



C.M.A.Nos.1920 & 1970 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 26.09.2022

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

**and**

**THE HONOURABLE MR.JUSTICE SUNDER MOHAN**

**C.M.A.Nos.1920 & 1970 of 2022**

**and**

**C.M.P.No.14213 of 2022**

**C.M.A.No.1920 of 2022:**

Shriram General Insurance Company Limited,  
C-135A, 5<sup>th</sup> Cross, Thillai Nagar, Tiruchirapalli,  
Tamil Nadu – 620 018.

.. Appellant

**Vs.**

1.M.Vijayan

2.Tamizharasi

.. Respondents

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.10.2018, made in M.C.O.P.No.1501 of 2012, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Salem.

For Appellant : Mr.S.Krishnamoorthy

For R1 : Mr.T.S.Arthanareeswaran

**C.M.A.No.1970 of 2022:**



C.M.A.Nos.1920 & 1970 of 2022

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M.Vijayan

.. Appellant

**Vs.**

1.Tamilarasi

2.M/s. Sriram General Insurance Co.Ltd.,  
C-135-A, 5<sup>th</sup> Cross, Thillai Nagar,  
Trichirappalli – 620 018.

.. Respondents

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.10.2018, made in M.C.O.P.No.1501 of 2012, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Salem.

For Appellant : Mr.T.S.Arthanareeswaran  
for Ms.S.R.Kalyani

For R2 : Mr.S.Krishnamoorthy

### **COMMON JUDGMENT**

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

C.M.A.No.1920 of 2022 has been filed by the Insurance Company against the award dated 12.10.2018, made in M.C.O.P.No.1501 of 2012, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Salem.



2.C.M.A.No.1970 of 2022 has been filed by the claimant seeking enhancement of compensation granted by the Tribunal in the award dated 12.10.2018, made in M.C.O.P.No.1501 of 2012, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Salem.

3.Both the appeals arise out of same accident and same award and hence, disposed of by this common judgment.

4.The parties are referred to as per their ranks in the claim petition, for the sake of convenience.

5.The claimant filed M.C.O.P.No.1501 of 2012, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Salem, claiming a sum of Rs.70,00,000/- (claim value amended as per order dated 19.06.2017 made in I.A.No.72 of 2017) as compensation for the injuries sustained by him in the accident that took place on 18.08.2012.

6.According to the claimant, on 18.08.2012 at about 06.15 p.m., while he was travelling as pillion rider in the motorcycle bearing Registration No.TN 30 S 6391 along with one Gunasekar on the Salem to



Attur main road at Masinaickenpatti Petrol Bunk, the driver of the lorry bearing Registration No.TN 04 L 9457 belonging to 1<sup>st</sup> respondent, who was proceeding ahead of the motorcycle, applied sudden brake in a negligent manner and due to the same, the motorcycle dashed on the backside of the lorry and caused the accident. In the accident, the claimant sustained grievous injuries all over the body, multiple fractures and he was taken to Ganga Medical Centre Hospital, Coimbatore, where he was treated as inpatient from 18.08.2012 to 10.09.2012. Hence, the claimant filed the said claim petition claiming compensation against the respondents who are the owner and insurer of the lorry respectively.

7.The 1<sup>st</sup> respondent – owner of the lorry remained exparte before the Tribunal.

8.The 2<sup>nd</sup> respondent-Insurance Company filed counter statement and denied all the averments made by the claimant. The 2<sup>nd</sup> respondent denied the manner of accident as alleged by the claimant. According to the 2<sup>nd</sup> respondent, the rider of the motorcycle in which the claimant traveled as pillion rider only drove the same rashly and caused the accident. The claimant has to produce the driving license of the rider of



the motorcycle and insurance for the motorcycle on the date of accident.

