



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.07.2023

CORAM:  
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

**C.M.A.No.969 of 2022 & C.M.P.No.7161 of 2022**  
**and Cross Objection No.89 of 2022**

**C.M.A.No.969 of 2022**

The Reliance General Insurance Company Limited,  
No.141/373, New Bypass road, M.P.Sarathi Nagar,  
Vellore 632 012.

.. Appellant

Vs.

1.D.Prakash  
2.C.Selvakumar  
3.A.Arunachalam

.. Respondents

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 22.12.2021 made in M.C.O.P.No.59 of 2019 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Vellore @ Ranipet.

For Appellant : Mr.C.Bhuvanasundari  
For R1 : Mr.M.Lokesh  
For R2 : No appearance

**Cross Objection No.89 of 2022**

D.Prakash

.. Cross objector



Vs.

1.The Reliance General Insurance Company Limited,  
No.141/373, New Bypass road, M.P.Sarathi Nagar,  
Vellore 632 012.

2.C.Selvakumar

3.A.Arunachalam

.. Respondents

**Prayer:** This Cross Appeal is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 22.12.2021 made in M.C.O.P.No.59 of 2019 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Vellore @ Ranipet.

For Appellant : Mr.M.Lokesh

For Respondents : M/s.C/Bhuvanasundari for R1

### **COMMON JUDGMENT**

The Civil Miscellaneous Appeal has been filed by the Insurance Company against the award dated 22.12.2021 made in M.C.O.P.No.59 of 2019 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Vellore @ Ranipet.

The Cross-Objection has been filed by the 1<sup>st</sup> respondent seeking enhancement of compensation granted by the Tribunal in the award dated 22.12.2021 made in M.C.O.P.No.59 of 2019 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Vellore @ Ranipet.



2.The 1<sup>st</sup> respondent is the claimant in M.C.O.P.No.59 of 2019 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Vellore @ Ranipet. He filed the said claim petition claiming a sum of Rs.27,00,000/- as compensation for the injuries sustained by him in the accident that took place on 10.02.2019.

3.According to the 1<sup>st</sup> respondent, on the date of accident i.e., on 10.02.2019 at 8.00 p.m., while he was travelling in a two wheeler bearing registration No.TN 73 X 0790 along the Chennai to Bangalore NH Road, opposite to Arjunappa Koil Street and nearby Nandhiyalam Junction the 3<sup>rd</sup> respondent, the driver of the car bearing registration No. TN 09 AU 4554, which came behind the two wheeler in the same direction, drove the vehicle in a rash and negligent manner, dashed the two wheeler of the 1<sup>st</sup> respondent and caused the accident. In the accident, the 1<sup>st</sup> respondent sustained grievous injuries all over the body and therefore, he was entitled to a claim of Rs.27,00,000/-.

4. The respondents 2 and 3, who are the owner and driver of the offending vehicle remained ex-parte before the Tribunal.



5. The appellant/Insurance Company filed a counter statement denying the averments made in the claim petition and stated that the car involved in the accident was not insured with the appellant and the driver of the car was not possessing valid driving license at the time of accident. Therefore, the appellant/Insurance Company was not liable to pay any compensation to the first respondent. In any event, the compensation claimed by the first respondent is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the first respondent examined himself as P.W.1 and marked five documents as Exs.P1 to P5. The appellant/Insurance Company did not let in any oral and documentary evidence.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the third respondent, driver of the car belonging to the second respondent and directed the appellant/Insurance Company being insurer of the said car to pay a sum of Rs.20,67,800/- as compensation to the 1<sup>st</sup> respondent.

8. Against the said award dated 22.12.2021 made in M.C.O.P.No.59 of 2019, the appellant/Insurance Company has come out with C.M.A.No.969 of 2022 challenging the negligence as well as quantum of compensation awarded



by the Tribunal. Not being satisfied with the amounts awarded by the Tribunal, the 1<sup>st</sup> respondent has come out with Cros.Obj.No.89 of 2022 seeking enhancement of compensation awarded by the Tribunal.

9. Though the appellant/Insurance Company raised a ground with regard to negligence fixed on the third respondent in the grounds of appeal, at the time of argument, the learned counsel was unable to point out any error in the finding on negligence. However, the learned counsel for the appellant/Insurance Company submitted that the compensation awarded by the Tribunal is excessive. The Tribunal ought not to have adopted multiplier method and ought not to have taken the disability assessed by the Medical Board as functional disability. The learned counsel further submitted that the award of compensation under the other heads are also excessive and prayed for reduction of compensation.

10. The learned counsel for the first respondent/cross objector submitted that the first respondent has suffered serious injuries in his right leg which led to amputation. Ex.P2/Discharge summary reveals the following injuries:

*“Crush injury right leg is mangled extremity near total BK amputation would detract & Guillotine BK amputation revision through knee disarticulation right and under gone*



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*surgery of 'excision would explored, above knee amputation planned, tibia, tibula, lower femorel removed popliteal vessels ligated"*

The Medical Board assessed the disability of the first respondent as 80%, since the first respondent was working as an A/C mehanic, earning more than Rs.20,000/- per month and has lost his earning capacity. The Tribunal has taken the entire 80% as functional disability for computing the loss of income. Considering the nature of injuries, the multiplier method adopted by the Tribunal was just and reasonable. However, the learned counsel submitted that the notional income fixed by the Tribunal is not reasonable and the same is meagre. Further, the Tribunal had not considered the future prospects as the first respondent deserves compensation by adding the future prospects in the facts and circumstances of the case. In support of his submissions, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in the case of ***Mohd. Sabeer alias Shabir Hussain Vs. Regional Manager, U.P.State*** reported in ***2022 SCC Online SC 1701***. The compensation awarded under the heads pain and suffering and loss of amenities needs to be enhanced to Rs.2 lakhs each and prayed for enhancement of compensation.

