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C.M.A.No.1446 of 2016 and  
Cross Objection No.91 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2023

CORAM

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

Civil Miscellaneous Appeal No.1446 of 2016  
&  
Cross Objection No.91 of 2016  
and  
CMP No.11128 of 2016

CMA No.1446 of 2016

The Oriental India Insurance Co. Ltd.,  
Oriental House, 2<sup>nd</sup> Floor  
Old No.115, New No.216,  
Prakasam Salai  
Chennai-600 108.

... Appellant

..Versus..

1. K.Suresh  
2. Ail Neni Sahith

... Respondents

Cross Objection No.91 of 2016

K.Suresh

...Cross Appellant

.. Versus ..

1.The Oriental India Insurance Co. Ltd.,  
Oriental House, 2<sup>nd</sup> Floor  
Old No.115, New No.216,

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Prakasam Salai  
Chennai-600 108  
2. Ail Neni Sahith

.. Respondents

Civil Miscellaneous Appeal and Cross Objection were filed against the award and decree in MCOP No.3394 of 2013, dated 24.08.2015 on the file of the Motor Accident Claims Tribunal / IV Judge, Court of Small Causes, Chennai.

For Appellant/Insurance Company : Mr. Elveera Pandian

For Cross Objectors/claimants : Mr.A.Subadra  
For M/s.M.Malar

Mr.K.Vinod for R2

### **COMMON JUDGMENT**

The appellant/Insurance Company has preferred the present appeal in CMA. No. 1446 of 2016. The Claimant has filed Cross Objection No.91 of 2016. Both the cases are filed against the award and decree, dated 24.08.2015, passed by the Motor Accident Claims Tribunal / IV Judge, Court of Small Causes, Chennai in MCOP No.3394 of 2013.



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2. As could be seen from the Claim Petition, the accident had occurred on 08.04.2013 at about 16.00 hours, at OMR Road, Karapakkam, Chozhinganallur, opposite to Bhepal Company. The J-3 Guindy Traffic Investigation registered a case in Crime No.385/S3/2013 in connection with the accident. As per the first information report, while the claimant was walking along the road from north to south direction, a Motor Cycle bearing Registration No.TN 11 Y 3012 came in a rash and negligent manner from south to north direction and hit against the claimant. Due to the accident, he sustained major head injuries. Hence, he filed the claim petition.

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 motor cycle, belonging to the 2nd respondent herein, who is the owner of the vehicle and hence, directed the appellant/Insurance company to pay a sum of Rs.4,63,300/- with interest at the rate of 7.5% per annum from the date of claim till the date of realisation as compensation to the claimant.

4. Aggrieved over the quantum of award, the appellant/Insurance



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Company has come forward with CMA.No.1446 of 2016.

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5. Being not satisfied with the quantum of the award, the claimants have filed Cross Objection No.100 of 2021.

6. The learned counsel appearing for the appellant/Insurance Company mainly contended that the quantum of compensation awarded by the Tribunal is exorbitant. The precedents of this Hon'ble Court and the Supreme Court has not been followed by the Tribunal. The claimant was suffered only 10% disability, but the Tribunal has wrongly fixed 35% disability and awarded Rs.3000/- per percentage. The Tribunal erred in fixing the age of the claimant at 35 and his income at Rs.6,500/- and his avocation as driver, without any basis or evidence. The Tribunal has erred in awarding Rs.39,000/- towards loss of income for 6 months, without any proof of income or loss of income. When the claimant took treatment only for 3 days, the compensation of Rs.50,000/- awarded towards extra nourishment, Rs.40,000/- awarded towards transport and Rs.25,000/- awarded towards attender charges are on the higher side. The compensation



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towards medical expenses, pain and suffering, loss of amenities, future medical expenses, damage to clothing, and future loss of income is highly excessive. For the aforesaid reasons, the award is liable to be set aside.

7. On the other hand, the learned counsel for the cross objectors/ claimants contended that the Tribunal has failed to consider the injuries sustained by the claimant like fracture in the upper jaw at the level of maxillary left II and malleolar fracture, dislocation of lower jaw 1 tooth, upper central incisor missing with laceration at the upper lip and multiple grievous injuries all over the body. The Tribunal has also failed to consider the evidence of doctor who deposed that due to fracture and loss of upper and lower teeth, TM Joint fibrosis, midline shift to left side, difficulty in opening and closing of the mouth, functional impairment of masticatory dysfunction and disfigurement. Totally the doctor assessed the disability at 45%, but the claimant is having prosthesis, disability was restricted to 40%. But the Tribunal has fixed the disability at 35%. The injured has taken treatment at Smile Dental Care from 08.04.2013 to 13.04.2013 and further taken treatment at Ragas Dental Care from 24.04.2013 to 27.04.2013 The



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claimant was aged, 35 years, working as an auto driver and was earning about Rs.15,000/- per month at the time of accident. But the Tribunal without considering the age and occupation of the injured/claimant has fixed Rs.6,500/- only as monthly income which is very meager. The compensation awarded under the heads viz., pain and suffering, extra nourishment, transport to hospital, damages to cloths, attender charges, medical expenses, loss of income, loss of amenities of life are on the lower side. The Tribunal has failed to award any compensation under the heads of mental agony and head of disfigurement. The Tribunal ought to have adopt multiplier method by considering the nature of the injuries sustained by the claimant. No amount was awarded under the head of future prospects. Hence, he sought for enhancement of compensation.

