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C.M.A.No.811 of 2018 and Cros.Obj.No.82 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.811 of 2018 and Cros.Obj.No.82 of 2022
and C.M.P.No.6751 of 2018

C.M.A.No.811 of 2018

The Oriental Insurance Company Limited,
Divisional Office, Shoba TSM Complex,
R.S.Road, (Opp Town Railway Station),
Palghat 678 001, Kerala State.

... Appellant

Vs.

1.T.S.Sampathkumar, who is in Memory impaired,
Condition, represented by his wife/guardian,
S.Devi @ Shanmugadevi
2.A.Syed Mohammad
3.K.Shinu

... Respondents



C.M.A.No.811 of 2018 and Cros.Obj.No.82 of 2022

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.01.2018 made in M.C.O.P.No.287 of 2014 on the file of Motor Accident Claims Tribunal, (I Additional District Court), Trippur.

For Appellants : Mr.Elveera Ravindran
For R1 : MR.Ma.Pa.Thangavel
For R2 : Notice not ready
For R3 : Notice served

Cros.Obj.No.82 of 2022

T.S.Sampathkumar, who is in Memory impaired,
Condition, represented by his wife/guardian,
S.Devi @ Shanmugadevi

...Cross Objector

1.The Oriental Insurance Company Limited,
Divisional Office, Shoba TSM Complex,
R.S.Road, (Opp Town Railway Station),
Palghat 678 001, Kerala State.

2. A.Syed Mohammad
3. K.Shinu

...Respondents



C.M.A.No.811 of 2018 and Cros.Obj.No.82 of 2022

Prayer: This Cross Objection is filed under Order XLI Rule 22 of C.P.C., to enhance the compensation awarded in the judgment and decree dated 03.01.2018 made in M.C.O.P.No.287 of 2014 on the file of Motor Accident Claims Tribunal, (I Additional District Court), Trippur.

For Cros.Objector : Mr.Ma.Pa.Thangavel
For R1 : Mr.Vinod
for Mr.Elveera Ravindran

J U D G M E N T

(Judgment of the Court was delivered by SUNDER MOHAN,J.)

Civil Miscellaneous Appeal No.811 of 2018 has been filed by the appellant- Insurance Company against the judgment and decree dated 03.01.2018 made in M.C.O.P.No.287 of 2014 on the file of Motor Accident Claims Tribunal, I Additional District Court, Tiruppur.

2. Cross Objection No.82 of 2022 has been filed by the Claimant/1st respondent herein, seeking enhancement of compensation granted by the Tribunal in the said award.



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3.The appellant-Insurance Company is the 3rd respondent in M.C.O.P.No.287 of 2014 on the file of Motor Accident Claims Tribunal, I Additional District Court, Tiruppur and the first respondent filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the injuries sustained by him in the accident that took place on 30.09.2013.

4.According to the first respondent, on the date of accident i.e., on 30.09.2013 at about 1.45 p.m, when the first respondent was riding the motorcycle bearing Registration No.TN-30-B 6784 on the Perumanallur to Nambiyur main road from North to South on the extreme left side of the road with utmost care and caution and when he was nearing Karukkankattu Pudur, Nadar Colony on the said road, the second respondent being a driver drove the car bearing Registration No. KL 09 Y 6682 in a rash and negligent manner from East to West and suddenly dashed against the motorcycle of the first respondent herein. In the said accident, the first respondent was thereon away on the road and sustained greivous injuries. The first respondent immediately was taken to Malar Priya Hospital, pandian Nagar, Tiruppur, for first aid treatment and thereafter at KMCH Hospital, Coimbatore, admitted as in-patient for two months. Therefore, the frist respondent



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claimed a sum of Rs.50,00,00/- for compensation against the appellant-Insurance Company, the driver and the owner of the car bearing Registration No. KL 09 Y 6682.

5.The respondents 2 and 3, who are driver and owner of the vehicle remained exparte before the Tribunal.

6.The appellant-Insurance Company filed counter statement denying the averments made in the claim petition and submitted that the alleged accident happened only due to careless riding by the first respondent. The claim is bad for non-joiner of parties namely the insurer of the two wheeler belonging to the first respondent.

7.Before the Tribunal, five witnesses were examined on the side of the first respondent as P.W.1 to P.W.5 and 10 documents were marked as Exs.P.1 to P.10. The appellant-Insurance Company neither examined any witnesses nor marked any documents on their side.



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8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of the car bearing Registration No. KL 09 Y 6682 and directed the appellant-Insurance Company, being the insurer of the said vehicle to pay a sum of Rs.29,31,000/- as compensation to the first respondent.

9. Against the said award dated 03.01.2018 made in M.C.O.P.No.287 of 2014, the appellant has come out with appeal in C.M.A.No.811 of 2018. Not being satisfied with the quantum of compensation by the Tribunal, the first respondent has filed Coss. Objection No.82 of 2022.

