



CMA.Nos.2649 to 2651 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 29.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.Nos.2649 to 2651 of 2021

Rajkumar	...Appellant in CMA.No.2649 of 2021
Sekar	...Appellant in CMA.No.2650 of 2021
Vijayakumar	...Appellant in CMA.No.2651 of 2021

Vs.

1. Thiyagarajan	
2. The Divisional Manager, The New India Assurance Co. Ltd., No.1, Officers Line, Vellore.	...Respondents in all CMA's.

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, as against the judgment and decree dated 03.03.2020 made in MACTOP.Nos.237, 239 and 238 of 2017 respectively on the file of the Motor Accidents Claims Tribunal and Special Sub Court, Thiruvannamalai.



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In all CMA's.:

For Appellant : M/s.N.Lavanya
for M/s.M.Malar

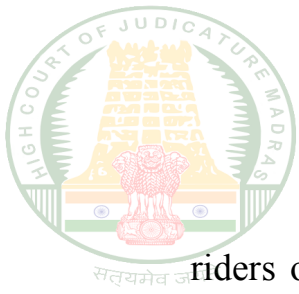
For Respondents : Notice dispensed with, for R1
: Mr.K.Thirunavukkarasu, for R2

COMMON JUDGEMENT

Since all these appeals are arising out of the very same accident, they are disposed of by way of this common order.

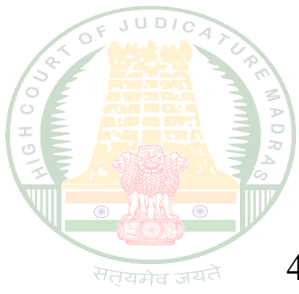
2. Challenging the common judgment and decree dated 03.03.2020 made in MACTOP.Nos.237 to 239 of 2017 on the file of the Motor Accidents Claims Tribunal and Special Sub Court, Thiruvannamalai, the respective claimants are before this Court.

3. It is the case of the appellants/claimants that, on 31.12.2016 at about 5.00 pm., when the appellants/claimants were returning to their home town in the Hero Splender Pro bearing Regn.No.TN-25-AP-9615 driven by the appellant in CMA.No.2649 of 2021 along with other appellants as pillion



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riders owned by one Rajendiran and were proceeding in Thiruvannamalai to Vellore road, at that time, a car bearing Regn.No.TN-23-BX-0567 owned by the 1st respondent insured with the 2nd respondent driven by its driver came in a rash and negligent manner and dashed against the vehicle in which the appellants were travelling, due to which, the appellants sustained grievous injuries and got admitted in the hospital. Thereby, the appellants filed respective claim petitions in MACTOP.Nos.237 to 239 of 2017 seeking compensation of Rs.7,00,000/-, Rs.7,00,000/- and Rs.15,00,000/- respectively. Before the tribunal, the appellants/claimants examined themselves as P.W.1, P.W.2 and P.W.3 respectively and marked exhibits P.1 to P.10 and on the side of respondents, two witnesses viz., R.W.1 and R.W.2 were examined and marked Exhibits R.1 to R.4 and the Disability certificates were marked as Court documents Exs.C.1 to C.3. After trial, the Tribunal had mechanically fixed 80%-20% negligence on the part of the driver of the 1st respondent vehicle and the respective appellants/claimants and awarded a meagre compensation of Rs.53,600/-, Rs.28,000/- and Rs.2,98,649/- respectively. Aggrieved by the same, the appellants have come up with these appeals.

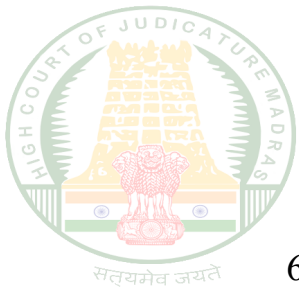


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4. Learned counsel appearing for the appellants/claimants submitted that, the above said accident occurred solely due to the rash and negligent driving on the part of the driver of the 1st respondent vehicle, due to which, the appellants sustained grievous fracture injuries all over their body, however, the tribunal had awarded meagre compensation under the head Disability and the compensation awarded under other heads are also on lower side and the same has to necessarily be enhanced. Learned counsel further submitted that, unless it is proved either before the tribunal or before this Court that the above accident had taken place solely due to triple riding, mere fact that three persons have travelled in the two wheeler cannot be a ground to fix 20% contributory negligence on the part of the appellants/claimants. Accordingly, she prayed for appropriate orders.

