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C.M.A.No.1898 of 2022 and
Cross Obj.No.99 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1898 of 2022

and

C.M.P.No.13922 of 2022

and

Cross Objection No.99 of 2022

C.M.A.No.1898 of 2022:

Reliance General Ins. Co. Ltd.,
Reliance Centre,
No.19, Walchand Hirachand Marg,
Bailard Estate,
Mumbai – 400 001.

.. Appellant

Vs.

1.M.Manoharan

2.M.Sarthar

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.01.2022, made in M.C.O.P.No.5953 of 2014, on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.



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For Appellant : Ms.C.Bhuvanasundari
For R1 : Mr.Bharath Kumar

Cross Objection No.99 of 2022:

M.Manoharan

.. Cross Objector

Vs.

1.Reliance General Ins. Co. Ltd.,
Reliance Centre,
No.19, Walchand Hirachand Marg,
Ballard Estate,
Mumbai – 400 001.

2.M.Sarthar

.. 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 06.01.2022, made in M.C.O.P.No.5953 of 2014, on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Cross Objector : Mr.R.Bharath Kumar
For R1 : Ms.C.Bhuvanasundari

COMMON JUDGMENT

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

C.M.A.No.1898 of 2022 has been filed by the Insurance Company against the award dated 06.01.2022, made in M.C.O.P.No.5953 of 2014, on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.



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2.Cross Objection No.99 of 2022 has been filed by the claimant seeking enhancement of compensation granted by the Tribunal in the award dated 06.01.2022, made in M.C.O.P.No.5953 of 2014, on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

3.The 1st respondent / claimant filed M.C.O.P.No.5953 of 2014, claiming a sum of Rs.1,00,00,000/- as compensation for the injuries sustained by him in the accident that took place on 29.03.2014.

4.According to 1st respondent, on 29.03.2014 at about 09.00 A.M., while he was riding the motorcycle bearing Registration No.TN 20 CX 4088 with due care and diligence at over bridge in Mathuravoyal bypass Road, when he was turning the motorcycle on the left side to Koyambedu Service Road, the driver of the Lorry bearing Registration No.TN 04 J 4236, who was driving the lorry behind the 1st respondent, drove the same in a rash and negligent manner without following the road traffic rules, dashed on the motorcycle and caused the accident. Due to the said impact, the 1st respondent fell down and the lorry ran over the legs of the 1st respondent. The 1st respondent sustained fracture and crush injuries on both legs and grievous injuries all over the body. Immediately after the



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accident, the 1st respondent was admitted at Sri Ramachandra Hospital, Sri Ramachandra University Campus, Porur, Chennai. Hence, the 1st respondent filed the said claim petition claiming compensation against the 2nd respondent and appellant, who are the owner and insurer of the lorry respectively.

5.The 2nd respondent – owner of the lorry remained exparte before the Tribunal.

6.The appellant – Insurance Company filed counter statement and denied all the averments made by the 1st respondent. The 2nd respondent – owner of the lorry did not furnish the vehicular records and also the accident particulars to the appellant and hence, the appellant denied the involvement of the lorry in the accident. The driving license of the driver of the lorry and the fitness certificate, insurance as well as permit of the lorry are also denied by the appellant. The 1st respondent has to prove that the accident has occurred only due to the negligence of the driver of the lorry belonging to 2nd respondent. According to appellant, the accident has occurred only due to negligence of the 1st respondent.

Hence, the 1st respondent being tort feaser cannot claim compensation



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from the appellant for his own negligence. The appellant denied the age, avocation, income, nature of injuries, medical expenses incurred by 1st respondent and disability suffered by him. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the 1st respondent examined himself as P.W.1 and 28 documents were marked as Exs.P1 to P28. The appellant examined one Saravanabhavan, Area Manager of the appellant as R.W.1 and marked the copy of the Motor Vehicle Inspector's Report of the lorry belonging to 2nd respondent as Ex.R1. The disability certificate issued by the Regional Medical Board, Rajiv Gandhi Government General Hospital, Chennai was marked as Ex.C1.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to 2nd respondent and directed the appellant-Insurance Company, being the insurer of the lorry to pay a sum of Rs.40,53,700/- as compensation to the 1st respondent at the first instance and recover the same from 2nd respondent – owner of the lorry.



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9.Challenging the liability fastened on them and questioning the quantum of compensation granted by the Tribunal in the award dated 06.01.2022, made in M.C.O.P.No.5953 of 2014, the appellant-Insurance Company has come out with present appeal in C.M.A.No.1898 of 2022.

10.Not being satisfied with the amounts awarded by the Tribunal, the 1st respondent / claimant has filed Cross Objection No.99 of 2022, seeking enhancement of compensation.

