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C.M.A.Nos3170 of 2017 and 1897 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE V.SIVAGNANAM**

C.M.A.Nos.3170 of 2017 and 1897 of 2022
and C.M.P.No.13915 of 2022

C.M.A.No.3170 of 2017

P.Arun @ Mariappan

... Appellant

Vs.

1.N.Dhanabal

2.M/s.Southern Textiles Processors
1039/1A, Arasu colony
Vangal road, Karur
Karur District – 639 004.

3.United India Insurance Company Limited
Branch Office at No.19/2
Navaranga plaza
II floor, Opp LGB petrol bunk
Covai Road, Karur – 639 002.

... Respondents



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C.M.A.No.1897 of 2022

United India Insurance Co. Ltd.
Having its Branch Office at No.19/2
Navaranga plaza, II floor
Opp. LGB petrol bunk
Covai road, Karur – 639 002.

... Appellant

Vs.

1.P.Arun @ Mariappan

2.N.Dhanapal

3.M/s.Southern Textiles Processors
Having its Office at No.1039/1A
Arasu colony
Vangal road, Karur
Karur District – 639 004.

.. Respondents

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 21.01.2016 made in M.C.O.P.No.1 of 2015 on the file of Motor Accident Claims Tribunal, Special District Court, Erode.

In C.M.A.No.3170 of 2017

For Appellant : Mr.R.Nalliyappan
For R3 : Mr.S.Arunkumar

In C.M.A.No.1897 of 2022

For Appellant : Mr.S.Arun Kumar



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For R1 : Mr.R.Nalliyappan

COMMON JUDGMENT

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

C.M.A.No.3170 of 2017 is filed by the claimant for enhancement of compensation granted by the Tribunal in the award dated 21.01.2016 made in M.C.O.P.No.1 of 2015 on the file of Motor Accident Claims Tribunal, Special District Court, Erode.

C.M.A.No.1897 of 2022 is filed by the Insurance Company against the award dated 21.01.2016 made in M.C.O.P.No.1 of 2015 on the file of Motor Accident Claims Tribunal, Special District Court, Erode.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to by their respective ranks in the claim petition for the sake of convenience.



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3.The claimant filed M.C.O.P.No.1 of 2015 on the file of Motor Accident Claims Tribunal, Special District Court, Erode, claiming a sum of Rs.40,00,000/- as compensation for the injuries sustained by him in the accident that took place on 04.06.2014.

4.According to the claimant, on the date of accident i.e., on 04.06.2014 at about 5.40 P.M., while he was driving his Maruthi Omni van bearing Registration No.TN-36-D-0999 along with his family members, near the bus stop at Lakshmipuram on the left side of Coimbatore to Karur Main Road from West to East direction, the 1st respondent, the driver of Maruthi Swift car bearing Registration No.TN-47-AC-6090 belonging to the 2nd respondent, who was coming in the opposite direction, attempted to overtake one antecedent vehicle, drove the same in a rash and negligent manner, came on the wrong side of the road, dashed against the Omni van driven by the claimant and caused the accident. In the accident, the claimant and other occupants of the Omni van sustained injuries. Therefore, the claimant has filed the above claim petition claiming compensation as against the respondents 1 to 3, driver, owner and insurer of the Maruthi Swift car respectively.



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5.The respondents 1 and 2, driver and owner of the Maruthi Swift car remained exparte before the Tribunal.

6.The 3rd respondent/Insurance Company, insurer of the Maruthi Swift car filed counter statement denying the averments made by the claimant and stated that the accident was not intimated to the 3rd respondent. The 1st respondent, driver of the Maruthi Swift car and claimant did not possess driving license to drive the vehicles at the time of accident and therefore, the claimant is also responsible for the accident. The owner and insurer of the Maruthi Omni van driven by the claimant were not made as parties to the proceedings and hence, the claim petition is bad for non-joinder of necessary parties. Therefore, the 3rd respondent/Insurance Company is not liable to pay any compensation to the claimant. The 3rd respondent/Insurance Company has also denied the age, avocation, income and nature of injuries sustained by the claimant. In any event, the compensation claimed by the claimant is excessive and prayed for dismissal of the claim petition.



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7.Before the Tribunal, the claimant examined himself as P.W.1, one Kumar, Assistant Manager from Ganga Hospital at Coimbatore, was examined as P.W.2, Gokulraj, Senior Associate, Rehabilitation Service in Ottobock Health Care India Pvt. Limited, Coimbatore, was examined as P.W.3 and 47 documents were marked as Exs.P1 to P47. The 3rd respondent/Insurance Company did not let in any oral and documentary evidence.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent driving by the 1st respondent, driver of Maruthi Swift car belonging to the 2nd respondent and directed the 3rd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.35,85,355/- as compensation to the claimant.

9. Not being satisfied with the amounts awarded by the Tribunal, the claimant has come out with C.M.A.No.3170 of 2017 seeking enhancement of compensation. Questioning the quantum of compensation awarded by the Tribunal, the Insurance Company has come out with C.M.A.No.1897 of 2022.



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10.The learned counsel appearing for the claimant contended that in the accident, the claimant sustained fracture in the right shaft of femur, both bone fracture on the right leg with major crush injury on right foot, due to which, right leg below knee was amputated. Due to amputation, the claimant could not continue his job and hence, the Tribunal ought to have awarded compensation for 100% disability. At the time of accident, the claimant was doing business in the name of Babu Twisting, Babu fabrics, Sri.Angala Parameswari Textiles power looms and software developer in computer and was earning Rs.40,000/- per month. The Tribunal without considering the same, fixed a meagre sum of Rs.10,000/- per month as notional income of the claimant. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation and dismissal of the appeal filed by the 3rd respondent/Insurance Company.