The concerned Police Station did not forward the documents as per Section 158(6) of the Motor Vehicles Act, 1988 and not complied with the statutory demand. The 2<sup>nd</sup> respondent denied the age, avocation, income, nature of injuries, disability and medical expenses incurred by the claimant. On the date of accident the lorry belonging to 1<sup>st</sup> respondent was not having valid permit and fitness certificate. Hence, the 2<sup>nd</sup> respondent is not liable to pay any compensation to the claimant. The injuries sustained by the claimant are simple in nature and the claimant has to produce the medical records from the date of accident till the date of filing of the claim petition to show the nature of injuries, treatment taken and disability. In any event, the quantum of compensation claimed by the claimant is highly excessive and prayed for dismissal of the claim petition.

9.Before the Tribunal, the claimant examined himself as P.W.1 and marked 27 documents as Exs.P1 to P27. The 2<sup>nd</sup> respondent-Insurance Company examined one Gurunathan, Special Sub-Inspector of Police, Transport Investigation Wing, Salem as R.W.1 and one Stephen James Michael, Legal Advisor of 2<sup>nd</sup> respondent as R.W.2 and did not file any



document. Final Report was marked as Ex.C1.

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10.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by both the driver of the lorry belonging to 1<sup>st</sup> respondent as well as the rider of the motorcycle in which the claimant traveled as pillion rider and directed the 2<sup>nd</sup> respondent-Insurance Company, being the insurer of the lorry to pay a sum of Rs.18,12,680/- as compensation to the claimant granting liberty to the 2<sup>nd</sup> respondent to recover 50% of the compensation from the insurer of the motorcycle.

11.Challenging the liability fixed on the 2<sup>nd</sup> respondent as well as quantum of compensation granted by the Tribunal in the award dated 12.10.2018, made in M.C.O.P.No.1501 of 2012, the 2<sup>nd</sup> respondent-Insurance Company has come out with appeal in C.M.A.No.1920 of 2022.

12.Not being satisfied with the amounts awarded by the Tribunal, the claimant has come out with the present appeal in C.M.A.No.1970 of 2022 seeking enhancement of compensation.



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13.The learned counsel appearing for the 2<sup>nd</sup> respondent-Insurance Company contended that the Tribunal failed to see that though FIR was registered against the driver of the lorry, the final report was filed closing the case as mistake of fact. The Tribunal ought to have dismissed the claim petition for non-joinder of necessary parties. The claimant has not produced any document to show that he lost his earning capacity or suffered functional disability. In the absence of any document with regard to loss of earning capacity or functional disability, the Tribunal erroneously adopted multiplier method and awarded huge amount as compensation towards loss of earning capacity. The amounts awarded by the Tribunal towards pain and sufferings and loss of amenities are also excessive. The Tribunal has awarded excessive amount of Rs.2,00,000/- towards physiotherapy, when the entire medical expenses incurred by the claimant was only Rs.1,32,340/-. The total compensation awarded by the Tribunal is highly excessive and prayed for setting aside the award passed by the Tribunal and for dismissal of C.M.A.No.1970 of 2022 filed by the claimant.

14.The learned counsel appearing for the claimant contended that



the claimant proved that accident occurred only due to negligent driving by the driver of the lorry. The Tribunal without considering the evidence let in by the claimant, erroneously held that accident occurred due to negligence of both driver of lorry and rider of motorcycle. In any event, the award of the Tribunal directing the 2<sup>nd</sup> respondent-Insurance Company to pay the compensation does not warrant any interference. In the accident, the claimant sustained multiple bone fracture and grievous injuries all over the body. The claimant also lost his right hand and suffered 70% permanent disability. At the time of accident, the claimant was aged 42 years engaged with Government Contracts in Ayothyapattinam Panchayath Union, Salem District and was earning more than Rs.40,000/- per month and also he was running a Milk Procurement Center at his Village and was earning a sum of Rs.20,000/- per month. The monthly income fixed by the Tribunal at Rs.8,500/- is meagre. The multiplier '14' applied by the Tribunal is not correct. The amounts awarded by the Tribunal towards attendant charges and transportation are meagre and prayed for dismissal of C.M.A.No.1920 of 2022 filed by Insurance Company and for allowing C.M.A.No.1970 of 2022 filed for enhancement of compensation.

