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C.M.A.No.1400 of 2021
and Cross Obj.No.51 of 2022

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 30.09.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.1400 of 2021
and
Cross Obj. No.51 of 2022
and
M.P.No.1 of 2004

C.M.A.No.1400 of 2021:

The Manager,
M/s.Royal Sundaram General Insurance Company Limited,
having its Branch Office at III Floor,
No.186/5, Royal Towers,
New Bus stand Road,
Meyyanur,
Salem District.

... Appellant/2nd respondent

Vs.

1.Narasamma

... 1st Respondent/Petitioner

2.U.Shadhick

... 2nd Respondent/Respondent



C.M.A.No.1400 of 2021
and Cross Obj.No.51 of 2022

WEB CC **Cross Obj.No.51 of 2022:**

Narasamma ... Cross Objectors/1st Respondent
Vs.

1. The Manager,
M/s.Royal Sundaram General Insurance Company Limited,
having its Branch Office at III Floor,
No.186/5, Royal Towers,
New Bus stand Road,
Meyyanur,
Salem District. ... 1st Respondent/Appellant
2.U.Shadhick ... 2nd Respondent/2nd Respondent

Prayer in C.M.A.No.1400 of 2021: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 10.03.2020 in M.C.O.P.No.565 of 2018 on the file of the learned Additional District Judge, Motor Accidents Claims Tribunal, Hosur.

Prayer in Cross Obj.No.51 of 2022: Cross Objection is filed under Order 41 Rules 22 of the Code of Civil Procedure against the Award and Decree dated 10.03.2020 in M.C.O.P.No.565 of 2018 on the file of the learned Additional District Judge, Motor Accidents Claims Tribunal, Hosur.



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For Appellant : Ms Harini
for M/s.M.B.Gopalan Associates
in C.M.A.No.1400 of 2021

Mr.C.Prabakaran
in Cross Obj.No.51 of 2022

For Respondents : Mr.M.Sivakumar for R1
in C.M.A.No.1400 of 2021

Ms Harini
for M/s.M.B.Gopalan Associates
in Cross Obj.No.51 of 2022 for R1

R2- died in C.M.A.No.1400 of 2021

COMMON JUDGMENT

The Insurance Company has filed the above appeal challenging the Award passed by the learned Additional District Judge, Motor Accidents Claims Tribunal, Hosur, in M.C.O.P.No.565 of 2018. The Insurance Company has challenged the quantum of compensation that has been granted for the accident that had taken place on 14.07.2018.



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2.The 1st respondent/petitioner had sustained the following injuries:

- (1)fracture in right femur NOF right and
- (2)fracture proximal tibia and nasal bone.

She was hospitalised from 14.07.2018 to 30.07.2018 at Kauvery Hospital. She has claimed a sum of Rs.15 lakhs as compensation. It is her case that the petitioner was aged 45 years at the time of accident and earning a monthly income of Rs.8,000/- as a Cook in the canteen at Sanmar Chemical Company. The Tribunal ultimately granted a sum of Rs.9,10,971/- as compensation. Aggrieved by this Award, which according to the appellant is excessive, the Insurance company has filed the above appeal.



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3.The claimant would contend that the compensation awarded by the Tribunal was inadequate and therefore, she has filed Cross Obj.No.51 of 2022.

4.Heard the learned counsels appearing on either side and perused the papers.

5.The Tribunal had fixed a notional income of Rs.7,000/- and assessed the disability as a permanent one and calculated the loss of earning capacity at a sum of Rs.5,04,000/- [Rs.7,000/- x 12 x 40/100 x 15 =Rs.5,04,000/-]. The injuries that has been sustained by the 1st respondent/claimant is a right femur fracture and fracture proximal tibia fracture nasal bone. The evidence would indicate that the injuries has not been a deterrent to her continuing to work and she has not sustained any loss of earning capacity except for the period when she was in the hospital.



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6. Therefore, the amount of Rs.5,04,000/- awarded under the head of loss of earning capacity is set aside and the loss of income is calculated on a percent age basis by fixing a sum of Rs.5,000/- per percentage. In Ex.P.10 – Disability Certificate, the Doctor has assessed the 1st respondent's disability at 40%. Therefore, the amount under the head of disability at 40% is a sum of Rs.2,00,000/- [$\text{Rs.5,000/-} \times 40 = \text{Rs.2,00,000/-}$]. Further, it can be safely presumed that for the period of six months claimed she could not able to attend work. Therefore, the loss of income for six months at the rate of Rs.7,000/- is a sum of Rs.42,000/- ($\text{Rs.7,000/-} \times 6 = \text{Rs.42,000/-}$). The claimant has not been granted any amount under the head of damages to cloth. Hence, a sum of Rs.1,000/- is granted under this head. The amount under the head of transportation, extra nourishment and attendant charges is enhanced from Rs.10,000/- each to Rs.20,000/- each. That apart, a sum of Rs.10,000/- has been awarded



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under the head of discomfort, frustration and loss of social enjoyment, is enhanced to a sum of Rs.30,000/-. Therefore, a sum of Rs.9,10,971/- awarded by the Tribunal is reduced to a sum of Rs.6,99,971/- which is rounded off to a sum of Rs.7,00,000/-. Therefore, taking into consideration the above aspects,

the modified amount is 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 capacity	Rs.5,04,000/-	---	Deleted
2.	Transportation	Rs.10,000/-	Rs.20,000/-	Enhanced
3.	Extra nourishment	Rs.10,000/-	Rs.20,000/-	Enhanced
4.	Attendant charges	Rs.10,000/-	Rs.20,000/-	Enhanced
5.	Pain and sufferings	Rs.50,000/-	Rs.50,000/-	Confirmed
6.	Discomfort, frustration and loss of social enjoyment	Rs.10,000/-	Rs.30,000/-	Enhanced



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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
7.	Future medical expenses	Rs.20,000/-	Rs.20,000/-	Confirmed
8.	Medical Bills	Rs.2,96,971/-	Rs.2,96,971/-	Confirmed
9.	Damages to cloth	-	Rs.1,000/-	Granted
10.	Loss of income for six months	-	Rs.42,000/-	Granted
11.	Disability	-	Rs.2,00,000/-	Granted
	Total	Rs.9,10,971/-	Rs.6,99,971/- rounded off to Rs.7,00,000/-	

Therefore, the award amount is reduced to a sum of Rs.6,99,971/- which is rounded off to Rs.7,00,000/-.

7. Consequently, the Cross Objection filed by the claimant is dismissed and the Civil Miscellaneous Appeal filed by the appellant/Insurance Company is partly allowed. The appellant/Insurance Company is directed to deposit the entire



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compensation amount, with interest @ 7.5% per annum, less the amount already deposited, with proportionate accrued interest and costs, to the credit of M.A.C.T.O.P.No.565 of 2018 on the file of the learned Additional District Judge, Motor Accidents Claims Tribunal, Hosur, within a period of four weeks from the date of receipt of a copy of this Judgment, if not deposited earlier and thereafter recover the entire amount from the 2nd respondent/owner of the vehicle. On such deposit, the claimant is permitted to withdraw the entire award amount with proportionate accrued interest and costs, by making necessary applications.

The claimant is directed to pay the Court fee for the compensation amount, if required. The Tribunal below shall not disburse the amount till such time as proof of payment of Court Fee has been produced by the claimant. No costs. Consequently, connected Miscellaneous Petition is closed.



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Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

The Additional District Judge,
Motor Accidents Claims Tribunal,
Hosur.



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P.T. ASHA, J,

mps

**C.M.A.No.1400 of 2021 &
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and M.P.No.1 of 2004**

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