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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

**C.M.A.No.2387 of 2021 & C.M.P No.13565 of 2021
and
Cross Objection No.35 of 2023**

The Manager
Reliance General Insurance Company Limited
No.6, Reliance House, 6th Floor
Haddows Road, Nungambakkam
Chennai-600 006.

.. Appellant in CMA No.2387
of 2021/2nd respondent in
Cross Obj.35 of 2023

Vs

1.M.Ganesan

.. 1st Respondent in CMA
No.2387 of 2021/
Appellant in
Cross Obj.35 of 2023

2. V.Vedhachalam

.. 2nd Respondent in CMA
No.2387 of 2021/
1st Respondent in
Cross Obj.35 of 2023

Prayer in CMA.No.2387 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/ III Judge, Court of



Small Causes, Chennai in MCOP No.4490 of 2015 dated 24.02.2021.

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Prayer in Cross Objection No.35 of 2023: Cross Objection filed under Order 41, Rule 22 of CPC against the Award and decree passed by the Motor Accidents Claims Tribunal/III Judge, Court of Small Causes, Chennai in MCOP No.4490 of 2015 dated 24.02.2021.

For Appellant in
CMA No.2387 of 2021/
2nd respondent in
Cross Obj.35 of 2023 : M/s.M.B.Raghavan

For 1st Respondent in
CMA No.2387 of 2021/
Appellant in : Mr.S.Suriyaprakash
Cross Obj.35 of 2023

2nd Respondent in CMA
No.2387 of 2021/
1st Respondent in
Cross Obj.35 of 2023 : No Appearance

COMMON JUDGMENT

This appeal has been filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal.

2. During the pendency of this appeal, a cross objection has also been filed by the first respondent/claimant seeking enhancement of



compensation in Cross Objection No.35 of 2023.

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3. Since the appeal and the cross objection arise out of the very same accident, both the appeal as well as the cross objection are disposed of by a common judgement.

4. The first respondent/claimant had sustained the following injuries as a result of an accident caused by a vehicle insured with the appellant/Insurance Company.

" Proximal Femur Fracture Right side T Grade I & Fracture BB Left Leg".

5. The nature of the injuries sustained by the first respondent/claimant is not disputed by the appellant/Insurance Company as seen from the evidence available on record before the Tribunal. The Medical Board had assessed the disability of the first respondent at 60%. The first respondent/claimant was hospitalized for a period of 67 days in three spells. The period of treatment undergone by the first respondent/claimant is also not disputed by the appellant/Insurance



Company as seen from the evidence available on record. The Tribunal had assessed the disability of the first respondent/claimant accepting the disability assessed by the Medical Board at 60%. The Tribunal had also assessed the notional monthly income of the first respondent/claimant at Rs.10,495/- and the Tribunal had awarded 25% towards loss of future prospects. Insofar as 25% future prospects awarded by the Tribunal is concerned, the said award is a correct one, as only after giving due consideration to the age of the first respondent/claimant, the Tribunal had awarded 25% towards loss of future prospects. Insofar as the assessment of the notional monthly income of the first respondent/claimant at Rs.10,495/- is concerned, this Court is of the considered view that the assessment made by the Tribunal is incorrect as the Tribunal has not taken into consideration the avocation and the year of the accident.

6. The first respondent/claimant was admittedly a heavy vehicle driver, who was employed in Parveen Travels, an Omni bus operator. The salary slip has been produced by the first respondent/claimant, which has been marked as Ex.P13, which discloses that the first respondent/claimant was earning Rs.13,247/- at the time of the accident. This Court is



accepting the same as it is reasonable.

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7. The claimant was aged about 49 years at the time of accident. As per the settled law, the Tribunal has rightly awarded 25% towards future prospects. If 25% towards future prospects is added, monthly income of the claimant works out to Rs.16,558/-. The learned counsel for the first respondent/claimant on instruction, would submit that the first respondent/claimant will be satisfied if the monthly income is determined by this Court at Rs.16,000/-. Accordingly, this Court fixes the monthly income of the first respondent/claimant including loss of future prospects at Rs.16,000/-. Therefore, the monthly income fixed by the Tribunal under the impugned award is enhanced from Rs.13,118.75 to Rs.16,000/-, which also includes future prospects.

8. The Medical Board had assessed the disability of the first respondent/claimant at 60%. But the said assessment is not based on the functional disability of the first respondent/claimant. The disability assessed by the Medical Board was only pertaining to the limbs, which were injured as a result of an accident caused by a vehicle insured with the



appellant. In order to assess the loss of earning capacity of the first respondent/claimant, the functional disability of the claimant ought to have been assessed.

9. This Court, after giving due consideration to the nature of the injuries sustained by the first respondent/claimant and the disability certificate issued by the Medical Board, which has been marked as exhibit C1, is of the considered view that the functional disability of the first respondent/claimant has to be assessed at 50%. The Tribunal had erroneously accepted 60% disability as fixed by the Medical Board and had assessed the compensation towards loss of earning capacity by accepting the entire 60% disability fixed by the Medical Board without assessing the functional disability of the first respondent/claimant. Since this Court has assessed the functional disability of the first respondent/claimant at 50%, the compensation payable to the first respondent/claimant towards loss of earning capacity is re-modified at Rs.12,48,000/- (16,000 x 12 x 13 x 50%) instead of Rs.12,27,915/- , determined by the Tribunal under the impugned award.



10. Insofar as the compensation awarded by the Tribunal under various other heads, namely, pain and suffering, extra nourishment and transportation, medical expenses, loss of amenities, damage to clothing and attender charges are concerned, this Court is of the view that it is a just compensation, which does not call for any interference by this Court.

11. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced to Rs.15,27,820/- (rounded off to Rs.15,27,800/-) from Rs.15,07,735/- , as detailed hereunder:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
Pain and Suffering	75,000/-	75,000/-
Extra Nourishment & Transportation	75,000/-	75,000/-
Medical Expenses	33,720/-	33,720/-
Loss of amenities	75,000/-	75,000 /-
Damages to clothes	1,000/-	1,000/-
Attender Charges	20,100/-	20,100/-
Loss of earning capacity	12,27,915/- (13,118.75 x 12 x 13 x 60%)	12,48,000/- (16000 x 12 x 13x 50/100)
Total	15,07,735/- rounded off to Rs.15,07,800/-	15,27,820/-



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12. In the result, C.M.A No.2387 of 2021 filed by the Insurance Company is dismissed and the Cross Objection No.35 of 2023 filed by the Claimant is partly allowed. However, the rate of interest fixed by the Tribunal at the rate of 7.5% is confirmed. The Insurance Company is directed to deposit the modified award amount i.e, **Rs.15,27,800/-** along with interest and costs, after deducting the amount already deposited, if any, to the credit of MCOP.No.4490 of 2015 within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount to the bank account of the Claimant along with accrued interest through RTGS within a period of two weeks thereafter. Consequently, connected Miscellaneous Petition is closed. No costs.

04.07.2024

Internet: Yes/No

Index: Yes/No

Speaking order/Non-speaking order
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1.Motor Accidents Claims Tribunal,
III Judge, Small Causes Court,
Chennai.

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



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ABDUL QUDDHOSE, J.

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**C.M.A.No.2387 of 2021
&
C.M.P No.13565 of 2021 and
Cross Objection No.35 of 2023**

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