



WEB COPY



C.M.A.No.1386 of 2021 and Cros.Obj. No.63 of 2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 24.06.2024

CORAM:

**THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE**

**C.M.A. No.1386 of 2021, Cros. Obj. No.63 of 2021**  
**and C.M.P. No.7130 of 2021**

**C.M.A. No.1386 of 2021**

The Branch Manager,  
M/s.Oriental Insurance Company Limited,  
Registered and Head Office,  
No.A-25/27, Asaf Ali Road,  
New Delhi - 110 002.

.. Appellant

vs.

1.Munivelan

2.K.Venkatesan

3.K.Seetharaman

.. Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 10.01.2020 made in M.C.O.P. No.236 of 2019 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Krishnagiri.

For Appellant

: Mr.N.Vijayaraghavan

For Respondents

: Mr.S.P.Yuaraj for R1  
R2 and R3-No appearance

**Cros. Obj. No.63 of 2021**



C.M.A.No.1386 of 2021 and Cros.Obj. No.63 of 2021

Munivelan

.. Cross Objector

vs.

1.The Branch Manager,  
M/s.Oriental Insurance Company Limited,  
Registered and Head Office,  
No.A-25/27, Asaf Ali Road,  
New Delhi - 110 002.

2.K.Venkatesan

3.K.Seetharaman

.. Respondents

**Prayer:** Cross Objection filed under Order 41 Rule 22 of C.P.C. against the judgment and decree dated 10.01.2020 made in M.C.O.P. No.236 of 2019 on the file of the Motor Accidents Claims Tribunal/Special Subordinate Court, Krishnagiri.

For Cross Objector : Mr.S.P.Yuaraj

For Respondents : Mr.N.Vijayaraghavan for R1  
R2 and R3-No appearance

### **COMMON JUDGMENT**

This appeal has been filed by the Insurance Company, aggrieved by the findings of the Tribunal holding the driver of the vehicle, insured with the appellant, alone responsible for the cause of the accident, which resulted in the injuries sustained by the claimant.

2.The Insurance Company has also questioned the quantum of



C.M.A.No.1386 of 2021 and Cros.Obj. No.63 of 2021

compensation awarded by the Tribunal under the impugned award as according to them, the compensation awarded is excessive. The Tribunal, under the impugned award, has directed the Insurance Company to pay the claimant a compensation of Rs.17,11,004/- as detailed hereunder:

| S.Nos. | Head                                   | Amount awarded by the Tribunal |
|--------|----------------------------------------|--------------------------------|
| 1.     | Loss of earning capacity               | Rs.13,10,400.00                |
| 2.     | Medical bills                          | Rs. 80,604.00                  |
| 3.     | Transportation                         | Rs. 8,000.00                   |
| 4.     | Extra Nourishment and attender charges | Rs. 12,000.00                  |
| 5.     | Pain and suffering                     | Rs. 52,000.00                  |
| 6.     | Social amenities                       | Rs. 52,000.00                  |
| 7.     | Damages to clothing                    | Rs. 1,000.00                   |
| 8.     | 65% disability                         | Rs. 1,95,000.00                |
|        | Total                                  | Rs.17,11,004.00                |

3.Two vehicles were involved in the accident, which resulted in the injuries sustained by the claimant, when the claimant was coming from West to East direction and the rider of the motor cycle, insured with the Insurance Company was proceeding from East to West direction. An F.I.R. was registered only against the claimant, who was riding his motor cycle from West to East direction. A charge sheet has also been filed by the police, which reiterates the contents of the F.I.R. by holding that the claimant was responsible for the cause of the accident. A sketch



C.M.A.No.1386 of 2021 and Cros.Obj. No.63 of 2021

pertaining to the subject accident was also filed and marked as Ex.C5 before the Tribunal.

4.This Court has perused and examined the F.I.R., charge sheet and the sketch. As seen from the same, the claimant, who is the rider of the motor cycle and had a head-on collision with the two wheeler, insured with the Insurance Company, is also responsible for the cause of the accident. However, under the impugned award, no contributory negligence has been fixed on the part of the claimant despite the evidence, which has been placed on record to prove that he was also responsible for the cause of the accident.

5.This Court, after giving due consideration to the evidence available on record, i.e. F.I.R., charge sheet, sketch and the rash and negligent driving of the claimant and also the fact that the rider of the two wheeler was also not possessing the driving licence at the time of the accident, fixes the contributory negligence of the claimant at 20% and the rider of the two wheeler, insured with the appellant at 80%. As the contributory negligence of the claimant is fixed by this Court at 20%, the Insurance Company is liable to pay compensation to the claimant at 80%



of the determined compensation amount.