11.The learned counsel appearing for the appellant-Insurance Company contended that the 1st respondent has not examined any eyewitness to prove that that the accident has occurred only due to rash and negligent driving by the driver of the lorry belonging to 2nd respondent. The Tribunal ought not to have accepted the evidence of 1st respondent as P.W.1 for fixing the negligence on the driver of the lorry belonging to 2nd respondent. The Tribunal ought to have exonerated the appellant from its liability instead of ordering pay and recovery. The Tribunal erroneously accepted the disability certificate issued by the Medical Board and fixed the loss of earning capacity of the 1st respondent at 70% as per Ex.C1 / disability certificate and failed to



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differentiate between functional disability and loss of earning capacity.

Further, the Tribunal erroneously applied multiplier method for awarding compensation towards loss of earning capacity and failed to convert 70% disability to whole body. There is no loss of future prospects to the 1st respondent and the Tribunal ought not to have granted enhancement towards future prospects. The Tribunal in addition to granting compensation towards loss of earning capacity by adopting multiplier method, erroneously granted compensation towards loss of amenities and loss of expectation of life. At the time of accident, the 1st respondent was only a Partner and not Managing Partner in Construction Business and hence, the notional income of the 1st respondent fixed by the Tribunal at Rs.10,000/- per month is excessive. The Tribunal ought to have fixed only a sum of Rs.6,500/- per month as notional income of the 1st respondent and awarded compensation. The amounts awarded by the Tribunal towards pain and sufferings and attendant charges are excessive. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal and for dismissal of Cross Objection No.99 of 2022, filed by the 1st respondent / claimant for enhancement of compensation.



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12.The learned counsel appearing for the 1st respondent / cross

objector contended that at the time of accident, the 1st respondent was a Partner in J.R.Engineering Enterprises, Pattabiram, Chennai – 600 072 and was earning a sum of Rs.60,000/- per month and produced Ex.P26 / Income Tax Returns Verification forms to prove his income. But, the Tribunal erroneously fixed a meagre sum of Rs.10,000/- per month as notional income of the 1st respondent and awarded compensation. The Tribunal erroneously denied the physiotherapy charges for a sum of Rs.1,63,500/-, when the 1st respondent has produced relevant bills to prove the same. The 1st respondent has produced certificates to show the qualification of the attendant and also produced bills and marked the same as Exs.P12 and P13. But, the Tribunal erroneously has fixed only a meagre sum of Rs.300/- per day as attendant charges and awarded only a sum of Rs.42,000/- towards attendant charges. The amounts awarded by the Tribunal towards loss of amenities, extra nourishment, pain and sufferings, transportation and loss of expectation of life are meagre. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation and for dismissal of C.M.A.No.1898 of 2022 filed by the appellant – Insurance Company.



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13.Heard the learned counsel appearing for the appellant-Insurance Company as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

14.From the materials on record, it is seen that it is the case of the 1st respondent that on 29.03.2014, while he was riding the motorcycle at over bridge in Mathuravoyal bypass Road and when he was turning the motorcycle on the left side to Koyambedu Service Road, the driver of the Lorry, who was driving the lorry behind the 1st respondent, drove the same in a rash and negligent manner, dashed on the motorcycle driven by the 1st respondent and caused the accident. To prove the said contention, the 1st respondent examined himself as P.W.1, marked FIR as Ex.P1, which was registered against the driver of the lorry belonging to 2nd respondent and Ex.P6 / Accident Register. As per Ex.P6 / Accident Register, it has been mentioned that the 1st respondent was hit by a lorry while he was riding on a two wheeler and his legs were ran over by the lorry. On the other hand, it is the case of the appellant that the accident has occurred only due to negligence of the 1st respondent. To prove their contention, the appellant did not examine the driver of the lorry, who is



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the best witness to depose about the manner of accident or any eyewitness to prove their case. Further, the appellant or the driver of the lorry did not file any objection to the FIR and also has not lodged any complaint against the 1st respondent that he was responsible for the accident. The Tribunal considering the evidence of P.W.1, contents of Ex.P1 / FIR and Ex.P6 / Accident Register and in the absence of any contra evidence to the evidence of P.W.1, non-examination of the driver of the lorry or any eyewitness, not filing any objection to FIR and not lodging any complaint against the 1st respondent, held that the accident has occurred due to rash and negligent driving by driver of the lorry belonging to 2nd respondent.

14(i).It is the further case of the appellant – Insurance Company that the lorry belonging to 2nd respondent was not having valid fitness certificate on the date of accident. To prove the said contention, the appellant examined its Area Manager one Saravanabhavan as R.W.1 and marked Ex.R1 / copy of the Motor Vehicle Inspector's report of the lorry. In Ex.R1, it has been mentioned that the lorry belonging to 2nd respondent was not having any fitness certificate and it was detained at K10 Police Station. The Tribunal considering the same and the fact that



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the lorry belonging to 2nd respondent was insured with the appellant on the date of accident, directed the appellant to pay the compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent – owner of the lorry. There is no error in the said finding of the Tribunal warranting interference by this Court.

