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C.M.A.No.769 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.08.2023

PRONOUNCED ON : 01.09.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.769 of 2022

and

C.M.P.No.5598 of 2022

Magma HDI General Insurance Co.Ltd

Rep by its Manager

Magma House, 24 Park Street,

Kolkata – 700 016.

..Appellant/2nd Respondent

Vs.

1.S.Ramesh

2.R.Jayapal

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decretal order dated 06.12.2019 made in M.C.O.P.No.163 of 2014 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Tirupattur.



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For Appellant : Mr.N.Somasundar

For Respondents : Mrs.A.Subadra and
Mrs.M.Malar for R1

No appearance for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the quantum of compensation granted by the Tribunal in the award dated 16.12.2019 made in M.C.O.P. No.163 of 2014 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Tirupattur.

2. The appellant/Insurance Company is the second respondent in M.C.O.P. No.163 of 2014 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Tirupattur. The first respondent/petitioner filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the injuries suffered by him in the accident that took place on 02.02.2017.



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3. According to first respondent/claimant, on 02.02.2017 at about 20:45 hours, while he was proceeding towards Jolarpettai near Sacred Heart College in his motorcycle bearing Reg.No.TN 23 BW 2522, a lorry bearing Reg.No.TN 52 C 4448 which was driven by its driver in a rash and negligent manner, dashed against him. In that accident, he sustained grievous injuries and admitted in the Hospital. Hence, the first respondent filed a claim petition claiming compensation against the appellant and second respondent.

4. The second respondent/owner of the lorry remained exparte before the Tribunal.

5. The appellant filed a counter statement denying all the averments made in the claim petition and stated that the accident took place due to the rash and negligent driving by the rider of the two wheeler i.e., first respondent; and that the first respondent did not have valid driving license at



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the time of the accident. They also denied that the first respondent was admitted as an inpatient in the Hospital from 03.02.2014 to 07.03.2014 and stated that in any event the compensation claimed by the first respondent is highly excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined three witnesses as P.W.1 to P.W.3 and marked eighteen documents as Exs.P1 to P18. The appellant neither marked any document nor examined any witness on their side.

7. The Tribunal, after considering the oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the 2nd respondent and directed the appellant/Insurance Company being the insurer of the said lorry to pay a sum of Rs.19,27,598/- as compensation to the first respondent/claimant.

8. Against the said award dated 16.12.2014 made in M.C.O.P.No.163 of 2014, granting compensation to the first respondent, the appellant/Insurance

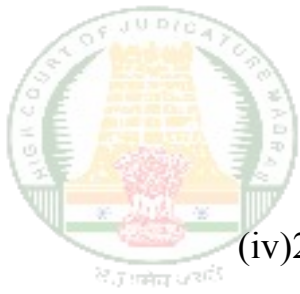


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Company has filed the present appeal challenging the quantum of compensation awarded by the Tribunal.

9. The learned counsel appearing for the appellant submitted that the award of the Tribunal granting compensation by adopting multiplier method is erroneous; that the first respondent has not established that he had suffered functional disability due to the injuries suffered by him in the accident; that the first respondent had renewed his license in the year 2020 for driving transport vehicles and has also produced copy of the said licence. The learned counsel therefore submitted that this also confirms the fact that the first respondent had not suffered any functional disability. The learned counsel relied upon the judgment of the Hon'ble Apex Court reported in **2010 (2) TN MAC 581 (SC) in Raj Kumar vs. Ajay Kumar and Anr** and the judgment of this court in the following cases -

- (i) 2016 (1) TNMAC 731 (MAD-DB) [United India Insurance company ltd. v. S.Murugesh and Others]
- (ii) 2013 (1) TNMAC 47 (MAD-DB) [The New India Assurance Company v. E.Poonurangan]
- (iii) 2018 (1) TNMAC 472 (MHC) [Managing Director, TNSTC v. P.Prasanth @ Nanthakumar.



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(iv)2018 (1) TNMAC 670 (MHC) [Oriental Insurance Company Ltd. vs. R.Devika]

(v)2019 (1) TNMAC 635 (MHC) [Esakki v. Managing Director]

wherein according to him in similar circumstances, this Court had awarded compensation by adopting percentage method. The learned counsel further submitted that in the instant case, the Tribunal ought not to have awarded future prospects; that even assuming that the first respondent is entitled to future prospects, the Tribunal ought not to have granted interest on the said portion of compensation on account of future prospects and relied upon the judgments in **Oriental Insurance Company Ltd. v. Rumi Barman reported in 2021 (2) TAC 142 (Gauhati HC) and The Oriental Insurance Company Ltd. v. Smti.Champabati Ray & Others reported in 2020 (1) TNMAC 236** in support of the said submission.

