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C.M.A.No.1317 of 2022 and
Cross Obj.No.88 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1317 of 2022

and

C.M.P.No.9017 of 2022

and

Cross Objection No.88 of 2022

C.M.A.No.1317 of 2022:

Royal Sundaram General Insurance Company Limited,
No.186/5, Royal Towers, Meyyanur Main Road,
Meyyanur, Salem – 4,
Salem District.

.. Appellant

Vs.

1.Minor. D.Kaviya Dharshini

(Minor 1st respondent represented
by her Next Friend and Guardian,
her Father Dhanabal)

2.S.Vinod

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.01.2022, made in M.C.O.P.No.999 of 2017, on the file of the Motor



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Accident Claims Tribunal, Special Sub Court No.I, Salem.

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For Appellant : Ms.C.Harini

For R1 : Mr.S.P.Yuaraj

Cross Objection No.88 of 2022:

Minor. D.Kaviya Dharshini

.. Cross Objector

(Minor represented by her next friend
and guardian, her father Dhanabal)

Vs.

1.Royal Sundaram General
Insurance Company Limited,
No.186/5, Royal Towers,
Meyyanur Main Road,
Meyyanur, Salem – 4.

2.S.Vinod

.. 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
22.01.2022, made in M.C.O.P.No.999 of 2017, on the file of the Motor
Accident Claims Tribunal, Special Sub Court No.I, Salem.

For Cross Objector : Mr.S.P.Yuaraj

For R1 : Ms.C.Harini



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COMMON JUDGMENT

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

C.M.A.No.1317 of 2022 has been filed by the Insurance Company against the award dated 22.01.2022, made in M.C.O.P.No.999 of 2017, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Salem.

2.Cross Objection No.88 of 2022 has been filed by the claimant seeking enhancement of compensation granted by the Tribunal in the award dated 22.01.2022, made in M.C.O.P.No.999 of 2017, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Salem.

3.The 1st respondent / claimant filed M.C.O.P.No.999 of 2017, claiming a sum of Rs.50,00,000/- as compensation for the injuries sustained by her in the accident that took place on 10.10.2016.

4.According to 1st respondent, on 10.10.2016 she was returning home from Pannapatty in the motorcycle bearing Registration No.TN 30 AV 0082 driven by her father on the Dharmapuri to Salem NH Road. At



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about 17.00 hours near Santhai Thadam bus stop, the father of the 1st respondent stopped the motorcycle on the left side of the mud road and tried to talk with his brother-in-law viz., Mani and one Periyasamy who were standing on the Santhai Thadam Bus Stop. At that time, the driver of the Maruthi Suzuki Ritz car bearing Registration No.KA 41 B 6488 belonging to 2nd respondent, drove the same in a rash and negligent manner and dashed against the motorcycle in which the 1st respondent was travelling and caused the accident. In the accident, the 1st respondent, her father and one Prabhu were thrown out and the 1st respondent sustained injuries all over the body. Immediately after the accident, the 1st respondent was taken to Manipal Hospital and then referred to SIMS Chellum Hospital, Salem, where she has taken treatment as inpatient. 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 Maruti Car respectively.

5.The 2nd respondent – driver-cum-owner of the Maruti Car remained exparte before the Tribunal.

6.The appellant – Insurance Company filed counter statement and



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denied all the averments made by the 1st respondent. According to the appellant, at the time of accident, three persons travelled in the motorcycle in violation of provisions of Motor Vehicles Act and the rider of the motorcycle was not possessing valid driving license to drive the motorcycle. Due to overloading in the motorcycle, the rider of the motorcycle without paying any attention to the approaching car, crossed the National Highway by entering from the other lane, lost his balance and control over the motorcycle and dashed on the car which was driven by the 2nd respondent. Further, the 1st respondent was not wearing helmet at the time of accident. There was no fault on the part of the 2nd respondent / driver-cum-owner of the Maruti Car and only the rider of the motorcycle was responsible for the accident. Hence, the appellant is not liable to pay any compensation to the 1st respondent. The owner and insurer of the motorcycle bearing Registration No.TN 30 AV 0082 are also necessary parties to this petition and the claim petition has to be dismissed for non-joinder of necessary parties. The appellant denied the age, avocation, income, nature of injuries and disability suffered by the 1st respondent. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.



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7.Before the Tribunal, the father and mother of the 1st respondent were examined as P.W.1 & P.W.2 respectively and 19 documents were marked as Exs.P1 to P19. The appellant did not let in any oral and documentary evidence. The disability certificate issued by the Medical Board, Salem 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 Maruti Car belonging to 2nd respondent and directed the appellant-Insurance Company, being the insurer of the Maruti Car to pay a sum of Rs.46,83,164/- as compensation to the 1st respondent.

9.Questioning the quantum of compensation granted by the Tribunal in the award dated 22.01.2022, made in M.C.O.P.No.999 of 2017, the appellant-Insurance Company has come out with present appeal in C.M.A.No.1317 of 2022.

10.Not being satisfied with the amounts awarded by the Tribunal, the 1st respondent / claimant has filed Cross Objection No.88 of 2022,



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seeking enhancement of compensation.

