



CMA No.1293 of 2013  
& Cross Obj.No.68 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

CORAM :

**THE HONOURABLE MR. JUSTICE A.A. NAKKIRAN**

Civil Miscellaneous Appeal No.1293 of 2013  
&  
Cross Objection No.68 of 2015  
and  
MP.No. 1 of 2013

CMA.No.1293 of 2013

The Branch Manager,  
The New India Assurance Co. Ltd.,  
Post Box No.47, Kumaran Shopping Complex  
Kumaran Road, Tiruppur.

... Appellant

Versus

1. Kalaiselvi  
2. Senthilkumar  
3. T.T.S Transport Service  
546, Devi Gardens  
Kangeyam Nagar, 2nd street  
Kangeyam Road  
Tiruppur

(Respondents 2 and 3 herein remained exparte  
before the Tribunal)

... Respondents



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WEB COM Cross Objection No.68 of 2015

Kalaiselvi

... Cross objector

Versus

1. The Branch Manager,  
The New India Assurance Co. Ltd.,  
Post Box No.47, Kumaran Shopping Complex  
Kumaran Road, Tiruppur.
2. Senthilkumar
3. T.T.S Transport Service  
546, Devi Gardens  
Kangeyam Nagar, 2nd street  
Kangeyam Road  
Tiruppur

... Respondents

Civil Miscellaneous Appeal & Cross Objection are filed against the award and decree dated 24.04.2012, made in M.C.O.P.No.1529 of 2009 on the file of the Motor Accident Claims Tribunal/Fast Track Court No.7, Tiruppur.

For Appellant  
in CMA/Insurance Company : Mr. A. Salomi

For Claimants/  
Cross Objectors : Mr.Ma.P. Thangavel



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## **COMMON JUDGMENT**

The appellant/Insurance Company has preferred the present appeal in CMA No.1293 of 2013 and claimants have filed Cross Objection No.68 of 2015 against the award and decree, dated 24.04.2012, passed by the Motor Accident Claims Tribunal/ Additional District and Sessions Judge No.7, Tiruppur in MCOP No.1529 of 2009.

2. As per the claim petition, on 21.09.2009 at about 12:30 p.m at Avinasi to Erode NH 47 Road, Avinasi, opposite to Sri Arya Bhavan Hotel, the claimant was travelling as a pillion rider along with one Suresh and Dharani in a bike viz., Hero Honda Splender bearing Registration No.TN 30 U 8080 from west to east direction. At that time, the bus named TTS bearing Registration No.TN 39 AJ 8889 came from east to west direction in a rash and negligent manner and dashed against one Karuppannan alias Karupppiah and then dashed against the bike bearing Registration No.TN 30 U 8080. In the impact, Dharani died on the spot and the claimant, Suresh and Karuppannan alias Karupppaiah sustained grievous injuries.



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3. The Tribunal on appreciation of both oral and documentary evidence came to the conclusion that the accident occurred only due to the rash and negligent driving of the driver of the bus and hence, directed the Insurance Company to pay a sum of Rs.4,33,104/- with interest at the rate of 7.5% per annum from the date of claim till the date of realisation as compensation to the claimants.

4. Aggrieved over the quantum of award, the appellant/Insurance Company has come forward with CMA. No. 1293 of 2013.

5. Being not satisfied with the quantum of the award, the claimant has filed Cross Obj.No.68 of 2015.

6. The learned counsel for the appellant/Insurance company contended that the deceased was travelling as pillion rider along with two more persons which is against the provision of Section 123 of Motor Vehicles Act. Further, the accident had occurred on the highway in the middle of the road, as a result of head on collision between the bus and



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the rider of the motor cycle. While so, the Tribunal ought to have held that the rider and the claimant were equally responsible for the accident and fixed contributory negligence at 50%. But, the Tribunal has erred in fixing 80% negligence on the part of the driver of the bus and 20% contributory negligence on the part of the injured-claimant. He also submitted that in the absence of any material evidence, the monthly income fixed by the Tribunal is on the higher side. The Tribunal has erred in fixing 48% disability for particular limb in the absence of proof of whole body disability and functional disability. The Tribunal also erred in assessing the compensation by applying multiplier method in the absence of proof of avocation. The compensation awarded by the Tribunal under the heads of loss of earning power, medical expenses and pain and suffering are on the higher side, hence, he prays to reduce the award amount.

