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C.M.A.No.649 of 2021 and
Cross Obj.No.35 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.649 of 2021

and

Cross Objection No.35 of 2022

and

C.M.P.No.3962 of 2021

C.M.A.No.649 of 2021:

1.S.Ayyappan

2.Royal Sundaram Alliance Insurance Co.Ltd.,
No.1, Club House Road,
Subramaniam Building,
2nd Floor, Anna Salai,
Chennai – 600 001.

.. Appellants

Vs.

Arjunan

.. Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 01.07.2019, made in M.C.O.P.No.2003 of 2013, on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellants : Mr.M.Krishnamoorthy



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For Respondent : Ms.A.Subadra
for Mr.V.Velu

Cross Objection No.35 of 2022:

Arjunan

.. Cross Objector

Vs.

1.S.Ayyappan

2.Royal Sundaram Alliance Insurance Co.Ltd.,
D.No.1, Club House Road,
Subramaniam Building,
2nd Floor, Anna Salai,
Chennai – 600 001.

.. Respondents

Prayer: This Cross Objection is filed under Order XLI Rule 22 of C.P.C., to enhance the award amount in the judgment and decree dated 01.07.2019, made in M.C.O.P.No.2003 of 2013, on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Cross Objector : Ms.A.Subadra
for Mr.V.Velu

For Respondents : Mr.M.Krishnamoorthy

COMMON JUDGMENT

(Judgment of the Court was delivered by V.M.VELUMANI, J.)

C.M.A.No.649 of 2021 has been filed by the owner and insurer of the car against the award dated 01.07.2019, made in M.C.O.P.No.2003 of



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2013, on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2.Cross Objection No.35 of 2022 has been filed by the claimant seeking enhancement of compensation granted by the Tribunal in the award dated 01.07.2019, made in M.C.O.P.No.2003 of 2013, on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

3.The respondent / claimant filed M.C.O.P.No.2003 of 2013, claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by him in the accident that took place on 15.09.2012.

4.According to the respondent, on 15.09.2012 at about 11.00 hours while he was riding the motorcycle bearing Registration No.TN 04 Q 6782 on the Ambur – Vellore NH Road opposite to Iraivankaadu Vijayan House, the driver of the Maruti Car bearing Registration No.KA 51 MC 7818 drove the same in a rash and negligent manner at a dangerous speed and dashed against the motorcycle driven by the respondent and caused the accident. In the accident, the respondent sustained multiple grievous



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injuries all over his body. Hence, the respondent filed the said claim petition claiming compensation against the appellants who are the owner and insurer of the Maruti Car respectively.

5.The 1st appellant – owner of the Maruti Car filed counter statement and denied all the averments made by the respondent in the claim petition. The 1st appellant denied the manner of accident as alleged by the respondent, nature of injuries sustained by the respondent and the treatment taken by him. According to 1st appellant, the respondent only drove the motorcycle in a rash and negligent manner and collided against the Maruti Car belonging to him and invited the accident. At the time of accident, the driver of the Maruti Car drove the same without any breach of conditions and traffic rules and hence, the 1st respondent is not liable to pay any compensation to the respondent. At the time of accident, the Maruti Car was insured with 2nd appellant and hence, the 2nd appellant is liable to pay the compensation to the respondent. The 1st appellant denied the age, avocation and income of the respondent. The quantum of compensation claimed by the respondent is highly excessive and prayed for dismissal of the claim petition.



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6.The 2nd appellant-Insurance Company filed separate counter statement and denied all the averments made by the respondent. The 2nd appellant denied the manner of accident as alleged by the respondent. The respondent has filed the claim petition after 7 months of the accident only to claim compensation from the 2nd appellant, for which he is not legally entitled. At the time of accident, the respondent drove the motorcycle without wearing helmet and hence, the respondent is solely responsible for the accident due to his negligence. The respondent was not possessing valid endorsement in the driving license to drive the motorcycle. He was having the driving license only to drive Light Motor Vehicle. As per FIR, the respondent only drove the motorcycle at a high speed and dashed on the rear right side of the Maruti Car and damaged the rear right side of the car, invited the accident and got injured. From the information collected it is seen that a container lorry which was coming behind the motorcycle at a great speed, ran over the respondent's left hand, crushed it and resulted in amputation of left hand of the respondent. The respondent ought to have impleaded the owner and driver of the container lorry. From the Motor Vehicle Inspector's report, it is clear that the motorcycle only hit and damaged the rear side of the