10. The learned counsel appearing for the first respondent, per contra submitted that the evidence in the instant case would show that the first respondent had suffered functional disability; that in any case merely because the first respondent had renewed his licence, the award of compensation by



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adopting multiplier method cannot be set aside. The learned counsel relied upon the judgment of this Court in CMA No.2438 of 2016 dated 14.10.2020 wherein this Court had, based on the disability certificate issued by the Medical Board assessed the functional disability and adopted the multiplier method though there was evidence to show that the injured/driver had renewed his license. The learned counsel also relied upon the Division Bench judgment of the Hon'ble Apex Court in ***Dinesh Singh v. Bajaj Allianz General Insurance Co. Ltd.*** reported in **2014 (1) TNMAC 641 (SC)** in support of her submission that subsequent employment cannot be the basis for denying compensation by adopting multiplier method, if there is evidence to show that the injured had suffered functional disability. The learned counsel further submitted that the award of compensation by enhancing the income by considering future prospects is not erroneous and relied upon the judgment in ***Mohd.Sabeer @ Shabir Hussain v. Regional Manager UP State Road Transport Corporation*** reported in **2022 Live Law (SC)1017**. The learned counsel further submitted that the interest for the said portion is not erroneous and prayed for dismissal of the appeal.



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WEB COPY 11. The learned counsel appearing for the appellant, in reply submitted that the judgment of the Hon'ble Apex Court reported in ***Dinesh Singh's case, cited supra*** would not be applicable to the facts of the present case because, in that case, the claimant had suffered amputation of left leg and those facts cannot be compared to the facts of the present case. The learned counsel further submitted that Section 15 of the Motor Vehicles Act which provides for renewal of licence to drive transport vehicle states that the same cannot be renewed unless the applicant is medically fit. The very fact that the licence was renewed confirms that the first respondent is medically fit.

12. Though notice has been served on the second respondent, none has entered appearance.

13. Heard the learned counsel for the appellant as well as the learned counsel for the first respondent and perused the materials available on record.

14. The following questions arise in the instant appeal:-



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(a) Whether the first respondent/claimant had established the functional disability to the extent of 61% so as to warrant the award of compensation by adopting multiplier method?

(b) Whether the Tribunal had awarded just and reasonable compensation?

15. As regards the first question, it is seen that there cannot be any dispute with the proposition of law that functional disability is not the same as the disability assessed by the Doctors or the Medical Board. It is trite that the functional disability has to be assessed based on the nature of disability and the avocation of the deceased. This assessment would depend on facts and circumstances of each case. The Judgments relied upon by the learned counsel for the appellant have been rendered on the facts of those cases. In the Judgments relied upon by the learned counsel, the Courts have adopted percentage method to award compensation since there was no evidence to prove functional disability. Therefore, merely because in a few cases



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percentage method was adopted, the same cannot be adopted in all the cases.

WEB COPY This Court has to ascertain from the evidence on record as to whether the respondents had suffered functional disability. P.W.1/first respondent had deposed before the Tribunal that he had lost his job and he was bed ridden for nearly one year due to the injuries suffered by him. He had further stated that he was unable to stand or walk independently. The evidence of the first respondent/claimant is corroborated by the medical evidence. The first respondent had examined P.W.3/Doctor who had certified that the first respondent had suffered from **“Seventh nerve palsy, difficulty in speech and unsteadiness (tendency to fall while standing and walking)”**. The Medical Board had assessed the disability of the first respondent/petitioner/claimant, and issued disability certificate as Ex.P.18. The Medical Board assessed the disability as 61% and classified the disability as a “mental illness” and it had diagnosed as follows: “Post Traumatic Cerebellar contusion” leading to speech disability. The Medical Board had also assessed the condition as “Non progressive”. From Ex.P.12, the Wound certificate issued by the Hospital, it is seen that the



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following injuries were present at the time of admission:

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- 1.Sustained wound in right parietal region*
- 2.Mandible fracture*
- 3.Cerebellar contusion present.*
- 4.Small left basifrontal hemorrhage conclusion*
- 5.Dilated lateral ventricles*
- 6.Fracture of occipital bone*
- 7.Subdural hemorrhage in interhemispheric fissure.*
- 8.Subarachnoid hemorrhage at fourth ventricle and posterior fissa with effacement of cisterns at posterior pole with brain stem injury.*

The Doctor had opined that injuries 2 to 8 referred above were grievous in nature. The evidence also disclosed that the first respondent/claimant was admitted in the hospital from 03.02.2014 to 07.03.2014.

16. From the above evidence, it is clear that the first respondent had suffered functional disability. As stated earlier, functional disability has to be assessed based on the avocation, nature of injuries and the disability suffered by the victim. In view of the overwhelming medical evidence referred above and the avocation of the first respondent, the Tribunal was right in adopting



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the multiplier method to award compensation holding that the first respondent had suffered functional disability. However, it is seen that P.W.3/Doctor had assessed the disability as 40% and the Medical Board had assessed the disability as 61%. Therefore, this Court is of the view that considering the nature of the injuries, the avocation of the first respondent and the medical certificates, the functional disability can be fixed as 50%. The Tribunal had correctly fixed notional income and had also taken into consideration the future prospects. This Court is of the view that considering the nature of injuries, the first respondent is also entitled to future prospects while awarding the compensation.