5. Per contra, the learned counsel appearing for the 2nd respondent submitted that, by considering all the relevant documents, the Tribunal has rightly passed the present impugned award, which does not require any modification. Accordingly, he prayed for dismissal of these appeals.



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6. Heard the learned counsel on either side and perused the materials available on record.

7. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. It is not in dispute that three persons have travelled in the vehicle at the time of accident and a perusal of the impugned award reveals that the tribunal had fixed a contributory negligence of 20% on the part of the appellants for the said reason, as the same is a clear violation of Motor Vehicles Act and the appellants/claimants have miserably failed to establish before the tribunal that the accident had not taken place solely due to the fact that three persons have travelled in the vehicle at the time of accident. Hence, in the absence of any evidence to hold that the accident had happened solely due to the rash and negligent driving on the part of the driver of 1st respondent vehicle, the tribunal had fixed 20% contributory negligence on the part of the appellants, in which this Court does not find any fault with and thereby, this Court is not inclined to interfere with the same.



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8. The major grievance of the appellants/claimants is with regard to the quantum of compensation awarded by the Tribunal. It is claimed by the appellants that the accident is of the year 2016 and the injuries sustained by the appellants are permanent and functional in nature, however, the Tribunal had adopted multiplier method and that too had taken only a sum of Rs.3,000/- per percentage of disability. In this regard, this Court perused the disability certificates issued by the Medical Board, which were marked as Exs.C.1 to C.3 and on perusal of the same, this Court is of the view that, though the tribunal had rightly adopted the percentage method by holding that the injuries sustained by the appellants are not functional in nature, as the same would not hamper their day to day activities, however, by erroneously adopting a sum of Rs.3,000/- per percentage of disability, the tribunal awarded only a sum of Rs.30,000/-, Rs.15,000/- and Rs.1,20,000/- respectively, and as per the existing law at the relevant point of time, the Tribunal ought to have fixed a sum of Rs.4,000/- per percentage of disability. Hence, the amount under the head Disability awarded to the respective appellants/claimants stands



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enhanced to a sum of Rs.40,000 /- ($10\% \times \text{Rs.4,000/-} = \text{Rs.40,000/-}$),
Rs.20,000/-($5\% \times \text{Rs.4,000/-} = \text{Rs.20,000/-}$) and Rs.1,60,000 /- ($40\% \times$
Rs.4,000/- = Rs.1,60,000/-) respectively.

9. Insofar as the compensation awarded under other heads in respect of the appellant in CMA.No.2649 of 2021 is concerned, the tribunal had awarded a sum of Rs.10,000/-, Rs.8,000/-, Rs.4,000/- and Rs.7,000/- under the heads Pain and sufferings, Extra nourishment, Attender charges and Loss of income respectively, which are on the lower side and thereby, this Court is inclined to enhance the same to Rs.40,000/-, Rs.20,000/-, Rs.10,000/- and Rs.10,000/- respectively. At the same time, a sum of Rs.8,000/- has been awarded under the head Loss of Amenities, which is not sustainable and thereby, the same is rejected.

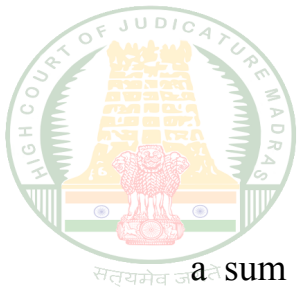
10. In view of the above, the compensation awarded by the Tribunal in respect of the appellant in CMA.No.2649 of 2021 is modified as under :-



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Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Disability	30,000/-	40,000/-
Pain and sufferings	10,000/-	40,000/-
Loss of Amenities	8,000/-	-
Extra nourishment	8,000/-	20,000/-
Attender charges	4,000/-	10,000/-
Loss of income	7,000/-	10,000/-
Total	67,000/-	1,20,000/-
After deducting 20% towards contributory negligence	Rs.53,600/-	Rs.96,000/-

