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C.M.A.Nos.2802 & 2806 of 2022
and C.M.P.Nos.12033 & 12088 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.Nos.2802 & 2806 of 2022
and C.M.P.Nos.12033 & 12088 of 2023

C.M.A.No.2802 of 2022

M/s.Oriental Insurance Company Ltd.,
No.116, Prakasam Salai,
Chennai – 600 108.

... Appellant

Versus

1.Suba @ Sujatha
2.K.Lakshmanan

... Respondents

C.M.A.No.2806 of 2022

M/s.Oriental Insurance Company Ltd.,
No.116, Prakasam Salai,
Chennai – 600 108.

... Appellant

Versus

1.Yamuna Devi
2.K.Lakshmanan

... Respondents

PRAYER in C.M.A.No.2802 of 2022 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 17.12.2021 made in M.C.O.P.No.7415 of 2014, on the file of the Motor Accident Claims Tribunal, Special Sub-Court No.2, Chennai.



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PRAYER in C.M.A.No.2806 of 2022 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 17.12.2021 made in M.C.O.P.No.7410 of 2014, on the file of the Motor Accident Claims Tribunal, Special Sub-Court No.2, Chennai.

In both C.M.As

For Appellant : Mr.D.Bhaskaran
For R1 : Mr.T.G.Ravichandran

JUDGMENT

These appeals have been filed by the Insurance Company challenging the compensation awarded by the Tribunal in M.C.O.P.Nos.7410 & 7415 of 2014, dated 17.12.2021.

2.The claim petitions were filed stating that on 11.11.2014, at about 15.30 hrs, while the 1st respondent in both the appeals were travelling as passengers in Maxi cab bearing Regn No.TN-19-D-2039, the driver of the said cab drove the same in a rash and negligent manner, dashed against the car bearing Regn No.TB-18-S-3953, near Toll Plaza, Kellambakkam to Kovalam road; that as a result, the 1st respondent in both the appeals sustained grievous injuries and hence, they are entitled for compensation.



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3.The 2nd respondent/owner of the offending vehicle remained *ex-parte* before the Tribunal.

4.The appellant/Insurance Company filed a counter denying all the averments made in the claim petition and stated that the seating capacity of the cab was only 8 including the driver; that however, 13 passengers travelled in the said vehicle; that they are deemed to be unauthorized passengers; that hence, the appellant is not liable to pay any compensation and prayed for dismissal of the claim petition.

5.Before the Tribunal, the 1st respondent in C.M.A.No.2802 of 2022 examined herself as P.W.2 and marked Ex.P.15 to Ex.P.32 on her side. The disability certificate issued to her by the Medical Board was marked as Ex.C1. The 1st respondent in C.M.A.No.2806 of 2022 examined herself as P.W.1 and marked Ex.P.1 to Ex.P.14 on her side. The disability certificate issued to her by the Medical Board was marked as Ex.C2. The appellant had examined one witness and marked Exs.R1 to R4 on their side.



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6.The Tribunal after considering the oral and documentary evidence directed the appellant to pay a sum of Rs.17,11,000/- as compensation to the 1st respondent in C.M.A.No.2806 of 2022 and Rs.13,79,800/- as compensation to the 1st respondent in C.M.A.No.2802 of 2022.

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

8.The learned counsel for the appellant submitted that the 1st respondent in C.M.A.No.2802 of 2022 had not established that she had suffered any functional disability. However, the Tribunal based on the Ex.C1-disability certificate issued by the Medical Board which assessed 60% physical disability, had fixed functional disability at 40% in the absence of any evidence to show that the 1st respondent had suffered loss of income. The learned counsel therefore submitted that the compensation should have been awarded only by percentage method and prayed for reduction of compensation amount.



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9.As regards C.M.A.No.2806 of 2022, the learned counsel for the appellant submitted that the Tribunal had not considered the functional disability of the 1st respondent and had fixed the same at 60% based on the disability certificate issued by the Medical Board assessing the disability at 68% physical disability. The learned counsel therefore prayed for reduction of compensation amount.

10.The learned counsel for the 1st respondent in both the appeals submitted that the 1st respondent in both the appeals have established that they both were working as tailor and were also home makers. The injuries suffered by the 1st respondent in C.M.A.No.2802 of 2022 was serious and the Tribunal was right in fixing the disability at 40% based on the photographs and other evidence on records. As regards compensation in C.M.A.No.2806 of 2022, the learned counsel for the 1st respondent submitted that the 1st respondent suffered crush injuries in right fore arm, hand and in her forehead as well. Therefore, the Tribunal was right in fixing functional disability at 60% as she was not able to carry on her work. The learned counsel further submitted that the notional income fixed by the Tribunal is also meagre and hence, prayed for dismissal of



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the appeal.