10. The learned counsel for the appellant-Insurance Company was unable to point out any evidence to dislodge the finding with regard to negligence on the part of the second respondent herein and hence, cannot assail the finding with regard to the negligence rendered by the trial Court. As regards the quantum, the learned counsel submitted that the trial Court had erroneously assessed the functional disability at 100% on the basis of the evidence of P.W.4 and P.W.5. The



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learned counsel further submitted that P.W.4 and P.W.5 were not the Doctors who treated the first respondent and the Certificates given by them viz., Exs.P.6 and P.9 cannot be relied upon to hold that the functional disability was 100%. In any case both the Doctors did not assess the functional disability. The learned counsel for the appellant further submitted that no evidence has been let in by the first respondent to show that the first respondent had suffered 100% functional disability.

11.The learned counsel for the cross objector submitted that the Tribunal rightly assessed the functional disability for the first respondent at 100% on the basis of the evidence of P.W.4 and P.W.5. The Tribunal however erred in fixing the monthly income at Rs.7,000/-, though the first respondent had produced evidence to show that he earned Rs.20,000/- per month. The Tribunal also erred in fixing only Rs.50,000/- towards pain and suffering and the same is meagre. Further, the Tribunal also erred in awarding only Rs.20,000/- towards nutrition.



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12.Heard, the learned counsel for the appellant and the learned counsel for the first respondent/cross objector and perused the materials available on record.

13.When the matter was taken up for hearing on 06.09.2022, the learned counsel for the appellant submitted that the Tribunal had erroneously accepted the disability certificate issued by the Doctors P.W.4 and P.W.5 who had not treated the first respondent. However, the learned counsel for the first respondent submitted that the disability certificate issued by the Doctors are correct, however, the first respondent was willing to subject himself to the examination by the Medical Board. In view of the said submissions this Court directed the first respondent to appear before the Medical Board constituted by the Dean, Government Coimbatore Medical College and Hospital for examination. Pursuant to the direction issued by this Court, the first respondent appeared before the Medical Board and after examination, the Medical Board sent a report dated 10.10.2022. The Medical Board opined as follows:

*"Post Traumatic Brain Injury Sequelae with right Femur#
Locomotor disability with regard to right upper & lower limb is 65%
(Sixty Five Percent only) "*



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Thus we find that there is no finding to suggest that the first respondent has become 100% functionally disabled. We are inclined to accept the report of the Medical Board which assessed the physical disability at 65%. We find that the Tribunal had taken the notional income at Rs.7000/- per month. The accident took place in the year 2013 and we are of the view that the notional monthly income fixed by the Tribunal is meagre and can be enhanced to Rs.9000/-.

14. The age of the first respondent was 37 years at the time of occurrence. The correct multiplier applicable is 15 is taken and future prospects applicable is 40%, since he was self employed. Thus, the loss of earning power is fixed at Rs.14,74,200/- $[9000 + 3600 (40 \times 9000) \times 12 \times 15 \times 65\%]$. The compensation towards pain and suffering awarded by the Tribunal at Rs.50,000/- is meagre and the same is enhanced to Rs.1,00,000/- in view of the injuries suffered by the first respondent. We find that the amount of Rs.20,000/- awarded by the Tribunal towards Nutrition is also meagre. We are of the view, that the compensation awarded under the said head can be enhanced to Rs.1,00,000/-. The compensation



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awarded by the Tribunal under other heads are confirmed by this Court as we do not find any infirmity with regard to the same. 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 or reduced
1.	Loss of earning	17,64,000	14,74,200	Reduced
2.	Pain and Suffering	50,000	1,00,000	Enhanced
3.	Loss of Amenities	50,000	50,000	Confirmed
4.	Medical Expenses as per bill	8,25,000	8,25,000	Confirmed
5.	Attended Charges	1,02,000	1,02,000	Confirmed
6.	Transport Expenses	20,000	20,000	Confirmed
7.	Future Medical Expenses	1,00,000	1,00,000	Confirmed
8.	Nutrition	20,000	Rs.1,00,000	Enhanced
	Total	29,31,000/-	27,71,200	Reduced by Rs.1,59,800/-



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15.In the result, Civil Miscellaneous Appeal No.811 of 2018 is partly allowed by reducing the award amount from Rs.29,31,000/- to Rs.27,71,200/- and Cross objection No.82 of 2022 is partly allowed by enhancing compensation with respect to Pain and Suffering and Nutrition. The Appellant-Insurance Company is directed to deposit the award amount now determined by this Court along with interest at the rate of 7.5 % and costs, less the amount already deposited, if any, to the credit of MCOP.No. 287 of 2014 within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent who is the cross objector is permitted to withdraw the award amount lying to the credit of M.C.O.P.No. 287 of 2014. The appellant-Insurance Company is permitted to withdraw the excess amount lying in the deposit, if the entire award amount has already been deposited by them. No costs. Consequently, connected miscellaneous petition is closed.

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

26.10.2022



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Index : Yes / No

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**V.M.VELUMANI,J.
and
SUNDER MOHAN,J.**

vsn

To

1.The I Additional Judge
Motor Accident Claims Tribunal
District Court, Tiruppur.

2.The Section Officer
VR Section
High Court
Madras.

**C.M.A.No. 811 of 2018 and
Cross.Obj.No.82 of 2022 and
C.M.P.No.6751 of 2018**

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