11. Though the above appeal has been filed by the appellant/ Insurance Company challenging the finding on negligence, the learned counsel for the



appellant as stated earlier is unable to point out any infirmity with regard to the finding on negligence. The first respondent has examined himself as P.W.1 to prove the manner in which the accident took place and also to establish the fact that the driver of the offending vehicle namely car drove the same in a rash and negligent manner and caused the accident. In the absence of any contra evidence let in on the side of the appellant, this Court is of view that the award of the Tribunal holding that the offending vehicle was liable for negligence cannot be faulted.

12. As regards quantum, it is seen that due to crush injuries in the right leg and right knee, the right leg of the respondent was amputated and the Medical Board assessed the disability of the first respondent as 80%. Considering the nature of injuries, the job pursued by the first respondent prior to the accident as an A/C mechanic, this Court is of the view that it is just and reasonable to fix the functional disability at 75% for the purpose of computing the loss of income. The accident is of the year 2019. The notional income fixed by the Tribunal is justified. The Tribunal has not taken the future prospects into consideration. In view of the injuries suffered by him, this Court is of the view that while computing the loss of income, the future prospects has also to be considered. As per Ex.P4/ driving license, the date of birth of the first



respondent is 27.04.1978. The accident took place on 10.02.2019 and therefore, the first respondent was aged 40 years at the time of accident. Hence, the first respondent is entitled to 40% enhancement towards future prospects. The Tribunal had erroneously considered the age of the first respondent as 41 years. Hence, the applicable multiplier as per the judgment of the Hon'ble Apex reported in **2009 (2) TNMAC 1 SC (Sarla Verma vs. Delhi Transport Corporation)** is 15. Thus, the compensation awarded by the Tribunal under the head loss of future earning is modified as follows: Rs.22,68,000/- [Rs12,000/- + Rs.4,800/- (40% of Rs.12,000/-) X 12 X 15 X 75/100).

13. This Court also finds that the award under the heads pain and suffering and loss of amenities are meagre. In a judgment in ***Mohd. Sabeer alias Shabir Hussain Vs. Regional Manager, U.P.State*** reported in **2022 SCC Online SC 1701**, the Hon'ble Apex Court granted Rs.2 lakhs each under those two heads. Considering the facts and circumstances of the instance case, Rs.1,50,000/- each is awarded under the heads pain and sufferings and loss of amenities respectively. The Tribunal had awarded a sum of Rs.1,44,000/- towards temporary loss of income for which the first respondent is not entitled to, since the multiplier method has been adopted for computing the loss of income. Thus the amount awarded under the head temporary loss of income is



set aside. The amount of compensation awarded by the Tribunal under the other heads are just and reasonable and hence, the same are hereby 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 or reduced |
|-------|--------------------------------------------------------------|---------------------------------|-----------------------------------|---------------------------------------------------|
| 1.    | Transportation, Extra nourishment and miscellaneous expenses | 50,000                          | 50,000                            | Confirmed                                         |
| 2.    | Attender charges                                             | 12,000                          | 12,000                            | Confirmed                                         |
| 3.    | Loss of future earnings on account of disability             | 16,12,800                       | 22,68,000                         | Enhanced                                          |
| 4.    | Damage to the articles                                       | 3,000                           | 3,000                             | Confirmed                                         |
| 5.    | Pain and suffering                                           | 96,000                          | 1,50,000                          | Enhanced                                          |
| 6.    | Loss of amenities                                            | 1,00,000                        | 1,50,000                          | Enhanced                                          |
| 7.    | Temporary Loss of income                                     | 1,44,000                        | -                                 | Set aside                                         |
| 8.    | Future medical expenses                                      | 50,000                          | 50,000                            | Confirmed                                         |
|       | <b>TOTAL</b>                                                 | <b>20,67,800</b>                | <b>26,83,000</b>                  | <b>Enhanced by Rs.6,15,200/-</b>                  |

14. In the result, C.M.A.No.969 of 2022 is partly allowed in respect of reducing the percentage of disability from 80% to 75%. Cross Objection No.89

of 2022 is partly allowed by enhancing the compensation from Rs.20,67,800 to



26,83,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The first respondent is directed to pay the necessary Court fee if any, on the enhanced compensation. The appellant/Insurance Company is directed to deposit the enhanced 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. On such deposit, the 1<sup>st</sup> respondent is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

**31.07.2023**

Index: Yes/No

Internet: Yes/No

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To

1.The Motor Accident Claims Tribunal /  
II Additional District Judge, Ranipet.

2.The Section Officer  
VR Section, High Court of Madras.

**SUNDER MOHAN,J.**



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