for grievous injuries suffered by them.

5. The second respondent owner of the vehicle remained ex-parte before the Tribunal and the claim was resisted by the Insurance Company by filing counter and it was the case of the Insurance company that all the three claimants travelled in a two wheeler violating the provisions of Motor Vehicles Act. It was further the case of the appellant, the accident had occurred only due to the negligence on the part of the



claimants and hence the Insurance Company has come before this Court.

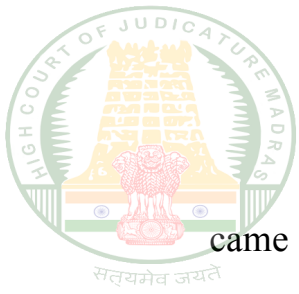
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6. Before the Tribunal, the claimant in O.P.No.145 of 2016 was examined as PW.1, the claimant in O.P.No.148 of 2016 was examined as PW.2, the claimant in O.P.No.149 of 2016 was examined as PW.3. The Doctor was examined as PW.4. Twenty nine documents were marked on the side of the claimants as Exs.P1 to P29.

7. On behalf of the respondent, the officer of the appellant/Insurance Company was examined as RW.1, five documents were marked on behalf of the Insurance Company as R1 to R5.

8. The Tribunal based on the evidence available on record came to the conclusion that the accident had occurred due to the negligence of the driver of the Innova Car insured with the appellant Insurance Company. However, the Tribunal, taking into consideration, three persons had travelled in a two wheeler fixed 20% contributory negligence on the part of the claimants. The said findings has not been challenged by claimants by filing any appeal.

9. The Tribunal based on the evidence available on record

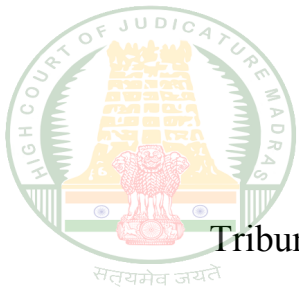


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came to the conclusion that the second respondent owner of the vehicle had taken only private car package policy and he used the vehicle as a tourist Taxi at the time of accident. Therefore, the Tribunal came to the conclusion that there was a violation of policy conditions and directed pay and recovery order against the appellant/Insurance Company.

10. Based on the evidence available on record, the Tribunal quantified the compensation payable to the respective claimants at Rs.4,75,000/-, Rs.5,90,000/- and Rs.7,60,000/-. Aggrieved by the award passed by the Tribunal, the Insurance Company has filed these appeals.

11. The learned counsel appearing for the Insurance Company would submit that 20% contributory negligence fixed by the Tribunal is on the lower side. The Tribunal fixed negligence on the part of the claimants only on the ground that three persons travelled in a two wheeler and hence that also contributed to the accident. In fact, merely because three persons travelled in two wheeler, in the absence of any positive evidence it cannot be decided that they also contributed to the accident. But in any event, in the case on hand, the claimants have not questioned the said finding of the



Tribunal. Therefore, this Court is not inclined to interfere with the said findings on the question of contributory negligence.

12. The learned counsel appearing for the appellant would submit that the amount awarded by the Tribunal under the head pain and suffering, compensation towards simple injuries, compensation towards loss of amenities are on higher side and the same requires reduction. The learned counsel also submitted that without any basis, the Tribunal adopted multiplier method and the same is liable to be set aside.

13. The learned counsel appearing for claimant would submit that the Doctor who treated the claimant was examined as PW.4 and through him disability certificates were marked as Exs.P21, 24 and 27. Based on the medical evidence available on record, the Tribunal came to the conclusion that the claimants suffered permanent disability, which interfered with their avocation, therefore, the multiplier method adopted by the Tribunal is in accordance with law.



