



C.M.A.No.2003 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.2003 of 2020

and

Cross Objection No.23 of 2022

and

C.M.P.No.14700 of 2020

National Insurance Company Limited,
Represented by Branch Manager,
Do Erode, Branch Office,
18 Court Street, Tiruppur.

...Appellant

Kalimuthu

...Cross Objectors in Cross
Obj.No.23 of 2022

Vs.

1. Kalimuthu
2. R.Loganathan

...Respondents in C.M.A.No.2003
of 2020

1. National Insurance Company Limited,
Represented by Branch Manager,
Do Erode, Branch Office,
18 Court Street, Tiruppur.
2. Kalimuthu

...Respondents in Cross
Obj.No.23 of 2022

(Respondent No.2 remained ex-parte before the Tribunal. Hence notice may be dispensed with for R-2 in this Cross appeal)



C.M.A.No.2003 of 2020

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Prayer in C.M.A.No.2003 of 2020: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment passed in MACT.O.P.No.1060 of 2014 dated 03.01.2018 on the file of Motor Accident Claims Tribunal, 1st Additional District Judge, Tiruppur.

Prayer in cross objection No.23 of 2022: Cross objection filed under Rule 22 of Order 41 of the Code of Civil Procedure 1908 seeking to enhance the compensation from Rs.12,73,400/- to Rs.23,00,000/- with higher rate of interest and costs.

In Appeal:

For Appellant : Mrs.N.B.Surekha

For respondents : Mr.Ma.P.Thangavel for R1

: No Appearance [R2]

In Cross Objection:

For cross objector : Mr.Ma.P.Thangavel

For R1 in both cross objections : Mrs.N.B.Surekha for R1

Notice Dispensed with for R2

JUDGEMENT

This civil miscellaneous appeal has been filed seeking to set aside the the decree and judgment passed in MACT.O.P.No.1060 of 2014 dated



C.M.A.No.2003 of 2020

03.01.2018 on the file of Motor Accident Claims Tribunal, 1st Additional
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District Judge, Tiruppur.

2. Though the notice was served on the second respondent in C.M.A.No.2003 of 2020, no one appeared on his behalf. Considering the period of pendency of this appeal, the same is disposed of based on the materials available on record.

3. The case of the appellant is that on 19.05.2014 at about 23:45 hrs, when the first respondent / claimant was driving his two wheeler bearing Regn.No.TN 37 AM 2664, at that time the offending vehicle bearing Reg.No.TN 40 H 8448 driven by its driver-cum-owner / second respondent who was coming in the opposite direction in a rash and negligent manner dashed against the vehicle driven by the first respondent / claimant, due to the said impact, the first respondent / claimant sustained grievous injuries and thereby he was admitted in the Hospital. Claiming compensation in a sum of Rs.23,00,000/- the first respondent / claimant has filed the claim petition.



C.M.A.No.2003 of 2020

WEB COPY

4. Before the Tribunal, the claimant examined P.W.1 to P.W.3 and marked Exs.P.1 to Ex.P.6. The respondents examined R.W.1 and marked Exs.R1 to R3. After considering all the oral and documentary evidence, the Tribunal, awarded a sum of Rs.10,55,180/- as compensation to the claimant to be payable by the insurer of the second respondent vehicle. Challenging the same, the present appeal has been filed.

5. The learned counsel appearing for the appellant / insurance company submitted that, though the Law Enforcing Agency has registered an FIR against the first respondent / claimant, the Tribunal has fastened the entire liability as against the appellant / insurance company which is per se unsustainable. He further submits that though the disability of the claimant assessed by the individual Doctor is only partial permanent disability as per Ex.P5, however, the Tribunal assessed the disability as functional disability and adopted multiplier method, which is wholly unsustainable. Further, the



C.M.A.No.2003 of 2020

WEB COPY

other heads awarded by the Tribunal are also highly excessive and the same requires interference.

