



C.M.A.No.2837 of 2022
and Cros.Obj.No.13 of 2023
and C.M.P.No.22101 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.2837 of 2022
and Cros.Obj.No.13 of 2023
and C.M.P.No.22101 of 2022

C.M.A.No.2837 of 2022

The Oriental Insurance Co.Ltd.,
Motor Third Party Claims Hub,
Oriental House, 2nd Floor,
No.216, Prakasam Salai, Broadway,
Chennai – 600 001.

... Appellant

Versus

1.S.Udayasooriyan
2.Mariya Rani

... Respondents

Cros.Obj.No.13 of 2023

1.S.Udayasooriyan

... Appellant

Versus

1.The Oriental Insurance Co.Ltd.,
Motor Third Party Claims Hub,
Oriental House, 2nd Floor,
No.216, Prakasam Salai, Broadway,
Chennai – 600 001.

2.Mariya Rani

... Respondents



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PRAYER in C.M.A.No.2837 of 2022: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 27.06.2022 passed in M.C.O.P.No.5335 of 2016, by the Motor Accident Claims Tribunal, Special Sub-Court No.2, Small Causes Court, Chennai.

PRAYER in Cros.Obj.No.13 of 2023: Cross-Objection filed under Order XXXXI, Rule 22 of CPC., praying to enhance the compensation awarded by the Tribunal from Rs.8,79,000/- to Rs.19,79,000/-.

In C.M.A.No.2837 of 2022

For Appellant	: Mr.R.Sivakumar
For R1	: Mr.M.N.Muthurajan
For R2	: Notice dispensed with

In Cros.Obj.No.13 of 2023

For Appellant	: Mr.M.N.Muthurajan
For R1	: Mr.R.Sivakumar
For R2	: Notice dispensed with

COMMON JUDGMENT

The appeal has been filed by the appellant/Insurance Company challenging the compensation awarded by the Tribunal in M.C.O.P.No.5335 of 2016, dated 27.06.2022.



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The Cross-objection has been filed by the appellant/claimant seeking to enhance the compensation awarded by the Tribunal in M.C.O.P.No.5335 of 2016, dated 27.06.2022.

2.For the sake of convenience, the parties are referred as per their rank in the claim petition.

3.The claim petition was filed stating that on 12.09.2015, at about 11.15 hours., the claimant was riding the motorcycle bearing Registration No.TN-74-L-4917 from Aralvaimozhi to Kumarapuram. While he was proceeding near the junction of Kumarapuram Road, the car bearing Registration No.TN-05-AF-1433, which was driven in a rash and negligent manner came from the opposite direction and hit against the motorcycle, due to which, the claimant sustained severe injuries. Thus, the claimant is entitled for compensation.

4.The 1st respondent/owner of the offending vehicle remained *ex-parte* before the Tribunal.



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5.The 2nd respondent/Insurance Company filed a counter denying all the averments made in the claim petition and stated that the as per Police investigation, the accident was caused by the rash and negligent driving of the claimant, who suddenly turned right without making any signal and hit against the right side door of the offending vehicle; that the alleged accident was not reported by the 1st respondent to the 2nd respondent. Hence, the 2nd respondent is not liable to pay compensation to the claimant and prayed for dismissal of the claim petition.

6.Before the Tribunal, the claimant examined himself as P.W.1 and marked Ex.P.1 to Ex.P.12 on his side. The 2nd respondent/Insurance Company had not examined any witness or marked any document. The disability certificate issued by the Medical Board was marked as Ex.C1.

7.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 offending vehicle and the claimant, who is the driver of the motorcycle also contributed to the accident. Hence, the Tribunal fixed 70% negligence on the part of the 1st respondent and 30%



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contributory negligence on the part of the claimant and directed the 2nd respondent, being the insurer of the offending vehicle, to pay a sum of Rs.8,79,000/- as compensation to the claimant.

8. Aggrieved over the award passed by the Tribunal, the 2nd respondent/Insurance Company has filed the present appeal challenging the negligence as well as quantum of compensation awarded by the Tribunal. The claimant has filed Cross Objection seeking enhancement of compensation.

9. Learned counsel for the 2nd respondent/Insurance Company submitted that though the Tribunal found that the claimant had contributed to the accident, erred in fixing only 30% contributory negligence on the claimant, considering the admission in the cross-examination of P.W.1, that he had cut across the road to enter into smaller road called cut road. The Tribunal therefore ought to have fixed entire negligence on the claimant. Learned counsel further submitted that in the absence of any evidence to prove the income and avocation of the claimant, the Tribunal ought not to have fixed the notional income at



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Rs.9,500/- per month. Learned counsel further submitted that the Tribunal also ought not to have awarded compensation by applying the multiplier method. Hence, learned counsel prayed for reduction of the compensation awarded by the Tribunal.