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14. In order to prove the disability suffered by the claimants, all

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the claimants have been examined as PW.1 to PW.3. The doctor who treated the claimants examined them and based on his examination, he issued disability certificates and the same were marked as Exs.P21, 24 and 27. By taking into consideration, the nature of injury and the extent of disability suffered by them, the Tribunal rightly came to the conclusion the disability interfered with avocation and awarded the compensation under the head disability by applying multiplier method. The same is in accordance with law and this Court is not inclined to interfere with the said findings.

15. As far as O.P.No.145 of 2016 is concerned, the claimants suffered WHIPLASH injury in his neck, even after the treatment his neck movement got restricted. The doctor fixed the disability at 20%. As per the averment in the claim petition, he was employed as a barber earning Rs.12,000/- per month. When he has difficulty in moving his neck certainly, the same would interfere with his avocation. Therefore, the Tribunal accepted 20% disability fixed by Doctor and adopted multiplier method, having regard to the date of accident and the income claimed by the claimant himself in the claim petition, the Tribunal rightly adopted notional income at



Rs.12,000/- and fixed Rs.4,32,000/- under the head disability.

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16. The amount of Rs.50,000/- awarded by the Tribunal under pain and suffering is on higher side and the same is liable to be reduced to Rs.35,000/-. Having awarded compensation by adopting multiplier method for the permanent disability, the Tribunal ought not have awarded Rs.25,000/- under the head simple injury, therefore, the same is set aside. The amount of Rs.5,000/- awarded under the head loss of estate is also set aside. The amount awarded by the Tribunal under the other heads are confirmed. Accordingly, the compensation is reduced to Rs.4,36,000/-. The award passed by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Disability	4,32,000/-	4,32,000/-
2.	Medical expenses	38,000/-	38,000/-
3.	Pain and suffering	50,000/-	35,000/-
4.	Transport expenses	5,000/-	5,000/-
5.	Extra nourishment	30,000/-	30,000/-
6.	Attender charges	5,000/-	5,000/-
7.	Simple injury	25,000/-	Set aside



8.	Loss of estate	5,000/-	Set aside
	Total	Rs.5,90,000/-	Rs.5,45,000/-
	Less 20% contributory negligence	Rs.1,18,000/-	Rs.1,09,000/-
	Total	Rs.4,72,000/- (rounded off to Rs.4,75,000/-)	Rs.4,36,000/-

Hence, CMA.No.3611 of 2021 is partly allowed. The award amount is reduced to Rs.4,36,000/-

17. As far as O.P.No.148 of 2016 is concerned, as per Ex.P24-disability certificate issued by Doctor, he suffered the fracture in hip and restriction in the ankle movement and the same reads as follows:

Movements using Baseline Goniometer: Both Hip Flexion Extension ARC-0-110 (0-140) Abduction Adduction ARC -0-70 (0-90) Rotation 0-60 (0-90) Muscle strength Manual muscle testing method: Both Hip Flexor Muscles 4/5 (5/5) Extensor Muscles 4/5 (5/5) Abductor muscles 4/5 (5/5) Adductor Muscles 4.5 (5/5) Rotator muscles External 4/5 (5/5) Rotator Muscles internal 4/5 (5/5).

18. The Doctor fixed the disability at 30% . As per the averment in the claim petition, the claimant was employed as Power loom weaver. In the disability certificate issued by the doctor, it is clearly



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mentioned that due to the injury suffered by him, it may not be possible for him to squat or climb the stairs. A weaver working in power loom is required to move his hand and leg constantly with synchronisation. Therefore, taking into consideration the disability suffered by him, the Tribunal accepted 30% of the disability fixed by the Doctor and adopted multiplier method. The Tribunal fixed the notional income of the claimant at Rs.11,000/- and fixed the compensation under the head disability at Rs.6,75,000/-. The amount of Rs.75,000/- awarded by the Tribunal under the head pain and suffering is excessive one and the same is reduced to Rs.35,000/-. Likewise, the amount awarded by the Tribunal under the head loss to the estate is also set aside. The amount awarded by the Tribunal under the various other heads are fair and reasonable and the same is confirmed. Hence, the amount awarded by the Tribunal is reduced to Rs.7,22,480/-. The award passed by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of earning capacity	6,75,000/-	6,75,000/-