11.Though the learned counsel appearing for the 3rd respondent/Insurance Company raised various grounds with regard to negligence, at the time of arguments, he restricted his arguments only with regard to quantum of compensation awarded by the Tribunal and contended



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that the notional income fixed by the Tribunal is excessive. The Tribunal erred in granting 50% enhancement towards future prospects of the claimant.

The claimant can continue his job even after the accident and therefore, the compensation granted by the Tribunal adopting multiplier method and fixing disability of the claimant at 65% is not correct. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal and allowing the appeal filed by the 3rd respondent/Insurance Company.

12.The respondents 1 and 2 remained exparte before the Tribunal and hence, notice to the respondents 1 and 2 is dispensed with.

13.Heard the learned counsel appearing for the claimant as well as the learned counsel appearing for the 3rd respondent/Insurance Company and perused the entire materials on record.

14.From the materials on record, it is seen that it is the case of the claimant that in the accident, he suffered fracture in the right shaft of femur and fracture of both bones in the right leg with major crush injury in right



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foot. Due to the injuries, his right leg below knee was amputated and three doctors, who examined the claimant, assessed the disability at 65%. He has taken treatment in Ganga Hospital, Coimbatore, from 05.06.2014 to 19.06.2014 and 21.06.2014 to 23.06.2014 and has taken treatment as out-patient in the same hospital on six occasions and marked the wound certificate and two discharge summaries as Exs.P7, P12 and P14. Though the 3rd respondent/Insurance Company contended that 65% disability assessed by the Doctors is excessive, they have not let in any contra evidence to disprove the evidence of P.W.3/Doctor and Ex.P32 disability certificate. Therefore, 65% disability fixed by the Tribunal is proper. It is the claim of the claimant that at the time of accident, the claimant was running business in the name of Babu Twisting, Babu fabrics, Sri.Angala Parameswari Textiles power looms and software developer in computer and was earning Rs.40,000/- per month. To prove the same, the claimant marked the Income Tax returns as Exs.P39 to P41. The Tribunal rejected the same holding that they are not proved by supportive documents such as day book, ledger book and account book and fixed a sum of Rs.10,000/- per month as notional income of the claimant. Considering the date of accident and nature of work done by the claimant, the



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contention of the 3rd respondent/Insurance Company that notional income

fixed by the Tribunal is excessive, is not acceptable. The claimant was aged

25 years at the time of accident. The Tribunal granted 50% enhancement

towards future prospects of the claimant and applied multiplier '17' and

awarded compensation towards loss of earning power. As per the judgments

of the Hon'ble Apex Court reported in **2017 (2) TN MAC 609 (SC)**

[National Insurance Co. Ltd., Vs. Pranay Sethi and others] and **2009 (2)**

TNMAC 1 SC (Sarla Verma and others vs. Delhi Transport Corporation

and another), the claimant is entitled to only 40% enhancement towards

future prospects and multiplier applicable is '18'. In addition to the

compensation granted towards loss of earning power, the Tribunal also

awarded a sum of Rs.65,000/- towards disability and Rs.50,000/- towards loss

of amenities, which the claimant is not entitled to. Hence, the same are liable

to be set aside and are hereby set aside. The Tribunal awarded a sum of

Rs.3,58,200/- towards fixation of artificial leg. In addition to that, the

Tribunal awarded Rs.6,10,000/- towards future medical expenses. In view of

the excess amount granted by the Tribunal, the claimant is not entitled to any

enhancement of compensation. The amounts awarded by the Tribunal under



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all other heads are hereby confirmed. Thus, the compensation awarded by the

WEB COURT 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 or reduced
1.	Transportation	17,500	17,500	Confirmed
2.	Extra nourishment	25,000	25,000	Confirmed
3.	Pain and suffering	50,000	50,000	Confirmed
4.	Medical expenditure	2,20,655	2,20,655	Confirmed
5.	TT prosthesis already purchased	3,58,200	3,58,200	Confirmed
6.	Future medical expenditure	6,10,000	6,10,000	Confirmed
7.	Loss of earning power	19,89,000	19,89,000	Confirmed
8.	Disability	65,000	-	Set aside
9.	Loss of marriage prospects	1,50,000	1,50,000	Confirmed
10.	Loss of amenities	50,000	-	Set aside
11.	Attendance charges	50,000	50,000	Confirmed
	Total	35,85,355	34,70,355	Reduced by Rs.1,15,000/-

15. With the above modification, C.M.A.No.1897 of 2022 filed by the



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Insurance Company is partly allowed and C.M.A.No.3170 of 2017 filed by the claimant is dismissed. The compensation of Rs.35,85,355/- granted by the Tribunal is hereby reduced to Rs.34,70,355/- together with interest at the rate of 7.5% per annum (interest excluding the amount of Rs.6,10,000/- given for future medical expenses) from the date of petition till the date of deposit. The 3rd 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. The 3rd respondent/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.1 of 2015 on the file of Motor Accident Claims Tribunal, Special District Court, Erode, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (V.S.G., J)
08.09.2022

Index : Yes / No
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To

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1.The Special District Judge
Motor Accident Claims Tribunal
Erode.

2.The Section Officer
VR Section
High Court
Madras.



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V.M.VELUMANI,J.
and
V.SIVAGNANAM,J.

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and C.M.P.No.13915 of 2022

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