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11.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in fixing the monthly income of the 1st respondent at Rs.4,846/-, when the minor 1st respondent was a student aged 9 years non earning member at the time of accident. The Tribunal ought to have fixed the notional income of the 1st respondent at Rs.15,000/- per annum as per II Schedule. The Tribunal erred in applying multiplier '18' for the minor claimant for awarding compensation towards loss of earning capacity and also applied multiplier '18' for awarding compensation towards attendant charges. The facts of the case in the judgment of the Hon'ble Apex Court reported in **2020 (4) SCC 413, [Kajal Vs. Jagdish Chand and others]** relied on by the Tribunal is not applicable to the facts of the present case. The total compensation awarded by the Tribunal is highly excessive and prayed for setting aside the award of the Tribunal and for dismissal of Cross Objection No.88 of 2022, filed by the 1st respondent / claimant for enhancement of compensation.

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



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contended that at the time of accident, the 1st respondent was a 8 year old minor girl studying 3rd standard and due to the injuries and disability suffered by her in the accident, she was bedridden and cannot move without any help. The accident occurred in the year 2016 and the monthly income of the 1st respondent fixed by the Tribunal at Rs.4,846/-is meagre. The Tribunal failed to consider the judgment of the Hon'ble Apex Court reported in **2022 (2) TNMAC 192, [Abhimanyu Partap Singh Vs. Namita Sekhon and others]**, wherein the Hon'ble Apex Court has fixed the notional income of a 3 ½ year old child at Rs.5,000/- per month for the accident occurred in the year 1996. The Tribunal ought to have fixed more amount as monthly income of the 1st respondent based on the judgment of the Hon'ble Apex Court reported in **2022 (2) TNMAC 192**, cited supra. The amounts awarded by the Tribunal towards attendant charges, future medical expenses, transportation, loss of amenities, loss of marital life and extra nourishment are meagre and prayed for enhancement of compensation and for dismissal of C.M.A.No.1317 of 2022 filed by the appellant – Insurance Company.

13.Heard the learned counsel appearing for the appellant-Insurance

Company as well as the learned counsel appearing for the 1st respondent



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and perused the entire materials on record.

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14.From the materials on record, it is seen that it is the case of the 1st respondent that on 10.10.2016, while she was travelling in the motorcycle bearing Registration No.TN 30 AV 0082 driven by her father on the Dharmapuri to Salem NH Road, her father stopped the motorcycle on the left side of the mud road near Santhai Thadam to meet his relatives. At that time, the Maruti Car driven by the 2nd respondent dashed on the motorcycle and due to the same, the 1st respondent and pillion rider of the motorcycle were thrown out from the motorcycle. Due to the said impact, the 1st respondent, who was minor at the time of accident suffered head injury, fracture in the leg and severe injuries all over the body. After the accident, she was admitted in SIMS Chellum Hospital, Salem as inpatient from 10.10.2016 to 24.11.2016; from 28.07.2017 to 31.07.2017 and from 16.03.2020 to 19.03.2020, totally for a period of 54 days and underwent three surgeries in the brain and suffered fracture in the leg. Due to the injuries sustained by the 1st respondent in her head and operation in the brain, the 1st respondent is in vegetative condition. For all her day-to-day activities and basic amenities, the 1st respondent is depending on an attendant. The parents of the 1st respondent is only



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looking after her. The 1st respondent attained puberty. The parents of the 1st respondent examined themselves as P.W.1 & P.W.2 and deposed about the injuries sustained by the 1st respondent and treatment underwent by her and produced Exs.P2 to P4 / discharge summaries and marked Ex.C1 / disability certificate issued by the Medical Board, Salem Government Hospital. From Ex.C1, it is seen that the Medical Board examined the 1st respondent, enumerated the injuries sustained by her and treatment given to her. The Medical Board certified that the 1st respondent suffered 88% disability. The appellant-Insurance Company has not let in any contra evidence to disprove the evidence of P.W.1 and P.W.2, parents of the minor 1st respondent. The 1st respondent was aged 9 years and was a student studying III standard at the time of accident.

14(i).The Tribunal considering the materials placed before it, fixed the notional income of the 1st respondent at Rs.4,846/- per month, granted 40% enhancement towards future prospects and adopted multiplier method for awarding compensation for 88% disability. As per II Schedule of Motor Vehicles Act, the annual income of a non earning member is Rs.15,000/- and the multiplier applicable is '15'. The Hon'ble Apex Court considering the rise in cost of living, fixed a sum of Rs.30,000/- as annual



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income of a non earning member. In some of the cases, the Division Bench of this Court fixed the annual income of a non earning member at Rs.30,000/- to Rs.45,000/-. Considering the entire materials on record, this Court is of the view that it would be just and proper to fix the annual income of the 1st respondent at Rs.60,000/- per annum taking into consideration the young age of the 1st respondent at the time of accident. As per II Schedule, the correct multiplier applicable is '15'. Thus, by fixing a sum of Rs.60,000/- as annual income and applying multiplier '15', the compensation awarded by the Tribunal towards loss of earning capacity is modified to Rs.9,00,000/- (Rs.60,000/- X 15).