17. Further adverting to the submission of the learned counsel for the appellant that the first respondent had renewed his license and therefore, he had not suffered any functional disability, this Court is of the view that merely because the license has been renewed, one cannot infer that the first respondent had become 100% fit to pursue the job that he had pursued prior to the accident. That apart, license renewal by itself does not imply that the



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first respondent was gainfully employed. Furthermore, it is seen that license renewal is a subsequent development and the Judgment of the Honourable Apex Court in *Dinesh Singh Vs. Bajaj Allianz General Insurance Co. Ltd* reported in **2014 (1) TNMAC 641** would apply to the facts of the instant case wherein, the Honourable Apex Court had held that merely because the victim had secured a job subsequently, it would not mean that he had not suffered any functional disability. The submission of the learned counsel that the said case cannot be compared as that was a case of amputation cannot be countenanced. The ratio in that case was that a subsequent employment may not be the only relevant factor to assess functional disability and that it would all depend on facts and circumstances of each case. In the instant case, the appellant had not shown that the first respondent had secured any job. As stated earlier, renewal of license does not guarantee a job in view of the first respondent's ailment. The said license in any case has not been marked before the Tribunal and only a xerox copy is filed in the instant appeal.

18. This Court is also of the view that the future prospects can be



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awarded even in the case of injury and that would depend on facts and circumstances of each case. In the instance case, there is no infirmity in the award of compensation by the Tribunal by taking into consideration future prospects. The Judgment of the Honourable Supreme Court in ***Mohd.Sabeer @ Shabir Hussain Vs. Regional Manager UP State Road Transport Corporation*** reported in ***2002 Live Law (SC) 1017*** reiterates the said proposition.

19. The third contention of the learned counsel is that the interest cannot be awarded on future prospects. Compensation by taking into consideration the future prospect is awarded on the basis of a formula determined by the Apex Court in ***National Insurance Co. Ltd., Vs. Pranay Sethi and others*** reported in ***2017 (2) TN MAC 609 (SC)*** and ***Sarla Verma Vs. Delhi Transport Corporation*** reported in ***2009 (6) SCC 121***. The said formula has been determined after taking into consideration the average rise in income of any individual, after noting that the same cannot be determined in each individual cases with mathematical precision. Therefore, the Courts are conscious of the fact that rise in income on account of future prospects



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may be higher than the formula fixed in most of the cases. But yet to ensure uniformity, this formula has been suggested. The Honble Apex Court in

Pranay Sethi's case (cited supra) held as follows:-

“59...The determination of income while computing Compensation has to include Future Prospects so that the method will come within the ambit and sweep of Just Compensation as postulated under Section 168 of the Act...”

As seen from the above observation just compensation has to include future prospects. The Just compensation so determined becomes payable immediately to the claimant/claimants. Any delay in making the payment would have to necessarily carry interest. Therefore, this Court finds that the Judgment of the Gauhati High Court in ***Oriental Insurance Company Ltd., Vs. Rumi Barman*** reported in ***2021 (2) TAC 142*** relied upon the learned counsel for the appellant/Insurance Company which takes a contrary view cannot be accepted as it does not lay down the correct proposition of law. Therefore, this Court is of the view that the permanent disability has to be



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assessed in the following manner:-

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$$\text{Rs.9000} + (40 \% \times \text{Rs.9000/-}) \times 12 \times 17 \times 50 / 100 = 12,85,200/-$$

20. The compensation 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 reduced from Rs.19,27,598/- to Rs.16,46,928/- break-up follows:-

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent Disability	15,65,870/-	12,85,200/-	Reduced
2.	Pain and Sufferings	50,000/-	50,000/-	Confirmed
3.	Extra Nourishment	10,000/-	10,000/-	Confirmed
4.	Transportation Charges	10,000/-	10,000/-	Confirmed
5.	Attender Charges	5,000/-	5,000/-	Confirmed
6.	Loss of Amenities	20,000/-	20,000/-	Confirmed
7.	Medical Expenses	2,66,728/-	2,66,728/-	Confirmed
	Total	19,27,598/-	16,46,928/-	Reduced



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by
Rs.2,80,670/-

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21. With the above modification, this Civil Miscellaneous Appeal is partly allowed, and the compensation awarded by the Tribunal at Rs.19,27,598/- is hereby reduced to Rs.16,46,928/- together with interest at the rate of 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 along with interest and costs, less the amount already deposited if any, within a period of six (6) weeks from the date of receipt of a copy of this Judgment. On such deposit, the first respondent is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.163 of 2014, if the entire award amount has already been deposited by them. No costs. Consequently, the connected Miscellaneous Petition is closed.

01.09.2023

rgr/dk

17/19



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Index: Yes/No

Neutral Citation: Yes / No

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Copy to:-

1. The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Tirupattur.
2. The Section Officer,
VR Section,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

rgr/dk

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