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Maruti Car and the front portion of the motorcycle got damaged. The 2nd

appellant denied the age, avocation, income, nature of injuries, disability and medical expenses incurred by the respondent. In any event, the quantum of compensation claimed by the respondent is highly excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the respondent examined himself as P.W.1, one Venkatesan, Record Clerk from Rajiv Gandhi Government General Hospital was examined as P.W.2 and 9 documents were marked as Exs.P1 to P9. The 1st appellant examined himself as R.W.1 and marked five documents as Exs.R1 to R5.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that both the driver of the Maruti Car as well as the claimant are responsible for the accident, fixed 90% negligence on the part of the driver of the Maruti Car and 10% negligence on the part of the respondent / claimant, awarded a sum of Rs.24,16,400/- as compensation and directed the 2nd appellant to pay a sum of Rs.21,74,760/-, being 90% of the award amount as compensation to the respondent / claimant.



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9.Challenging 90% liability fixed on the 2nd appellant as well as quantum of compensation granted by the Tribunal in the award dated 01.07.2019, made in M.C.O.P.No.2003 of 2013, the appellants-owner and insurer of the Maruti Car have come out with present appeal in C.M.A.No.649 of 2021.

10.Not being satisfied with the amounts awarded by the Tribunal, the respondent / claimant has filed Cross Objection No.35 of 2022, seeking enhancement of compensation.

11.The learned counsel appearing for the appellants contended that the accident occurred only due to the negligence of the respondent / claimant. The Tribunal ought to have fixed entire negligence on the respondent / claimant instead of fixing only 10% negligence on him. The driver of the Maruti Car was examined as R.W.1 who deposed that the respondent alone dashed the motorcycle on the backside of the Maruti Car. FIR was registered only against the respondent / claimant. The Tribunal considered Ex.R4 / Motor Vehicle Inspector's report of motorcycle and Ex.R5 / Motor Vehicle Inspector's report of Maruti Car, gave a finding that the respondent / claimant also contributed to the



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accident, but erroneously fixed 90% negligence on the driver of the Maruti Car based on the self serving evidence of respondent. The accident occurred in the year 2012 and the respondent has not filed any document to prove the avocation and income. In the absence of any material evidence with regard to avocation and income, a sum of Rs.15,000/- per month fixed by the Tribunal as notional income of the respondent is excessive. The respondent did not appear before the Medical Board and Ex.P8/disability certificate produced by the respondent is only to avail the social benefits from the Government. The Tribunal after granting compensation by adopting multiplier method, erred in awarding compensation for loss of income, loss of amenities under separate heads. The respondent has not filed any document to prove that he requires further treatment. In the absence of materials, the Tribunal erroneously awarded a sum of Rs.50,000/- each towards medical expenses and future medical expenses. The amounts awarded by the Tribunal under other heads are excessive and prayed for setting aside the award of the Tribunal and for dismissal of Cross Objection No.35 of 2022 filed by the respondent / claimant for enhancement of compensation.



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12.The learned counsel appearing for the respondent / claimant submitted that the accident occurred only due to the negligence of the driver of the Maruti Car belonging to 1st appellant. The driver of the Maruti Car alone was responsible for the accident. The Tribunal considering entire materials on record and appreciating the evidence, rightly fixed 90% negligence on the part of the driver of the Maruti Car and 10% negligence on the respondent / claimant. The respondent / claimant was working as Driver and was earning a sum of Rs.20,000/- per month at the time of accident. The Tribunal erroneously fixed meagre amount of Rs.15,000/- per month as notional income of the respondent / claimant. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation and for dismissal of C.M.A.No.649 of 2021 filed by the appellants.

13.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the respondent and perused the entire materials on record.



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14. From the materials on record, it is seen that both the 1st appellant and respondent have stated the manner of the accident. The 2nd appellant – Insurance Company in the counter statement has stated that the respondent only drove the motorcycle in a rash and negligent manner at a high speed and hit the rear side of the Maruti Car and caused the accident. In the FIR, the 1st appellant has stated that the respondent came from behind and dashed on the backside of the right tyre of the Maruti Car. The respondent did not give any objection to the said complaint given by the 1st appellant – owner of the Maruti Car. There is nothing on record to show that the respondent gave a complaint against the driver of the Maruti Car, the 1st appellant herein. The version of the 1st appellant is substantiated by the FIR and the Motor Vehicle Inspector's report filed by the appellants and respondent, marked as Exs.P1, R4 & R5. The Tribunal having held that the respondent also contributed negligence, erred in fixing only meagre percentage of 10% contributory negligence on the respondent. From the materials on record, it is proved that the accident occurred when the respondent dashed on the backside of the Maruti Car. Taking into consideration the damages caused to both the vehicles, it would be just and proper to fix the negligence equally on the respondent



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/ rider of the motorcycle as well as 1st appellant / driver-cum-owner of the Maruti Car. Accordingly, 50% liability is fixed on the 2nd appellant, being the insurer of the Maruti Car belonging to 1st appellant.