WEB COPY

6.It is also to be noted as seen from the impugned award as well as from the evidence available on record that the claimant was not possessing a valid driving licence and was having insurance coverage for his vehicle. The accident happened on 11.06.2013. The claimant has pleaded that he was a Carpenter. Since the claimant did not produce any documentary evidence to substantiate his monthly income, the Tribunal has fixed his monthly income on notional basis at Rs.7,500/-. This Court is of the considered view that the fixation of the notional monthly income of the claimant at Rs.7,500/- is low and the same has to be enhanced to Rs.8,000/- for the accident which happened in the year 2013. Accordingly, the notional monthly income of the claimant is enhanced to Rs.8,000/- from Rs.7,500/-, erroneously fixed by the Tribunal.

7.The adoption of the multiplier method by the Tribunal is correct as admittedly one of the legs of the claimant has been amputated due to the injuries sustained by him as a result of the accident involving the vehicle, insured with the Insurance Company. Since the notional monthly income of the claimant is enhanced to Rs.8,000/- by this Court, the loss



C.M.A.No.1386 of 2021 and Cros.Obj. No.63 of 2021

of earning capacity payable to the claimant is enhanced to Rs.13,97,760/-

from Rs.13,10,400/- erroneously fixed by the Tribunal as detailed hereunder:

$8000 \times 40 / 100 = 3200$ ;  $8000 + 3200 = 11200 \times 12 \times 16 \times 65 / 100 = 13,97,760/-$

8.As seen from the impugned award, despite granting separate compensation towards loss of earning capacity, in addition to that, erroneously, the Tribunal has granted additional compensation of Rs.1,95,000/- for 65% disability suffered by the claimant calculating at Rs.3,000/- per percentage of disability, which will amount to duplication as the claimant has already been granted compensation under the head 'loss of earning capacity'. Hence, the compensation awarded by the Tribunal under the impugned award at Rs.1,95,000/- towards 65%

disability sustained by the claimant has to be set aside by this Court and the same is set aside.

9.Insofar as the compensation awarded by the Tribunal under various other heads i.e. Medical Bills, Transportation and Damages to clothing is concerned, the same is a just compensation, which does not



C.M.A.No.1386 of 2021 and Cros.Obj. No.63 of 2021

call for any interference by this Court and the same is confirmed.

WEB COPY

10.However, the Tribunal has erroneously granted lesser compensation to the claimant towards Extra nourishment and attender charges at Rs.12,000/-, which has to be necessarily enhanced to Rs.20,000/- by this Court. The Tribunal has also erroneously granted higher compensation to the claimant towards Pain and suffering and Amenities at Rs.52,000/- each, which has to be reduced to Rs.50,000/- and Rs.25,000/- respectively.

11.For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is reduced from Rs.17,11,004/- to Rs.15,82,364/- as detailed hereunder:

| S.Nos. | Head                                   | Amount awarded by the Tribunal |
|--------|----------------------------------------|--------------------------------|
| 1.     | Loss of earning capacity               | Rs.13,97,760.00                |
| 2.     | Medical bills                          | Rs. 80,604.00                  |
| 3.     | Transportation                         | Rs. 8,000.00                   |
| 4.     | Extra Nourishment and attender charges | Rs. 20,000.00                  |
| 5.     | Pain and suffering                     | Rs. 50,000.00                  |
| 6.     | Social amenities                       | Rs. 25,000.00                  |
| 7.     | Damages to clothing                    | Rs. 1,000.00                   |
|        | Total                                  | Rs.15,82,364.00                |



WEB COPY

12.As the contributory negligence of the claimant is fixed by this Court at 20%, the Insurance company is directed to deposit 80% of the reduced award amount of Rs.15,82,364/-, after deducting the amount already deposited, if any, together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit and cost to the credit of M.C.O.P. No.236 of 2019 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Krishnagiri, within a period of four weeks from the date of receipt of a copy of this judgment.

13.The claimant is permitted to withdraw the said amount, once it is deposited by the Insurance Company, by filing an appropriate application. On such application being made, the Tribunal shall transfer the amount lying to the credit of M.C.O.P. No.236 of 2019 to the bank account of the appellant directly through RTGS, within a period of one week thereafter. Pay and recovery rights available under the impugned award is hereby confirmed by this Court.

Accordingly, the appeal is partly allowed and the Cross objection



C.M.A.No.1386 of 2021 and Cros.Obj. No.63 of 2021

is disposed of. No costs. Consequently, connected petition is closed.

WEB COPY

24.06.2024

vga

To

- 1.The Motor Accidents Claims Tribunal,  
Special Subordinate Court, Krishnagiri
- 2.The Section Officer,  
V.R. Section, High Court, Madras.



WEB COPY



C.M.A.No.1386 of 2021 and Cros.Obj. No.63 of 2021

**ABDUL QUDDHOSE, J.**

vga

**C.M.A. No.1386 of 2021, Cros. Obj. No.63 of 2021**  
**and C.M.P. No.7130 of 2021**

**24.06.2024**