7. On the other hand, the learned counsel appearing for the cross objectors submitted that the compensation awarded by the Tribunal at a sum of Rs.4,33,104/- including the medical bills of Rs.1,53,500/- for the injury sustained by the claimant is very meager. At the time of



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accident, the claimant was earning Rs.5,000/- for which salary certificate was produced under Ex.P5. Hence the monthly income fixed by the Tribunal at Rs.3,500/- is very low. As far as contributory negligence is concerned, merely because three persons were travelling, including one minor girl in the vehicle, it will not be a reason to fix contributory negligence at all that too in the absence of any contra evidence. Thus, the contributory negligence fixed on the injured-claimant at 20% by the Tribunal is erroneous in law. He further contended that at the time of accident, the claimant was working as Accountant in A.V.J Department and due to the said accident, she sustained grievous injuries and fracture in left hand and skin drafting of right hand. There was disfigurement of entire right hand, which resulted in no sensation of entire right hand. She also lost her job and could not lift or even take objects by using her right hand. Even though the doctor assessed 52.4% permanent disability, it would affect 100% future earning capacity. While so, the Tribunal ought to have granted atleast 40% towards future prospects as per the decision rendered by the Hon'ble Supreme Court in the case of 1) *Erudhaya Priya vs. State Express Transport Corporation* reported in **2020 SCC Online SC 601 (FB) (para 10, 11 & 14)** 2) *Pappu Deo Yadav vs.*



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*Naresh Kumar & others* reported in **2020 SCC Online SC 752 (FB)**

**(para 7 to 12), 3) *Karthik Subramaniam vs. B.Sarath Babu* reported in CDJ-2021-SC196.** The Tribunal has wrongly applied 18 multiplier instead of 17 without following the decision in the case of *Sarla Verma*. The compensation awarded under the head of pain and suffering is very low. Further, no amount was awarded under the heads of loss of amenities, extra nourishment, attender charges, disfigurement, loss of permanent disablement. Hence, he prays to dismiss the appeal filed by the Insurance Company and to enhance the compensation amount claimed by the cross objector/claimant.

8. Heard Ms. A. Salomi, the learned counsel appearing for the Transport Corporation and Mr. Ma.P. Thangavelu, the learned counsel appearing for the claimant/cross objector.

9. As far as the negligence aspect is concerned, the learned counsel for the appellant/Insurance Company contended that the claimant was travelling as pillion rider along with two more persons which is against the provision under Section 123 of Motor Vehicles Act and



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invited the accident. As seen from the records, the injured-claimant was travelling as pillion rider. The Tribunal has considered the contentions made in the FIR as well as the oral evidence and arrived at a conclusion that the accident had occurred due to the rash and negligent driving of the driver of the bus, who is the 1st respondent in MCOP No.1529 of 2009 and the injured-claimant was also responsible for the accident and had rightly fixed the negligence on the part of the appellant/insurance company at 80% and 20% contributory negligence on the part of the injured-claimant.

10. On perusal of award passed by the Tribunal, it is seen that the Tribunal has not given any weightage to the present day cost of living while fixing the compensation. It is no doubt true that, it is just and necessary to provide appropriate weightage while fixing the notional income. However, considering the present cost of living and the fact that the injured was working as Accountant, aged about 28 years and the accident occurred in the year 2009, I feel that a sum of Rs.5,000/- could be taken as monthly notional income of the deceased, to arrive at a just and proper compensation under the head of Loss of earning capacity. So



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far as the correct multiplier that requires to be adopted for the age group between 26 to 30 years is concerned, as per decision rendered by the Hon'ble Supreme Court in *Sarla v. Verma and others* case, '17' is the correct multiplier, but the Tribunal has applied the multiplier '18', which is incorrect.

11. As far as the disability compensation is concerned, though PW3/doctor has assessed the disability of the claimant as 52.4%, the Tribunal has fixed the disability only at 48%, but no amount was awarded towards disability compensation. In this regard, the learned counsel for the cross objector/claimants has filed two photographs in order to show that there is a disfigurement of entire right hand and due to which, the claimant also lost her job and could not lift or even take objects in right hand. Considering the above, this Court is inclined to fix 52% disability for the injured-claimant.

