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C.M.A.No.841 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.841 of 2022
and C.M.P.No.6082 of 2022

M/s.United India Insurance
Company Ltd.,
Divisional Office No.1,
NK Complex, Hubli – 580 023
Karnataka State,
Branch Office,
No.2, Dr.Sankaran Road,
Namakkal District.

... Appellant

Versus

1.G.Senthilkumar

2.M/s.The Managing Director,
VRL Logistics Ltd.,
Regd. And Admn. Office,
NH-4, Bengaluru Road,
Varur, Hubli – 581 207,
Karnataka State.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 27.09.2021 passed in M.C.O.P.No.1310 of 2016, by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal.

For Appellant	: Mrs.R.Sree Vidhya
For R1	: Mr.C.Thanga Raja
For R2	: Mr.L.Rajasekar



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JUDGMENT

This appeal has been filed by the appellant/claimant challenging the compensation awarded by the Tribunal in M.C.O.P.No.1310 of 2016 dated 27.09.2021 .

2.The claim petition was filed stating that on 27.07.2015 at about 3.00 p.m., the 1st respondent was standing in front of the Truck bearing Reg No. MH 12 HB 3350 for giving signal and while the said Truck was about to turn, another Truck bearing Registration No.KA 24 B 8030 driven by its driver in a rash and negligent manner, dashed against the 1st respondent and caused the accident. Due to the said accident, the 1st respondent sustained grievous injuries all over his body and admitted in hospital for more than 30 days and he spent more than Rs.10,00,000/-. Thus, he was entitled for compensation.

3.The appellant/Insurance Company filed a counter denying all the averments made in the claim petition and stated that the version of accident narrated by the 1st respondent is unbelievable; that the driver of the truck bearing Regn. No. KA 25 B 8030 is not impleaded as party to the proceedings and therefore, the claim petition is bad for non-joinder of



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necessary parties. Thus, they prayed for dismissal of the claim petition.

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4.The 2nd respondent remained *ex-parte* before the Tribunal.

5.Before the Tribunal, the 1st respondent examined three witnesses on his side and marked Ex.P1 to P31. On behalf of the appellant/Insurance Company no witness was examined. The Disability certificate issued by the District Medical Board is marked as Ex.C1.

6.The Tribunal after considering the oral and documentary evidence held that the accident occurred due to the rash and negligent driving by the driver of the Truck bearing Registration No. KA 25 B 8030 and being the insurer of the offending vehicle, directed the appellant/Insurance Company to pay a sum of Rs.27,77,249/- to the 1st respondent.

7.Aggrieved over the award passed by the Tribunal, the appellant/Insurance Company has filed the present appeal challenging the quantum of compensation.

8.Learned counsel for the appellant/Insurance Company submitted



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that the Tribunal had awarded excessive compensation. Though the 1st respondent had not established his income, the Tribunal fixed the notional income at Rs.20,000/- per month. The Tribunal had erroneously accepted the income shown in the claim petition without any basis. Further, Ex.C1-disability certificate issued by the Medical Board would show that the respondent suffered 60% partial permanent disability. The Tribunal has not assessed the functional disability for the purpose of adopting multiplier method. The nature of injuries and the disability certificate would show that the functional disability and consequential loss of income could not have been 60%. Therefore, learned counsel prayed for reduction of compensation awarded by the Tribunal.

9.Per contra, learned counsel appearing for the 1st respondent submitted that the 1st respondent was working as driver. His employers were examined as P.W.2 and P.W.3. Ex.P.23 - salary slip and other documents were marked to show that he was earning Rs.950/- per day. Therefore, the Tribunal was right in fixing notional income at Rs.20,000/- per month. Learned counsel further submitted that considering the avocation of the 1st respondent and the nature of injuries, the functional disability assessed by the Tribunal is just and reasonable



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and there is no reason to interfere with the same and prayed for dismissal of the appeal.

10.The question involved in the instant appeal is whether the Tribunal had awarded just and reasonable compensation.

11.The appellant/Insurance Company had not challenged the finding with regard to negligence. The accident took place on 27.07.2015. The 1st respondent had marked Ex.P29-statement of accounts, Ex.P23-salary slip issued by his employer and had examined P.W.3-The Manager of firm in which he was employed, to prove his income. P.W.3 in his evidence has deposed that the 1st respondent was not earning a regular income. His evidence would show that in the month of May 2015, the 1st respondent has earned Rs.150/-, similarly in June - Rs.9,586, in July – Rs.21,250/- and in the same month on 08.07.2015 – Rs.2,182/- and on 15.07.2015 – Rs. 4,770/-. Therefore, in the absence of acceptable evidence to prove the income of the 1st respondent, the Tribunal had to fix a notional income. However, it is seen that the notional income fixed by the Tribunal is excessive. The accident took place in the year 2015. Considering the age, avocation of the deceased,



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the year of accident and the evidence on record, this Court is of the view that it would be just and reasonable to fix the notional income as Rs.15,000/- per month.

12.The 1st respondent suffered injuries on both legs. He was working as a driver. Considering the avocation and the injuries suffered there cannot be any doubt that he suffered functional disability. Therefore, the adoption of multiplier method cannot be faulted. The Tribunal had accepted Ex.C1-disability certificate issued by the Medical Board. The Medical Board has assessed disability at 60%. However, the functional disability of the 1st respondent was not assessed by the Medical Board. The report of the Medical Board had suggested that the 1st respondent had not suffered total disability or functional disability to the extent of 60%. The Medical Board had stated that he can perform work by pulling and pushing, manipulating by fingers, lifting and by kneeling and crouching.

13.Considering the nature of injuries, avocation of the respondent and the disability certificate issued by the Medical Board, this Court is of the view that it would be just and reasonable to fix the functional



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disability at 45%. The multiplier method adopted by the Tribunal is just and reasonable and the same is confirmed. Thus, the award of compensation under the head pecuniary loss is computed as follows:

$$\text{Rs.21,000/- (Rs.15,000/- + 40\%) X 17 X 12 X 45/100 = Rs.19,27,800/-}$$

The amount awarded by the Tribunal under other heads is just and reasonable and hence, the same 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.	Pecuniary Loss	24,48,000	19,27,800	Reduced
2.	Pain and Suffering	50,000	50,000	Confirmed
3.	Medical Expenses	2,57,249	2,57,249	Confirmed
4.	Transportation	7,000	7,000	Confirmed
5.	Nutrition	10,000	10,000	Confirmed
6.	Loss of Clothing and Ornaments	5,000	5,000	Confirmed
	Total	27,77,249	22,57,049	Reduced by Rs.5,20,200/-

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.27,77,249/- is hereby reduced to Rs.22,57,049/- together with interest



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at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of a receipt of copy of this Judgment. On such deposit the 1st respondent/claimant is permitted to withdraw the entire award amount, along with interest and cost, less the amount already withdrawn, if any. The appellant/Insurance company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.1310 of 2016, if the entire award amount has already been deposited by them. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:



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1.The Motor Vehicle Accident Tribunal,
Chief Judicial Magistrate, Namakkal.

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

SUNDER MOHAN, J.

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