2.	Medical expenses	1,38,000/-	1,38,000/-
3.	Pain and suffering	75,000/-	35,000/-
4.	Transport expenses	5,000/-	5,000/-
5.	Extra nourishment	25,000/-	25,000/-
6.	Attender charges	5,000/-	5,000/-
7.	Future Medical expenses	20,000/-	20,000/-
8.	Loss of estate	5,000/-	Set aside
	Total	Rs.9,48,000/-	Rs.9,03,000/-
	Less 20% contributory negligence	Rs.1,89,600/-	Rs.1,80,600/-
	Total	Rs.7,58,400/- (rounded off to Rs.7,60,000/-)	Rs.7,22,400/-

Hence, CMA.No.3629 of 2021 is partly allowed and award amount is reduced to Rs.7,22,400/-

19. As far as O.P.No.149 of 2016 is concerned, the Doctor who examined the claimant fixed the disability at 25%. It is also stated in the claim petition that due the disability suffered by him, he could not squat or climb the stairs. It was stated that the claimant was employed as a Barber, which requires constant standing. He suffered fracture in hip (superior and interior pubic rami fracture). In view of the injuries suffered by him, he may not be in a position to discharge his profession effectively. Therefore,



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taking into consideration, the nature of injury, the Tribunal rightly adopted multiplier method and fixed the compensation of Rs.5,76,000/- under the head disability by taking the notional income at Rs.12,000/- and the same is affirmed. The Tribunal awarded Rs.50,000/- under the head pain and suffering and the same is excessive, hence reduced to Rs.35,000/-. Having awarded the compensation by adopting multiplier method, the Tribunal ought not have awarded the compensation under the separate head, simple injuries and the same is set aside. The amount of Rs.5,000/- awarded under the head loss of estate is set aside. The amount awarded by the Tribunal under various other heads are confirmed and the total compensation is reduced to Rs.6,92,000/- after deducting 20% contributory negligence, the claimant is entitled to Rs.5,53,600/-. The award passed by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Disability	5,76,000/-	5,76,000/-
2.	Medical expenses	41,000/-	41,000/-



3.	Pain and suffering	50,000/-	35,000/-
4.	Transport expenses	5,000/-	5,000/-
5.	Extra nourishment	30,000/-	30,000/-
6.	Attender charges	5,000/-	5,000/-
7.	Simple injuries	25,000/-	Set aside/-
8.	Loss of estate	5,000/-	Set aside
	Total	Rs.7,37,000/-	Rs.6,92,000/-
	Less 20% contributory negligence	Rs.1,47,400/-	Rs.1,38,400/-
	Total	Rs.5,89,600/- (rounded off to Rs.5,90,000/-)	Rs.5,53,600/-

Hence, CMA.No.3615 of 2021 is partly allowed. The award amount is reduced to Rs.5,53,600/-

20. In view of the discussions made earlier, all the Civil Miscellaneous Appeals are partly allowed as mentioned above, the appellant/Insurance Company is directed to deposit the modified award amount to the credit of respective Original Petitions, on the file of the Subordinate Court, Sankagiri, within a period of six weeks. On such deposit the claimants are directed to withdraw the said amount by making formal application before the Tribunal. The Tribunal also passed an order



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for pay and recovery and the same was not questioned by owner of vehicle.

Therefore, the said finding is affirmed.

21. Accordingly, this Civil Miscellaneous Appeal is allowed.

No costs.

11.03.2025

Index : Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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To

1.The Motor Accident Claims Tribunal
Subordinate Court, Sankagiri, Salem District.

2.The Section Officer
VR Section, High Court, Madras.

S.SOUNTHAR, J.

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