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C.M.A.No.2134 of 2021
and C.M.A.No.1743 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2022

C O R A M

THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

C.M.A.No.2134 of 2021

and

C.M.A.No.1743 of 2020

and

CMP.No.11784 of 2021 in C.M.A.No.2134 of 2021

1.The HDFC ERGO General Insurance
Company Ltd.,

First Floor, 165/166, Reclamation Backbay
H.T.Parekh Marg, Church Gate
Mumbai
Maharashtra – 400 020.

Having its Branch Office at :

Empire Arcade, No.356/1

Omalur Main Road, Opp. New Bus Stand

Salem, Tamil Nadu – 636 004.

... Appellant in CMA.No.2134/2021

2.Sathishkumar

... Appellant in CMA.No.1743/2020

- Vs.-

1.Sathishkumar

.... 1st Respondent in CMA.No.2134/2021

2.Dhanvanth

.... 2nd Respondent in CMA.No.2134/2021

.... 1st Respondent in CMA.No.1743/2020



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3.Senthilkumar

.... 3rd Respondent in CMA.No.2134/2021

.... 2nd Respondent in CMA.No.1743/2020

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4.The HDFC ERGO General Insurance Company Ltd.,

First Floor, 165/166, Reclamation Backbay

H.T.Parekh Marg, Church Gate

Mumbai

Maharashtra – 400 020.

Branch Office at : Empire Arcade, No.356/1

Omair Main Road, Opp. New Bus Stand

Salem, Tamil Nadu – 636 004. ... 2nd Respondent in CMA.No.1743/2020

Prayer in CMA.No.2134 of 2021: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decretal order and award dated 27.01.2020 passed in M.C.O.P.No.1175 of 2018 by the learned Motor Accident Claims Tribunal (Special Sub-ordinate Judge-II), Salem, and to dismiss the claim and allow the CMA.

Prayer in CMA.No.1743 of 2020: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow the above civil miscellaneous appeal and enhance the award in the judgment and decree dated 27.01.2020 made in M.A.C.T.O.P.No.1175 of 2018 on the file of the Motor Vehicle Accident Claims Tribunal / Special Subordinate Judge No.II, Salem.

In CMA.No.2134 of 2021 :

For Appellant : Mr.N.Somasundar

For Respondents : Mr.C.Paraneedharan [R1]



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In CMA.No.1743 of 2020 :

For Appellant : Mr.C.Paraneetharan
For Respondents : Mr.N.Somasundaar [R3]
R1 & R2 - Not ready in notice

COMMON JUDGMENT

Both the insurance company as well as the claimant before the Tribunal are aggrieved by the judgment passed by the Special Subordinate Judge-II, Salem in M.C.O.P.No.1175 of 2018.

2. C.M.A.No.1743 of 2020 is filed by the claimant seeking enhancement of the compensation awarded by the Tribunal and C.M.A.No.2134 of 2021 is filed by the Insurance Company seeking reduction of the compensation as the Tribunal has adopted a multiplier method for arriving at a compensation under the head of "Loss of disability", which is not a functional disability.

3. The parties are referred to in the same rank as before the Tribunal.



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4. The claimant has filed the above M.C.O.P. seeking compensation for the injuries sustained by him in a road accident on 24.04.2018. It is the case of the claimant that he is a Trainee Doctor with Annapoorna Medical College, Salem, earning a monthly income of Rs.25,000/-. On 24.04.2018 at about 04.00 p.m he was travelling in his Royal Enfield Bike, bearing Registration No.TN 90 C 4528 on the Seeragapadi Salem Main Road. When he was opposite the HDFC ATM, a car bearing Registration No.TN 30 BE 6333 belonging to the second respondent and insured with the third respondent-Insurance Company, which was travelling in a rash and negligent manner in the same direction, suddenly swerved to the left, as a result of which, the claimant had sustained grievous injury. Therefore, the claimant had filed the above claim petition seeking compensation of a sum of Rs.15,00,000/-

5. The first respondent-driver remained *ex-parte* and the second respondent-owner had not filed a counter. The third respondent-Insurance Company had filed a counter denying the accident, quantum, claim and also put the claimant to proof that the driver of the car had a valid driving licence.



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6. The Tribunal, on considering the evidence, held that the accident was only on account of the negligence of the first respondent and therefore, the respondents 2 and 3 are liable to compensate the claimant. The Tribunal, after observing that the claimant, who claimed to be a training Doctor, had not produced any proof to show the same, proceeded to fix a notional income at Rs.20,000/-. Thereafter, the Tribunal, relying upon the disability certificate issued by the Medical Board, awarded a sum of Rs. 6,80,369/-.

7. Aggrieved by the fact that after observing that the claimant was only entitled to compensation for the disability under the percentage method, the Tribunal has awarded a sum of Rs.1,00,000/- under the head of "loss of amenities"" and a sum of Rs.1,20,000/- towards the "loss of income" for 6 months.

