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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

**C.M.A.No.3360 of 2021 & C.M.P No.19353 of 2021
and
Cross Objection No.41 of 2022**

The Branch Manager
United India Insurance Co. Ltd.,
Branch Office-III, Arjuna Towers
2nd Floor, 248/164, Cherry Road
Salem-636 001.

.. Appellant in CMA No.3360
of 2021/1st respondent in
Cross Obj.41 of 2022

Vs

1. Arunkumar

.. 1st Respondent in CMA
No.3360 of 2021/ Cross
Objector in
Cross Obj.41 of 2022

2. D.Murali

.. 2nd Respondent in
both the appeals

Prayer in CMA.No.3360 of 2021 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award and decree passed by the Motor Accidents Claims Tribunal, (Special Sub Judge), Krishnagiri in MCOP No.150 of 2017 dated 29.10.2018.



Prayer in Cross Objection No.41 of 2022: Cross Objection filed under Order 41, Rule 22 of CPC against the Award and decree passed by the Motor Accidents Claims Tribunal/Special Subordinate Judge, Krishnagiri in MCOP No.150 of 2017 dated 29.10.2018.

For Appellant in
CMA No.3360 of 2021/
1st respondent in
Cross Obj.41 of 2022 : M/s.I.Malar

For 1st Respondent in
CMA No.3360 of 2021/
Cross Objector in : Mr.S.P.Yuaraj
Cross Obj.41 of 2022

No Appearance for R2
in both the appeals

COMMON JUDGMENT

This appeal has been filed by the Insurance Company challenging the award on the ground that the driver of the vehicle insured with the appellant is not responsible for the cause of the accident and the quantum of compensation awarded by the Tribunal to the 1st respondent/claimant is also excessive.

2. It is brought to the notice of this Court by the learned counsel for the appellant that subsequent to the passing of the impugned award, the



1st respondent/claimant has withdrawn the entire award amount which is lying to the credit of MCOP No.150 of 2017 on the file of the Tribunal.

The same is also not disputed by the learned counsel for the 1st respondent/claimant on instructions.

3. The 1st respondent/claimant subsequent to the filing of this appeal and after withdrawing the award amount lying to the credit of MCOP No.150 of 2017, during the pendency of this appeal has filed Cross Objection No.41 of 2022 seeking for enhancement of the determined compensation as per the impugned award.

4. Insofar as the first ground raised by the Appellant/Insurance Company with regard to its liability to pay compensation is concerned, this Court is of the considered view that the Tribunal has rightly held that the appellant is liable to pay compensation to the 1st respondent/claimant for the injuries sustained by him as a result of an accident caused by a vehicle insured with the appellant for the following reasons:

a) FIR has been registered only against the driver of the vehicle insured with the appellant.



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b) No contra evidence has been produced by the appellant/Insurance Company to disprove the fact that the driver of the vehicle insured with the appellant is alone responsible for the cause of the accident.

c) Eventhough the learned counsel for the appellant would contend that there was no negligence on the part of the driver of the vehicle insured with the appellant due to the reason that the vehicle insured with the appellant was stationary and the offending vehicle had come from back and collided with the vehicle insured with the appellant, there is no evidence produced by the appellant/Insurance Company before the Tribunal with regard to the same.

d) Based on preponderance of probability, the Tribunal has rightly arrived at a conclusion that the vehicle insured with the appellant/Insurance Company is alone responsible for the cause of the accident.



5. Insofar as the second ground raised by the Appellant/Insurance Company with regard to the quantum of compensation awarded by the Tribunal is concerned, the Tribunal has rightly awarded a just compensation to the 1st respondent/claimant based on his avocation, disability, age and year of the accident. The Medical Board has assessed the disability of the 1st respondent/claimant at 35% and due to the grievous injuries sustained by the 1st respondent/claimant, more particularly the head injury, the Tribunal has rightly adopted the multiplier method for assessing the loss of earning capacity. The notional monthly income of the 1st respondent/claimant fixed by the Tribunal at Rs.6,500/- per month is also correct in view of the fact that the year of the accident is 2009 and the 1st respondent/claimant was a load man. No documentary evidence has also been produced by the 1st respondent/claimant before the Tribunal to prove that he was earning more than Rs.6,500/- at the time of the accident. Though he has pleaded in the claim petition that he was earning more income, only based on the available evidence on record, the Tribunal has fixed the notional monthly income of the 1st respondent/claimant as Rs.6,500/- which does not call for any interference by this Court, despite the fact that the learned counsel for the 1st



respondent/claimant seeks for fixation of a higher sum towards the notional monthly income. The Tribunal has added 40% towards future prospects which is in accordance with the settled law. The compensation awarded by the Tribunal under various other heads as determined in the impugned award is a correct determination which does not call for any interference by this Court.

6. Admittedly, the cross appeal was filed by the 1st respondent/claimant only after withdrawing the amount deposited by the Appellant/Insurance Company before the Tribunal and that too, the said cross appeal was filed only in the year 2022 though the present appeal was filed by the Insurance Company in the year 2021. Since the compensation awarded by the Tribunal is a just compensation, the question of entertaining the cross appeal filed by the claimant seeking for enhancement does not arise.

7. For the foregoing reasons, there is no merit in both the appeal as well as the cross appeal filed by the 1st respondent/claimant. Accordingly, the Award passed by the Tribunal in MCOP No.150 of 2017



dated 29.10.2018 on the file of the Motor Accident Claims Tribunal/

Special Sub Judge, Krishnagiri is confirmed and both the Civil

Miscellaneous Appeal and Cross Objection are dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

11.06.2024

Internet: Yes/No

Index: Yes/No

Speaking order/Non-speaking order

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To

1.Motor Accidents Claims Tribunal,
Special Sub Judge,
Krishnagiri.

2.The Record Clerk,
VR Section,
High Court, Madras.



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ABDUL QUDDHOSE, J.

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**C.M.A.No.3360 of 2021
&
C.M.P No.19353 of 2021 and
Cross Objection No.41 of 2022**



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