12. Further, as rightly contended by the learned counsel for the claimant, the Tribunal failed to award compensation towards future prospects. As per the judgment of the Hon'ble Supreme Court in *Pranay*



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**Sethi's case**, the claimant/cross objector is entitled to 40% enhancement towards future prospects.

13. Thus, if the monthly income of the injured-claimant is taken as Rs.5,000/- and 40% amount is added towards future prospects, the total comes to Rs.7,000/-. Consequently, the total loss of earning capacity works out to Rs.7,42,560/- ( $7,000 \times 12 \times 17 \times 52/100$ ). Hence, the compensation amount of Rs.3,62,880/- awarded by the Tribunal under the head of loss of earning capacity is hereby modified and enhanced to Rs.7,42,560/-.

14. As seen from Ex.P2 and P6, discharge summary, Ex.P3 wound certificate, Ex.P4 medical bills, after the accident, the claimant had taken treatment as inpatient for the injuries sustained by her from 22.09.2009 to 28.10.2009. Considering the above, the compensation of Rs.25,000/- awarded by the Tribunal under the head of pain and suffering is not adequate and hence, this Court is inclined to enhance it Rs.40,000/- from Rs.25,000/-.



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15. Further, it is seen that the Tribunal has not awarded any amount under the heads of transport to hospital, loss of amenities and extra nourishment. In the considered view of this Court, it would be appropriate to award a sum of Rs.20,000/- towards loss of amenities, Rs.10,000/- towards transport to hospital and Rs.15,000/- towards extra nourishment.

16. Hence, the total compensation payable to the claimant/cross objector are as hereunder:

| <i><b>Heads</b></i>              | <i><b>Amount awarded by the Tribunal (Rs)</b></i> | <i><b>Award Amount by this Court (Rs)</b></i>         |
|----------------------------------|---------------------------------------------------|-------------------------------------------------------|
| Loss of earning capacity         | 3,62,880/-<br>(3500x 12 x 18 x 48/100)            | 7,42,560/-<br>(5000 +40%= 7000<br>x 12 x 17 x 52/100) |
| Pain and suffering               | 25,000/-                                          | 40,000/-                                              |
| Transport to hospital            | Nil                                               | 10,000/-                                              |
| Loss of amenities                | Nil                                               | 20,000/-                                              |
| Medical Bills                    | 1,53,500/-                                        | 1,53,500/-                                            |
| Extra Nourishment                | Nil                                               | 15,000/-                                              |
| <b>Total</b>                     | <b>5,41,380/-</b>                                 | <b>9,81,060/-</b>                                     |
| Less contributory negligence 20% | <b>1,08,276/-</b>                                 | <b>1,96,212/-</b>                                     |
| <b>Total</b>                     | <b>4,33,104/-</b>                                 | <b>7,84,848/- rounded off to 7,84,850/-</b>           |



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17. In the result,

(i) The Appellant/Insurance Company is directed to deposit the modified award amount i.e, Rs.7,84,850/- along with interest at the rate of 7.5% per annum and costs, after deducting the amount already deposited, if any, to the credit of MCOP No.1529 of 2009 within a period of six weeks from the date of receipt of a copy of this Judgment.

(ii) On such deposit being made, the Tribunal is directed to transfer the award amount to the bank account of the claimant along with accrued interest through RTGS within a period of two weeks thereafter.

(iii) The cross objector /claimant is directed to pay the necessary court fee, if any for the enhanced compensation and the Registry is directed to draft the decree, after receipt of necessary court fee.



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18. Accordingly, CMA. No. 1293 of 2013 filed by the Insurance

Company is dismissed. Cross. Obj. No.68 of 2015 filed by the claimant is allowed by enhancing the award of the Tribunal from Rs.4,33,104/- to Rs.7,84,850/- . Consequently, connected miscellaneous petition is closed.

No costs.

28.03.2023

Index : Yes/No  
Speaking order/Non-Speaking order  
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To  
1. The Motor Accident Claims Tribunal  
Fast Track Court No.7  
Tiruppur.  
  
2. The Section Officer  
V.R.Section, High Court of Madras.



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**A.A.NAKKIRAN J.**

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