8. Learned counsel appearing for the appellant would submit that in the judgment reported in **2011 ACJ 1[Raj Kumar -vs- Ajay Kumar and another]**, the Hon'ble Supreme Court has held that the loss of amenities would be awarded only in the case of serious injuries, which is corroborated by the medical evidence. In the instant case, the Tribunal itself come to the



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conclusion that that the injuries were not serious in nature and has awarded compensation under the head of "compensation for disability" on a percentage basis. Therefore, he would submit the amount under the head of "loss of amenities" is to be set aside. That apart, the claimant has not produced any proof to show that he is a Doctor and that the award of the Tribunal fixing a notional income of Rs.20,000/- per month is erroneous and therefore, the amount under the head of "Loss of Income" is also to be set aside.

9. Per contra, the learned counsel appearing for the appellant in C.M.A.No.1743 of 2020 would submit that the medical board has assessed the disability at 40% and the report would state that he has lost his sensation in the ring and little finger and he is unable to carry on his routine activities. Therefore, he would submit that the Tribunal ought to have adopted a multiplier method.

10. The issue revolves around the nature of injuries sustained by the claimant and whether the injury has resulted in a functional disability to him and loss of earning capacity. The Discharge Summary issued by the Dharan Hospital, where the claimant has undergone his initial treatment is marked as



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Ex.P7. The report would indicate that there is a crush injury to the left ring finger, lacerated deep wound and abrasion over left lumbar area. The Hospital has adopted the following procedure:

Procedure:

- 1. Wound debridement K wire fixation.*
- 2. Debridement / abdominal flap corner*
- 3. Flap division with inset*

11. The claimant has been discharged within a day. Thereafter, after the filing of the petition, the claimant has been referred to the Medical Board. A perusal of the disability certificate-Ex C1 would show that the Medical Board has not taken into consideration the Discharge Summary-Ex.P7 and the Wound Certificate-Exp3 issued by the Dharan Hospital on 24.04.2018. The Medical Board has examined the claimant on 31.12.2019 nearly a year and a half after the surgery has been successfully effected. The Board has not even taken an X-Ray and has simply relied on the discharge summary and thereafter proceeded to pass the clinical notings. Therefore, this certificate cannot be relied upon to state that the injury sustained is of a serious in nature and has resulted in a functional disability to the claimant. Therefore, the adoption of



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percentage method by the Tribunal is in order. As rightly pointed out by the learned counsel for the appellant-Insurance Company in C.M.A.No.2134 of 2021, namely, the Insurance Company, a sum of Rs.1,00,000/- under the head of "loss of Amenities", especially, when the injuries are not of serious nature has to be set aside. The petitioner, who claims to be a Doctor, has not produced a single shred of evidence to substantiate the same. Therefore, the adoption of a monthly income of Rs.20,000/- is on the higher side and the same has been reduced to Rs.10,000/-. Therefore, the claimant will only be entitled to a sum of Rs.60,000/- under the head of "Loss of Income".

12. The learned counsel for the claimant would submit that the accident is of the year 2018 and the adoption of a sum of Rs.3,000/- per percentage of disability is on the lower side and the appropriate income to be adopted is Rs.5,000/-, which has not been seriously rebutted by the learned counsel for the insurance Company. Therefore, the compensation under the head of "loss of disability" is enhanced to a sum of $\text{Rs.5,000} \times 40 = \text{Rs.2,00,000}$. Therefore, the re-worked compensation would be as follows:-



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<i>Heads</i>	<i>Amount by the Tribunal in Rs.</i>	<i>Amount Awarded by this Court in Rs.</i>
Loss of Disability	1,20,000 (3,000 x 40%)	2,00,000 (5,000x 40%) (enhanced)
Pain and Sufferings	50,000	50,000
Loss of Amenities	1,00,000	NIL
Medical expenses	1,94,369	1,94,369
Loss of Income (10,000 x 6)	1,20,000	60,000 (Reduced)
Transportation Charges	25,000	25,000
Extra Nourishment Charges	50,000	50,000
Attendant Charges	20,000	20,000
Damages to Clothing and Article	1,000	1,000
Total	6,80,369	6,00,369

13. These appeals are partly allowed and the impugned Award of the Tribunal is modified, reducing the compensation amount from Rs.6,80,369.00 to **Rs.6,00369.00**. The appellant in C.M.A.No.2134 of 2021-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.1175 of 2018 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit



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being made, the appellant in C.M.A.No.1743 of 2020 / claimant is permitted to withdraw the award amount, along with accrued interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn, by filing necessary application before the Tribunal. The claimant is directed to pay the Court fee for the compensation amount, if required. The Tribunal below shall not disburse the award amount till such time as the certified copy showing proof of payment of Court fee has been produced by the claimants. In other respects, the Award of the Tribunal is hereby confirmed. There shall be no order as to costs in the present appeal. Consequently, connected miscellaneous petition is closed.

21.06.2022

Index:Yes/No
Speaking Order : Yes/No
srn

To

1. The Special Sub Judge II, (Motor Accident Claims Tribunal), Salem
- 2.The Section Officer, V.R.Section, High Court of Madras, Chennai.



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