8. Heard Mr. Elveera Ravindran, learned counsel for the Insurance Company and Ms. A. Subadra appearing for M/s.M.Malar, the learned counsel for the claimants/cross objectors.

9. The doctor/PW2 assessed the disability at 40%. However, the



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Tribunal has reduced the same to 35% , after giving due consideration to the nature of the injuries. As far as the quantum of compensation is concerned, the Tribunal has rightly fixed a sum of Rs.3,000/- for one percentage of disability since the accident occurred in the year 2013.

10. On a perusal of the award, it is seen that the claimant was an auto driver and was earning Rs.15,000/- per month. But, there is no proof of document filed and there was no contra evidence let in on the side of the Insurance Company. In the absence of any material evidence, the monthly income fixed by the Tribunal at Rs.6,500/- per month and thereby awarding loss of income at Rs.39,000/- (Rs.6500 x 6) is reasonable.

11. As seen from Ex.P3 Accident register, Ex.P4-discharge summary-I, immediately after the accident, the injured/claimant was admitted in Government Royapettah Hospital for first aid treatment and thereafter, he was taking treatment as inpatient in Ragas Dental, College and Hospital, Chennai from 24.04.2013 to 27.04.2013 as seen from Ex.P5 OP chit and Ex.P6 Discharge Summary-II. When the claimant took treatment only for 4



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days, the compensation of Rs.50,000/- awarded towards extra nourishment, Rs.40,000/- awarded towards transport to hospital and Rs.25,000/- awarded towards attender charges is highly excessive in the considered view of this Court. Hence, this Court is inclined to refix a sum of Rs.15,000/- instead of Rs.50,000/- towards extra nourishment, Rs.15,000/- instead of Rs.40,000/- towards transport to hospital and Rs.5,000/- instead of Rs.25,000/- towards attender charges. Likewise, the compensation of Rs.75,000/- awarded by the Tribunal towards pain and suffering is also highly excessive and therefore, this Court is inclined to reduce the same to Rs.30,000/-. The compensation of Rs.30,000/- awarded towards loss of amenities is also excessive and hence, this Court is inclined to reduce the same to Rs.20,000/- In this case, the disability suffered by the injured/claimant is not a functional disability, and therefore, the compensation under the heads of future medical expenses and loss of earning power does not arise. Accordingly, the compensation of Rs.50,000/- awarded towards future medical expenses and Rs.39,000/- awarded towards loss of earning power are hereby deleted.

12. Insofar as the other heads of the compensation viz., damages to clothes, medical expenses and loss of income is concerned, the assessment



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of the compensation under the said heads by the Tribunal is a just compensation and it does not call for any interference by this Court.

13. For the foregoing reasons, the award passed by the Tribunal is modified as follows:

| <i>Heads</i>               | <i>Amount awarded<br/>by the Tribunal<br/>(Rs.)</i> | <i>Award Amount<br/>by this Court<br/>(Rs.)</i> |
|----------------------------|-----------------------------------------------------|-------------------------------------------------|
| Disability                 | 1,05,000/-<br>3000 x 35                             | 1,05,000/-<br>3000 x 35                         |
| Pain and Suffering         | 75,000/-                                            | 30,000/-                                        |
| Extra Nourishment          | 50,000/-                                            | 15,000/-                                        |
| Transport to hospital      | 40,000/-                                            | 15,000/-                                        |
| Damages to clothes         | 3,000/-                                             | 3,000/-                                         |
| Attender charges           | 25,000/-                                            | 5,000/-                                         |
| Medical Expenses           | 7,300/-                                             | 7,300/-                                         |
| Future Medical Expenses    | 50,000/-                                            | Nil                                             |
| Loss of Income<br>6500 x 6 | 39,000/-                                            | 39,000/-                                        |
| Loss of earning power      | 39,000/-                                            | Nil                                             |
| Loss of Amenities          | 30,000/-                                            | 20,000/-                                        |
| <b>Total</b>               | <b>4,63,300/-</b>                                   | <b>2,39,300/-</b>                               |

14. In the result,

(i) The Insurance Company is directed to deposit the modified



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compensation of Rs.2,39,300/- with interest at the rate of 7.5.% p.a. from the date of claim petition till the date of realization, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this judgment.

(ii) On such deposit, the claimant is permitted to withdraw the award amount by filing an appropriate application and the payments are to be made through RTGS.

15. Accordingly, CMA.No.1446 of 2016 filed by the Insurance Company is allowed by reducing the amount awarded by the Tribunal from Rs.4,63,300/- to Rs.2,39,300 /-. Consequently, Cross Obj. No.91 of 2016 filed by the claimant is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

14.06.2023

Index:Yes/No  
Speaking/Non-speaking Order  
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1.The IV Judge, Small Causes Court  
(Motor Accidents Claims Tribunal),  
Chennai.

2.The Section Officer  
V.R.Section, High Court of Madras.

**A.A.NAKKIRAN, J.**

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& CMP No.11128/2016**

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