14(ii). As far as the contention of the learned counsel appearing for the appellant that attendant charges granted by the Tribunal is excessive and the judgment of the Hon'ble Apex Court reported in **2020 (4) SCC 413, [Kajal Vs. Jagdish Chand and others]** is not applicable to the facts and circumstances of the case. The contention of the learned counsel appearing for the appellant that the facts in the judgment of the Hon'ble Apex Court reported in **2020 (4) SCC 413** is that, the minor girl suffered 100% disability and considering the status of the minor girl, the Hon'ble Apex Court granted attendant charges and the said Judgment of the



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Hon'ble Apex Court is not applicable to the facts of the present case is not acceptable. In the present case, the 1st respondent was a minor girl aged 9 years at the time of accident and she attained puberty after the accident. Due to head injuries, she underwent surgery in the Brain and her mental condition has been affected and she is not aware of what is happening on her. The appellant has not let in any contra evidence to disprove the evidence of P.W.1 & P.W.2 with regard to status of the 1st respondent.

14(iii). Considering the above materials, this Court is of the considered view that judgment of the Hon'ble Apex Court reported in **2020 (4) SCC 413**, cited supra, is squarely applicable to the facts of the present case and the compensation awarded by the Tribunal for attendant charges and other heads are not excessive warranting interference by this Court.

15. 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



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1.	Loss of earning capacity	12,89,579/-	9,00,000/-	Reduced
2.	Pain and sufferings	5,00,000/-	5,00,000/-	Confirmed
3.	Loss of amenities	50,000/-	50,000/-	Confirmed
4.	Medical expenses	11,33,585/-	11,33,585/-	Confirmed
5.	Future medical expenses	3,00,000/-	3,00,000/-	Confirmed
6.	Transportation	30,000/-	30,000/-	Confirmed
7.	Attendant charges	10,80,000/-	10,80,000/-	Confirmed
8.	Loss of marriage prospects	3,00,000/-	3,00,000/-	Confirmed
	Total	Rs.46,83,164/-	Rs.42,93,585/-	Reduced by Rs.3,89,579/-

16.In the result, C.M.A.No.1317 of 2022 is partly allowed and Cross Objection No.88 of 2022 is dismissed. The compensation awarded by the Tribunal at Rs.46,83,164/- is hereby reduced to Rs.42,93,585/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. 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.999 of 2017, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Salem. On such deposit, considering the status of the 1st respondent, the Father of the minor 1st respondent viz., Dhanabal is permitted to withdraw 25% of the



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award amount now determined by this Court, together with interest and costs, by filing necessary applications before the Tribunal. As far as remaining 75% of the award amount is concerned, the Tribunal is directed to deposit the same in any one of the Nationalized Banks, till the minor 1st respondent attains majority. On such deposit, the Father of the minor 1st respondent viz., Dhanabal is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 1st respondent, by filing necessary applications before the Tribunal. The appellant is permitted to withdraw the excess amount lying in the credit of M.C.O.P.No.999 of 2017, 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)

17.10.2022

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Index : Yes / No

Internet : Yes / No

To

1.The Special Subordinate Judge No.I,



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Motor Accidents Claims Tribunal,
Salem.

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

V.M.VELUMANI, J.
and

SUNDER MOHAN, J.



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and Cross Objection No.88 of 2022

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

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

Today, this appeal is listed under the caption 'For being spoken to'.

2.It is brought to the notice of this Court that the default period of interest from 21.06.2018 to 14.03.2020 has not been mentioned in paragraph No.16 of the judgment of this Court dated 17.10.2022.

3.In view of the above, paragraph No.16 of the judgment of this Court dated 17.10.2022 reads as follows:

“16.In the result, C.M.A.No.1317 of 2022 is partly allowed and Cross Objection No.88 of 2022 is dismissed. The compensation awarded by the Tribunal at Rs.46,83,164/- is hereby reduced to Rs.42,93,585/- together with interest at the rate of 7.5% per annum (**excluding the period of interest from 21.06.2018 to 14.03.2020**) from the date of petition till the date of deposit. The appellant-Insurance Company is



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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.999 of 2017, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Salem. On such deposit, considering the status of the 1st respondent, the Father of the minor 1st respondent viz., Dhanabal is permitted to withdraw 25% of the award amount now determined by this Court, together with interest and costs, by filing necessary applications before the Tribunal. As far as remaining 75% of the award amount is concerned, the Tribunal is directed to deposit the same in any one of the Nationalized Banks, till the minor 1st respondent attains majority. On such deposit, the Father of the minor 1st respondent viz., Dhanabal is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 1st respondent, by filing necessary applications before the Tribunal. The appellant is permitted to withdraw the excess amount lying in the credit of M.C.O.P.No.999 of 2017, if the entire award amount has been already deposited by them. Consequently, the connected Miscellaneous Petition is closed. No costs.”



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4.Registry is directed to issue order copy after carrying out the above corrections. The other contents of the judgment of this Court dated 17.10.2022 shall remain unaltered.

(V.M.V., J) (S.M., J)
25.11.2022

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V.M.VELUMANI,J.



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25.11.2022