15.As far as quantum of compensation is concerned, it is the case of the 1st respondent that in the accident he sustained multiple grievous injuries all over the body and the Regional Medical Board, Rajiv Gandhi Government General Hospital, Chennai examined the 1st respondent and certified that the 1st respondent suffered 70% permanent disability and issued Ex.C1 / disability certificate to that effect. The Tribunal considering Ex.C1 / disability certificate and the nature of work done by the 1st respondent, has adopted multiplier method for awarding compensation towards loss of earning capacity.

16.From the materials on record, it is seen that the Medical Board has not mentioned that due to the injuries, the 1st respondent suffered functional disability and lost his earning capacity. The Tribunal in the absence of any evidence with regard to functional disability or loss of



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earning capacity, erroneously adopted multiplier method for awarding compensation towards loss of earning capacity. The 1st respondent is not entitled to compensation towards loss of earning capacity by adopting multiplier method and he is entitled to compensation only by adopting percentage method for 70% disability. Hence, the compensation awarded by the Tribunal towards loss of earning capacity is liable to be set aside and it is hereby set aside. The accident occurred in the year 2014. This Court by the judgment reported in **2020 (1) TN MAC 617 [M. Chinnathambi Vs. S.Deepa and another]**, fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2014. In view of the same, a sum of Rs.4,000/- is awarded per percentage of disability. Thus, the 1st respondent is entitled to a sum of Rs.2,80,000/- (Rs.4,000/- X 70% disability) towards 70% disability.

17.It is the case of the 1st respondent that he was aged 37 years, a Partner in J.R.Engineering Enterprises, Pattabiram, Chennai – 600 072 and was earning a sum of Rs.60,000/- per month. To prove the said



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contention, the 1st respondent produced Ex.P26 / Income Tax Returns Verification forms. The Tribunal considering Ex.P26, held that there is difference in income between the Assessment Year 2014-2015 and 2015-2016 amounting to Rs.77,450/- and hence, fixed notional monthly income of the 1st respondent at Rs.10,000/-. The notional monthly income fixed by the Tribunal is meagre. Considering the entire materials, it would be just and proper to fix a sum of Rs.15,000/- per month including future prospects as notional income of the 1st respondent.

17(i). As per Exs.P2 & P3/discharge summaries, the 1st respondent has taken treatment as inpatient in the Hospital from 07.06.2014 to 05.07.2014 for a period of 29 days and from 29.03.2014 to 21.05.2014 for a period of 54 days, totally for a period of 83 days. Considering the disability and period of treatment taken, the 1st respondent would not have attended his work atleast for a period of 12 months. Therefore, the 1st respondent is entitled to a sum of Rs.1,80,000/- [Rs.15,000/- X 12] towards loss of income. Considering the nature of injuries and period of treatment taken by the 1st respondent, the amounts awarded by the Tribunal towards attendant charges, loss of amenities, extra nourishment and transportation are enhanced to Rs.1,50,000/-, Rs.1,00,000/-,



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Rs.75,000/- and Rs.25,000/- respectively as the amounts awarded by the Tribunal are meagre. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed.

18.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.	Loss of earning capacity	17,64,000/-	-	Set aside
2.	Disability	-	2,80,000/-	Granted
3.	Pain and sufferings	1,00,000/-	1,00,000/-	Confirmed
4.	Loss of amenities	10,000/-	1,00,000/-	Enhanced
5.	Medical expenses	21,05,142/-	21,05,142/-	Confirmed
6.	Loss of expectation of life	10,000/-	10,000/-	Confirmed
7.	Transportation	15,000/-	25,000/-	Enhanced
8.	Attendant charges	42,000/-	1,50,000/-	Enhanced
9.	Extra nourishment	7,500/-	75,000/-	Enhanced
10.	Loss of income	-	1,80,000/-	Granted
	Total	Rs.40,53,642/- Rounded off to Rs.40,53,700/-	Rs.30,25,142/- Rounded off to Rs.30,25,200/-	Reduced by Rs.10,28,500/-



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19.In the result, C.M.A.No.1898 of 2022 filed by the Insurance Company is partly allowed reducing the compensation awarded by the Tribunal from Rs.40,53,700/- to Rs.30,25,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Cross Objection No.99 of 2022 filed by the 1st respondent / cross objector is partly allowed with regard to compensation towards loss of income, disability, attendant charges, extra nourishment, loss of amenities and transportation. The 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.5953 of 2014, on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, at the first instance and recover the same from the 2nd respondent – owner of the lorry. On such deposit, the 1st 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 appellant – Insurance Company is permitted to withdraw the excess amount lying in the credit



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of M.C.O.P.No.5953 of 2014, if the entire award amount has been already deposited by them. Consequently, the connected Miscellaneous Petition is closed. No costs.

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

02.11.2022

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Index : Yes / No
Internet : Yes / No

To

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

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



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