6. The learned counsel appearing for the first respondent / claimant submits that initially the Law Enforcing Agency registered a criminal case against the first respondent, however when the police contested the criminal case against the first respondent before the Court below in C.C.No.10 of 2019, the second respondent / owner-cum-driver of the offending vehicle who was examined as P.W.2 who has admitted the fact that due to his rash and negligent driving, he was unable to control his vehicle and caused the said accident. Hence, the case ended in acquittal. He further submits that the first respondent is a Tailor, due to the injuries sustained by him he was not able to continue his avocation as before the said accident. Hence, the Tribunal has fixed 40% towards functional disability and adopted multiplier method which cannot be interfered with. He further submits that though the claimant earned a sum of Rs.10,000/- per month, the Tribunal has fixed only a sum of Rs.7,000/- which requires to be interfered with. Accordingly he prayed for appropriate



C.M.A.No.2003 of 2020

enhancement under the said heads.

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7. Heard the learned counsel appearing for the appellant and the learned counsel for the cross objector and perused the materials available on record.

8. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant / insurance company is with regard to the multiplier method adopted by the Tribunal.

9. Admittedly, the first respondent had sustained multiple injuries. It is discernible from the case contested by the Police as against the first respondent / claimant in C.C.No.10 of 2019 that the second respondent / owner-cum-driver of the offending vehicle who was examined as P.W.2 and has also admitted that due to his rash and negligent driving, he was unable to control his vehicle and caused the said accident and the said case ended in acquittal. However, the Tribunal has rightly fixed the entire negligence as against the



C.M.A.No.2003 of 2020

WEB COPY

second respondent and fixed the entire liability on the part of the appellant herein / who is the insurer of the second respondent which cannot be interfered with.

10. As regards the quantum of compensation fixed, the first respondent is a Tailor, on a perusal of the award passed by the Tribunal it reveals that the first respondent sustained injury in his right leg, which is only partial disability, unless and until he establishes that after the said accident he could not continue his avocation. When the disability suffered by the claimant is only partial permanent, the Tribunal fixed 40% towards functional disability and adopted multiplier method which cannot be sustained.

11. A perusal of the impugned award makes it clear that, the Tribunal has adopted multiplier method to arrive at the compensation. However, considering the nature of injuries suffered and the disability, which has a lasting impact on the life of the claimant, this Court is of the considered view that adoption of percentage method would be the proper course and, therefore,



C.M.A.No.2003 of 2020

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this Court is inclined to adopt percentage method to arrive at the compensation to be given to the claimant. Further the independent Doctor assessed the disability at 75%, as the percentage of disability varies from Doctor to Doctor, this Court is inclined to fix 65% towards disability. However, considering the age and nature of injury sustained by the claimant and the extent of the disability would not really hamper the claimant from discharging his day to day, this Court fixes Rs.4000/- per percentage of disability. Therefore, the compensation awarded under the head “Loss of earning power” is modified to Rs.2,60,000/- (65% * 4000=2,60,000/-). Further the other heads awarded by the Tribunal is just and reasonable and the same does not require interference.

12. In view of the above, the compensation awarded by the Tribunal is modified as under :-

<i>S. No</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Loss of earning power	7,99,680/-	2,60,000/- (reduced)
2	Pain and suffering	50,000/-	50,000/-



C.M.A.No.2003 of 2020

S. No	Description	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
3	Medical Expenses as per bill (Ex.P.3 & P.4)	1,75,000/-	1,75,000/-
4	Attendant charges	10,000/-	10,000/-
5	Transport Expenses	10,000/-	10,000/-
6	Nutrition	10,000/-	10,000/-
	Total	10,55,180/-	5,15,000/-

13. Accordingly, the compensation awarded by the Tribunal is reduced from Rs.10,55,180/- to Rs.5,15,000/- and the appellant / Insurance Company is directed to deposit the compensation amount, awarded by this Court above, to the credit of M.C.O.P.No.1060 of 2014 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any already deposited, within a period of six weeks (6) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the first respondent/claimant through RTGS within a period of two weeks thereafter.



C.M.A.No.2003 of 2020

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14. With the above observation, the appeal filed by the insurance company is allowed and the Cross Objection filed by the cross objector is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

20.12.2023

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Index	: Yes / No
Speaking Order	: Yes / No
Neutral Citation Case	: Yes / No



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C.M.A.No.2003 of 2020

To

- 1.Motor Accident Claims Tribunal, 1st Additional District Judge, Tiruppur.
- 2.The Section Officer,
V.R. Section, High Court, Madras.



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C.M.A.No.2003 of 2020

M.DHANDAPANI, J.

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C.M.A.No.2003 of 2020