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11.The only question involved in the above appeal is whether the compensation awarded by the Tribunal is just and reasonable?

C.M.A.No.2802 of 2022:

12.On perusal of the records, it is seen that the Medical Board has assessed 60% physical disability for the 1st respondent who had suffered Grade III-B compound fracture both bones – left forearm with flexor tendon injury, ulnar artery and nerve injury and she deposed before the Tribunal that she was a tailor at the time of accident. Considering the nature of injuries, Ex.P22-photograph of the victim and avocation, this Court is of the view that the functional disability can be fixed as 20% instead of 40% fixed by the Tribunal. However, this Court finds that the Tribunal had fixed notional income as Rs.9,000/-, which is meagre. Considering the year of accident and the avocation, this Court is of the view that it would be just and reasonable to fix Rs.11,000/- per month as notional income. The appellant would be entitled to future prospect in the circumstances of the case. Therefore, compensation under the head disability has to be as follows:



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Rs.15,400/- (Rs.11,000 + 40%) X 12 X 17 X 20/100 =

Rs.6,28,320/-.

The amount awarded by the Tribunal under other heads is just and reasonable and 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	10,28,160	6,28,320	Reduced
2.	Pain and Suffering	40,000	40,000	Confirmed
3.	Transportation	5,000	5,000	Confirmed
4.	Medical Expenses	2,62,381	2,62,381	Confirmed
5.	Extra Nourishment	10,000	10,000	Confirmed
6.	Attender Charges	4,250	4,250	Confirmed
7.	Future Medical Expenses	30,000	30,000	Confirmed
	Total	13,79,791 rounded off to 13,79,800	9,79,951 rounded off to 9,79,950	Reduced by Rs.3,99,850/-

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,79,800/- is hereby reduced to Rs.9,79,950/-, together with interest at 7.5% per annum (excluding the default period, if any) from the date of



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petition till the date of deposit. The appellant/Insurance Company 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 four (4) weeks from the date of a receipt of copy of this Judgment. On such deposit, the 1st respondent is permitted to withdraw the entire award amount now determined by this Court, along with interest and costs, 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.7415 of 2014, if the entire amount has already been deposited by them. No costs.

C.M.A.No.2806 of 2022:

14. On perusal of the records, it is seen that the 1st respondent had suffered crush injuries on her right fore arm and hand, post traumatic soft tissue defect right forearm & right hand near circumferential defect with exposed tendons & loss of extensor tendons, fracture both bones (MID L/3 distal third junction) / distal ulna loss (+). The Medical Board had assessed disability at 68% physical disability. Considering the above facts, this Court is of the view that the functional disability can be fixed as 30% instead of 60% fixed by the Tribunal. The notional income fixed



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by the Tribunal at Rs.9,000/- is meagre and hence, the same is enhanced to Rs.11,000/- per month and she is entitled for 40% towards future prospects.

$$\text{Rs.15,400/- (Rs.11,000 + 40\%) X 12 X 15 X 30/100 =}$$

Rs.8,31,600/-.

The amount awarded by the Tribunal under other heads is just and reasonable and 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	13,60,800	8,31,600	Reduced
2.	Pain and Suffering	50,000	50,000	Confirmed
3.	Transportation	5,000	5,000	Confirmed
4.	Medical Expenses	2,80,198	2,80,198	Confirmed
5.	Extra Nourishment	10,000	10,000	Confirmed
6.	Attender Charges	5000	5000	Confirmed
	Total	17,10,998 rounded off to 17,11,000	11,81,798 rounded off to 11,81,800	Reduced by Rs.5,29,200/-

15. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at



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Rs.17,11,000/- is hereby reduced to Rs.11,81,800/-, together with interest 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 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 is permitted to withdraw the entire award amount now determined by this Court, along with interest and costs, 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.7410 of 2014, if the entire amount has already been deposited by them. No costs. Consequently, connected miscellaneous petitions are closed.

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rst

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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To:

- 1.The Motor Vehicle Accident Tribunal,
Special Sub-Court, Thiruvannamalai.
- 2.The Section Officer,
VR Section,High Court, Madras.

SUNDER MOHAN, J.



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