15.Heard the learned counsel appearing for the claimant as well as



the learned counsel appearing for the 2<sup>nd</sup> respondent-Insurance Company and perused the entire materials on record.

16.From the materials on record, it is seen that it is the case of the claimant that while he was riding as pillion in the motorcycle bearing Registration No.TN 30 S 6391 on the Salem to Attur main road, the driver of the lorry bearing Registration No.TN 04 L 9457 belonging to 1<sup>st</sup> respondent and insured with 2<sup>nd</sup> respondent, who was going in front of the motorcycle, suddenly stopped without any signal. Due to the same, the rider of the motorcycle dashed on the backside of the lorry and caused the accident. In the accident, the claimant sustained multiple grievous injuries and has taken treatment as inpatient at Ganga Medical Centre Hospital, Coimbatore from 18.08.2012 to 10.09.2012 for 24 days and also at Stanley Government Hospital, Chennai. To substantiate his contention, he examined himself as P.W.1 and marked the FIR, which was registered against the driver of the lorry as Ex.P1.

16(i). On the other hand, it is the case of the 2<sup>nd</sup> respondent-Insurance Company that the rider of the motorcycle in which the claimant was riding as pillion, drove the motorcycle in a rash and negligent manner



and invited the accident. The accident did not occur due to negligence of the driver of the lorry belonging to 1<sup>st</sup> respondent and insured with 2<sup>nd</sup> respondent. In any event, the driver of the lorry did not possess driving license at the time of accident and hence, the 2<sup>nd</sup> respondent-Insurance Company is not liable to pay any compensation. In support of their case, the 2<sup>nd</sup> respondent relied on the final report / Ex.C1, filed by the Police. After investigation, the Police filed final report stating that the accident occurred due to the negligence of the rider of the motorcycle.

16(ii). The Tribunal taking into consideration the judgment of the Division Bench of this Court reported in **2014 (1) TNMAC 295 (DB), [Managing Director, Tamil Nadu State Transport Corporation Ltd., Vs. S.Yobe and another]**, did not accept the evidence of R.W.1 and Ex.C1 and held that negligence cannot be fixed relying on the final report. The Tribunal considering the evidence of claimant as P.W.1 and the manner of accident, held that the accident occurred due to the negligence of both the driver of the lorry belonging to 1<sup>st</sup> respondent as well as the rider of the motorcycle. The claimant has filed claim petition only against the 1<sup>st</sup> respondent-owner of the lorry and 2<sup>nd</sup> respondent-insurer of the lorry. The Tribunal considering the judgment of the Hon'ble Apex court



reported in **2015 (1) TNMAC 801, [Khenyei Versus New India**

**Assurance Co.Ltd. & Others]**, held that claimant can seek compensation against any one of the party. In case of composite negligence, the Court can direct the Insurance Company to pay the compensation at the first instance and workout their remedy by filing suit against other party, whose vehicle was also involved in the accident. The 2<sup>nd</sup> respondent-Insurance Company did not examine the driver of the lorry or any witness to substantiate their case that accident occurred due to the negligence of the rider of the motorcycle in which the claimant was riding as pillion rider. In view of the above materials, we are of the opinion that there is no reason to interfere with the finding of the Tribunal fixing negligence on the part of the driver of the lorry belonging to 1<sup>st</sup> respondent.

17.As far as quantum of compensation is concerned, it is the case of the claimant that due to the injuries suffered in the accident, he suffered functional disability and he lost his earning capacity. He produced Ex.P22 / disability certificate issued by the District Welfare Board for the Differently Abled and also the beneficiary book to prove the disability suffered by him. The Tribunal considering the nature of injuries, Ex.P22/disability certificate, held that claimant suffered 70% functional