10.Learned counsel for the claimant submitted that the driver of the offending vehicle was not examined by the Insurance Company. The Tribunal had erroneously considered the contents of F.I.R., which is not substantive evidence to hold that the claimant was also guilty of contributory negligence. The Tribunal had not appreciated the claim in proper perspective. Learned counsel further submitted that the claimant had established his avocation as watchman. Though the claimant was unable to prove the income, the notional income fixed by the Tribunal is meagre. Admittedly, the claimant suffered fracture and underwent surgery and implants were fixed during surgery. He had marked Ex.P7 to prove that he had to remove those implants and thereby would incur future medical expense of Rs.1,00,000/-. However, the Tribunal had not awarded any compensation under future medical expense and also towards loss of amenities and prayed for allowing the cross-objection.



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11.The questions involved in the instant appeals are:

- a) Whether the Tribunal had correctly fixed the contributory negligence on the claimant?
- b) Whether the compensation awarded by the Tribunal is just and reasonable?

12.As regards the first question, admittedly, the driver of the offending vehicle was not examined to prove the manner in which the accident took place. The claimant examined himself as P.W.1 and marked Ex.P1-F.I.R. It is seen that F.I.R. was lodged by the driver of the offending vehicle viz., the car. In the F.I.R., it is stated that the claimant had taken a sharp right turn and cut across the road to enter into the smaller road. It is true that, in the absence of examination of the driver of the offending vehicle, the contents of the F.I.R cannot be treated as substantive evidence. However, in the instant case, the Tribunal on the basis of admission made by P.W.1 in his cross-examination had rightly held that P.W.1 had cut across the road and contributed to the accident. This Court is of the view that the claimant also had contributed to the



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accident and the Tribunal ought to have seen that the claimant had equally contributed to the accident. Therefore, in the fact and circumstances of the case, this Court is of the view that 50% contributory negligence has to be fixed on the claimant instead of 30% fixed by the Tribunal.

13.As regards as the second question - quantum of compensation, there is no infirmity in the assessment of functional disability by the Tribunal. Considering the nature of injuries suffered by the claimant, the Tribunal had fixed notional income correctly in the facts and circumstance of the case. Therefore, no infirmity is called for in the award of compensation. However, it is seen that the Tribunal had not considered Ex.P7- certificate issued by the Medical Board stating that the claimant had to undergo surgery for removal of implants which were fixed during the surgery. The Medical Board had assessed expenditure for removal of implants at Rs.1,00,000/-. Considering the nature of injuries and Ex.P8 - certificate issued by the Medical Board, this Court is of the view that the claimant is entitled to Rs.1,00,000/- towards future medical expenses. Further, the claimant is entitled to compensation under



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the head loss of amenities and hence, a sum of Rs.30,000/- is awarded towards loss of amenities. 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.	Disability	5,51,760	5,51,760	Confirmed
2.	Pain and Sufferings	50,000	50,000	Confirmed
3.	Transportation	4,000	4,000	Confirmed
4.	Medical Expense	6,20,760	6,20,760	Confirmed
5.	Extra Nourishment	10,000	10,000	Confirmed
6.	Attender Charges	19,200	19,200	Confirmed
7.	Loss of Amenities	-	30,000	Awarded
8.	Future Medical Expenses	-	1,00,000	Awarded
	Total	12,55,720	13,85,720	Reduced by Rs.1,86,140/-
		After deducting 30% contributory negligence – Rs.8,79,004/- rounded off to Rs.8,79,000	After deducting 50% contributory negligence Rs.6,92,860	



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14. With the above modification, (i) C.M.A.No.2837 of 2022 is partly allowed by reducing the compensation awarded by the Tribunal at Rs.8,79,000/- to Rs.6,92,860/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. (ii) Cros.Obj.No.13 of 2023 is partly allowed, with respect to awarding compensation under the heads loss of amenities and future medical expenses. (iii) The 2nd respondent is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit the claimant is permitted to withdraw the entire amount awarded by the Tribunal along with interest and cost, less amount already withdrawn, if any. No costs. Consequently, connected miscellaneous petition is closed.

22.08.2023

rst

Index: Yes/No



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Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

To:

- 1.The Motor Accident Claims Tribunal,
Special Sub-Court No.2,
Small Causes Court, Chennai.
- 2.The Section Officer,
VR Section, High Court, Madras.



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SUNDER MOHAN, J.

rst

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