11. Insofar as the compensation awarded under other heads in respect of the appellant in CMA.No.2651 of 2021 is concerned, the tribunal had awarded a sum of Rs.5,000/-, Rs.6,000/- and Rs.3,000/- under the heads Pain and sufferings, Extra nourishment and Attender charges respectively, which are on the lower side and thereby, this Court is inclined to enhance the same to Rs.30,000/-, Rs.20,000/- and Rs.10,000/- respectively. Further, no compensation has been awarded under the head Loss of income, and thereby, this Court awards a sum of Rs.10,000/- under the said head. At the same time,



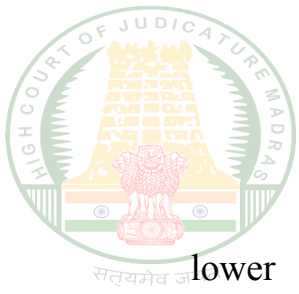
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a sum of Rs.6,000/- has been awarded under the head Loss of Amenities, which is not sustainable and thereby, the same is rejected.

12. In view of the above, the compensation awarded by the Tribunal in respect of the appellant in CMA.No.2651 of 2021 is modified as under :-

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Disability	15,000/-	20,000/-
Pain and sufferings	5,000/-	30,000/-
Loss of Amenities	6,000/-	-
Extra nourishment	6,000/-	20,000/-
Attender charges	3,000/-	10,000/-
Loss of income	-	10,000/-
Total	35,000/-	90,000/-
After deducting 20% towards contributory negligence	Rs.28,000/-	Rs.72,000/-

13. Insofar as the compensation awarded under other heads in respect of the appellant in CMA.No.2650 of 2021 is concerned, the tribunal had awarded a sum of Rs.5,000/-, Rs.5,000/- and Rs.19,500/- under the heads Attender charges, Transportation and loss of income respectively, which are on the



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lower side and thereby, this Court is inclined to enhance the same to Rs.10,000/-, Rs.10,000/- and Rs.20,000/- respectively. At the same time, a sum of Rs.25,000/- has been awarded under the head Loss of Amenities, which is not sustainable and thereby, the same is rejected.

14. In view of the above, the compensation awarded by the Tribunal in respect of the appellant in CMA.No.2650 of 2021 is modified as under :-

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Disability	1,20,000/-	1,60,000/-
Pain and sufferings	40,000/-	40,000/-
Loss of Amenities	25,000/-	-
Extra nourishment	20,000/-	20,000/-
Attender charges	5,000/-	10,000/-
Medical Bills	1,38,811/-	1,38,811/-
Transportation charges	5,000/-	10,000/-
Loss of income	19,500/-	20,000/-
Total	3,73,311/-	4,23,811/-
After deducting 20% towards contributory negligence	Rs.2,98,649/-	Rs.3,39,048.8/-
Rounded off to		Rs.3,40,000/-



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15. Accordingly, these Civil Miscellaneous appeals stand allowed in part and the impugned award of the Tribunal is modified by enhancing the compensation amount from **Rs.67,000/- to Rs.96,000/-, Rs.28,000/- to Rs.72,000/- and Rs.2,98,649/- to Rs.3,40,000/- respectively.** The 2nd respondent/insurance company is directed to deposit the said amount to the credit of claim petitions in MACTOP.Nos.237, 238 and 239 of 2017 respectively along with interest at the rate of 7.5% per annum from the date of respective claim petitions till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the respective Appellants through RTGS within a period of two (2) weeks thereafter, upon production of proof with regard to payment of Court



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fee on the enhanced compensation by the appellants. It is underscored that the appellants are not entitled to any interest for the default period, if any. No Costs.

29.01.2025

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

To

1. The Section Officer,
VR Section, Madras High Court.
2. The Motor Accidents Claims Tribunal,
Special Sub Court, Thiruvannamalai.



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M.DHANDAPANI, J.

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