disability, adopted multiplier method for awarding compensation towards loss of earning capacity and the same is proper. It is the further case of the claimant that at the time of accident he was aged 45 years, an Agriculturist and also doing Milk Vending Business in S.M.Dairy, Amurtha Milk Center, Yathapoor and was earning a sum of Rs.40,000/- per month. He did not file any document to prove his avocation and income. In the absence of any document with regard to income, the Tribunal fixed a sum of Rs.8,500/- as monthly income of the claimant. The accident is of the year 2012. The monthly income fixed by the Tribunal is meagre. Considering the age and nature of work done by the claimant, a sum of Rs.9,000/- is fixed as monthly income of the claimant. The claimant was aged 45 years at the time of accident. Following the judgments of the Hon'ble Apex Court reported in **2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others]** and **2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another]**, the Tribunal has rightly granted 25% enhancement towards future prospects and applied multiplier '14'. Thus, by fixing the monthly income as Rs.9,000/-, granting 40% enhancement towards future prospects and applying multiplier '14', the compensation towards loss of earning capacity is



arrived at Rs.13,23,000/- {Rs.11,250/- [(Rs.9,000/- + Rs.2,500/- (25% of Rs.9,000/-)] x 12 x 14 x 70/100}.

18.From the materials available on record, it is seen that the claimant has taken treatment as inpatient in the Ganga Medical Centre Hospital, Coimbatore from 18.08.2012 to 10.09.2012 for 24 days and produced Ex.P7 / discharge summary to that effect. Further, the claimant has taken inpatient treatment at Stanley Government Hospital, Chennai for 29 days from 24.07.2013 to 21.08.2013 and produced Ex.P11/discharge summary to that effect. Considering the nature of injuries and period of treatment taken by the claimant, the amounts awarded by the Tribunal towards attendant charges and extra nourishment are enhanced to Rs.50,000/- each as the amounts awarded by the Tribunal are meagre. Further, the claimant has produced medical bills for a sum of Rs.90,000/- for the physiotherapy treatment taken by him for the period from 10.10.2012 to 20.07.2013 and another sum of Rs.1,10,000/- for the period from 15.09.2013 to 22.12.2014. In view of the same, the amount awarded by the Tribunal towards physiotherapy treatment is not interfered with. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, they are confirmed.



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 | 12,49,500/-                     | 13,23,000/-                       | Enhanced                               |
| 2.    | Pain and sufferings      | 50,000/-                        | 50,000/-                          | Confirmed                              |
| 3.    | Loss of amenities        | 75,000/-                        | 75,000/-                          | Confirmed                              |
| 4.    | Attendant charges        | 20,000/-                        | 50,000/-                          | Enhanced                               |
| 5.    | Extra nourishment        | 20,000/-                        | 50,000/-                          | Enhanced                               |
| 6.    | Transportation           | 34,960/-                        | 34,960/-                          | Confirmed                              |
| 7.    | Medical expenses         | 1,62,720/-                      | 1,62,720/-                        | Confirmed                              |
| 8.    | Physiotherapy expenses   | 2,00,000/-                      | 2,00,000/-                        | Confirmed                              |
| 9.    | Damages to clothes       | 500/-                           | 500/-                             | Confirmed                              |
|       | <b>Total</b>             | <b>Rs.18,12,680/-</b>           | <b>Rs.19,46,180/-</b>             | <b>Enhanced by Rs.1,33,500/-</b>       |

19. In the result, this C.M.A.No.1920 of 2022 filed by the Insurance Company is dismissed and C.M.A.No.1970 of 2022 filed by the claimant is partly allowed. The compensation awarded by the Tribunal at Rs.18,12,680/- is hereby enhanced to Rs.19,46,180/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2<sup>nd</sup> respondent-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.1501 of 2012, on the file of the Motor Accident



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Claims Tribunal, Special Sub Court No.II, Salem. On such deposit, the claimant 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 claimant is not entitled to interest for the delay period as per the order of this Court dated 11.04.2022, made in C.M.P.No.5928 of 2022 in C.M.A.No.SR.43355 of 2019. Consequently, the connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (S.M., J)  
26.09.2022

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Index : Yes / No

Internet : Yes / No

To

1.The Special Subordinate Judge No.II,  
Motor Accidents Claims Tribunal,  
Salem.

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

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

**SUNDER MOHAN, J.**

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