15.As far as quantum of compensation is concerned, the respondent claimed that at the time of accident he was working as Driver and was earning a sum of Rs.20,000/- per month. He did not file any document to prove his avocation and income. In the absence of any materials with regard to avocation and income, the Tribunal fixed a sum of Rs.15,000/- per month as notional income of the respondent. The accident is of the year 2012. The notional income fixed by the Tribunal is excessive. Considering the year of accident and nature of work done by the respondent, the notional income fixed by the Tribunal is reduced and fixed as Rs.10,000/- per month. To prove the disability suffered by him, the respondent produced the disability certificate issued by the Government K.K.Nagar Peripheral Hopsital as Ex.P8 to avail the social benefits from the Government. In view of the same, he is not entitled to compensation for 90% disability as per Ex.P8. Hence, the compensation granted for 60% disability is not interfered with. As per Ex.P3 / driving license, the respondent was aged 45 years at the time of accident. As per



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the judgments of the Hon'ble Apex Court reported in **2017 (2) TNMAC**

609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others] and **2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another]**, the Tribunal has rightly granted 25% enhancement towards future prospects and applied multiplier '14'. Thus, by fixing the monthly income as Rs.10,000/-, granting 25% enhancement towards future prospects and applying multiplier '14', the compensation towards functional disability is arrived at Rs.12,60,000/- {Rs.12,500/- [(Rs.10,000/- + Rs.2,500/- (25% of Rs.10,000/-)] x 12 x 14 x 60/100}.

15(i).The Tribunal considering the nature of injuries, disability, amputation and nature of work done by the respondent, applied multiplier method and granted compensation for functional disability. In view of the compensation awarded by the Tribunal towards functional disability by adopting multiplier method, the respondent is not entitled to compensation for loss of amenities and loss of income. Therefore, a sum of Rs.1,00,000/- awarded by the Tribunal towards loss of amenities and a sum of Rs.45,000/- awarded by the Tribunal towards loss of income are liable to be set aside and they are hereby set aside. The contention of the



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learned counsel for the appellants that the respondent has not filed any document to prove that he requires further treatment and in the absence of any document for medical expenses, the Tribunal erroneously granted a sum of Rs.50,000/- each towards medical expenses and future medical expenses. As far as future medical expenses is concerned, the respondent suffered amputation and he may require amount for medical expenses in future. In view of the same, the said amounts granted by the Tribunal towards medical expenses and future medical expenses are not interfered with. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, they are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Functional Disability	18,90,000/-	12,60,000/-	Reduced
2.	Loss of income	45,000/-	-	Set aside
3.	Loss of amenities	1,00,000/-	-	Set aside
4.	Pain and sufferings	2,00,000/-	2,00,000/-	Confirmed
5.	Medical expenses	50,000/-	50,000/-	Confirmed
6.	Attendant charges	5,400/-	5,400/-	Confirmed
7.	Extra nourishment	50,000/-	50,000/-	Confirmed
8.	Transportation	25,000/-	25,000/-	Confirmed



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9.	Future medical expenses	50,000/-	50,000/-	Confirmed
10.	Damages to clothes	1,000/-	1,000/-	Confirmed
	Total	Rs.24,16,400/-	Rs.16,41,400/-	Reduced by Rs.13,54,060/- (Rs.21,74,760/- - Rs.8,20,700/-)
	90% of compensation	Rs.21,74,760/-	-	
	50% of compensation	-	Rs.8,20,700/-	

16.In the result, C.M.A.No.649 of 2021 is partly allowed and Cross Objection No.35 of 2022 is dismissed. The compensation awarded by the Tribunal at Rs.21,74,760/- is hereby reduced to Rs.8,20,700/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd appellant-Insurance Company is directed to deposit the award amount, now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.2003 of 2013, on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai. On such deposit, the respondent is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The 2nd appellant is permitted to withdraw the excess amount lying in the credit of M.C.O.P.No.2003 of



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2013, if the entire award amount has been already deposited by them.

Consequently, the connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (T.V.T.S., J)

23.09.2022

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Index : Yes / No

Internet : Yes / No

To

1.The II Judge,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.

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

V.M.VELUMANI, J.



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