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C.M.A.No.2540 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.No.2540 of 2022

&

Cross Obj.No.72 of 2023

C.M.A.No.2540 of 2022

The Manager,
ICICI LOMBARD General Insurance Company Limited,
2nd floor, SVR Complex,
Hosur Main Road, Bangalore, Karnataka.

... Appellant

Vs.

1. S.Manjunath Kumar
2. Avinandhan Bhattacharya

... Respondents

Cross Obj.No.72 of 2023:

S.Manjunath Kumar

... Cross objector

Vs.

The Manager,
ICICI LOMBARD General Insurance Company Limited,
2nd floor, SVR Complex,
Hosur Main Road, Bangalore, Karnataka.

... Respondent

Prayer in C.M.A.No.2540 of 2022: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 17.09.2021 made in M.C.O.P.No.652 of 2019 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Krishnagiri.

Prayer in Cross Obj. No.72 of 2023: Civil Miscellaneous Appeal filed under



C.M.A.No.2540 of 2022

Section 173 of Motor Vehicle Act, 1988 for enhancement of the compensation awarded in the Judgment and Decree dated 17.09.2021 made in M.C.O.P.No.652 of 2019 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Krishnagiri.

Appearance in C.M.A.No.2540 of 2022:

For Appellant : Mr.B.Siva Kollapan
For R1 : Mr.S.P.Yuvaraj
For R2 : Exparte vide JR
dated 07.12.2022

Appearance in Cross Obj.No.72 of 2023

For Appellant : Mr.S.P.Yuvaraj
For R1 : Mr.B.Siva Kollapan

COMMON JUDGEMENT

Aggrieved by the quantum of compensation awarded by the Tribunal in M.C.O.P.No.652 of 2019, dated 17.09.2021, the Insurance Company has filed an appeal in C.M.A.No.2540 of 2022. Being not satisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant has filed Cross Obj. No.72 of 2023.

2. Since both the Civil Miscellaneous Appeal and Cross objection arise out of the common order passed by the Tribunal, they have been taken up



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together and, being disposed of vide this common judgement. For the sake of convenience, the parties are referred to as per their rank in C.M.A.No.2540 of 2022.

3. On 11.02.2016, at about 8.00 a.m., while the first respondent was riding his two wheeler bearing Reg.No.TN 10 U 9466, he was hit by a Honda car bearing Reg.No.KA 51 MG 1402, insured with appellant/Insurance Company, driven by its driver which came from opposite direction, in a rash and negligent manner. Due to the said accident, the first respondent/claimant sustained grievous injuries all over his body and fracture on his right leg. Hence, the first respondent/claimant has filed a Claim Petition claiming a sum of Rs. 50,00,000/- as compensation.

4. On consideration of oral and documentary evidence, the Tribunal has awarded a sum of Rs.16,93,852/- towards compensation to the first respondent/claimant. Aggrieved by the said compensation amount, the appellant/Insurance Company has filed the present appeal. Finding the same to be insufficient, the claimant has filed Cross-Objection.

5. The learned counsel for the appellant/Insurance Company contended that, the Tribunal while awarding compensation under the head “loss



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of earning capacity”, by adopting multiplier method, it ought not to have awarded compensation under the head “disability” separately. Thus, accordingly, the learned counsel urged that one of the method has to be set-aside by this Court. Further, he submitted that the amount awarded under other heads are just and reasonable, and the same may be confirmed by this Court.

6. The learned counsel appearing for the first respondent/claimant, submitted that the claimant has filed Cross Objection for enhancement of compensation. The main grievance of the first respondent is that, at the time of accident, the claimant was aged about 34 years, self-employed private car/tractor driver and was earning a sum of Rs.25,000/- per month. Without considering the same, the Tribunal has erroneously fixed the notional income of the injured/first respondent at Rs.8,500/- per month, which is very meager, and the same is required to be enhanced to Rs.14,000/- per month. Further, he fairly admitted that a sum of Rs.3,00,000/- awarded by the Tribunal towards “disability” has to be set-aside, as the Tribunal has awarded a sum of Rs.12,56,640/- towards “loss of earning capacity” by applying multiplier method. Further, he submitted that once the compensation awarded by adopting multiplier method, the Tribunal ought not to have awarded any amount towards “loss of amenities”, and the same is also liable to be set-aside.



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7. Heard the learned counsel for the appellant and the learned counsel for the first respondent and perused the materials available on record.

8. Taking into consideration the submissions made by the learned counsel on both sides, this Court is of the view that there is no dispute with regard to the injuries sustained by the claimant and also the issuance of permanent disability certificate, which was marked as Ex.P11 assessing the disability at 60%. Therefore, as rightly submitted by the learned counsel on both sides, while determining the compensation, the Tribunal ought to have adopted either percentage method or multiplier method. Hence, an amount of Rs.3,00,000/- awarded by the Tribunal towards “disability” is liable to be set-aside, and accordingly, the same is set-aside. Resultantly, the Tribunal ought not to have awarded the amount under the head “loss of amenities”, and therefore, a sum of Rs.48,000/- awarded by the Tribunal under the said head, is also liable to be set-aside, and accordingly, the same is set-aside.

9. A sum of Rs.15,000/- was awarded by the Tribunal under the head of extra nourishments and attender charges together, which appears to be low, and the same is modified and enhanced to a sum of Rs.50,000/-. Further, the



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Medical Board fixed the disability of claimant at 60% and his right leg was amputated. This Court finds that the Tribunal has failed to award any amount under the head of “future medical expenses”. Considering the nature of injuries sustained by the claimant, this Court is inclined to award a sum of Rs.1,00,000/- towards “future medical expenses”.

10. As far as the quantum of compensation is concerned, at the time of accident, the claimant was aged about 34 years, and was earning Rs.25,000/- per month by working as a car driver. The Tribunal had fixed the notional income of the claimant at Rs.8,500/- per month, which is on the lower side. Considering the nature of injuries sustained by the claimant, he cannot able to perform his work well as before, since his right leg was amputated. Therefore, this Court feels it appropriate to fix the notional income of the claimant at Rs.12,000/- per month, which would be just and reasonable. Thus, by fixing a sum of 12,000/- per month as a notional income; adding 40% towards future prospects as per the dictum laid-down by the Hon'ble Apex Court, the income of the injured is quantified at Rs.16,800/- per month. Adopting multiplier of '16' as per the decision of Apex Court, the “loss of earning capacity” is arrived at $Rs.16,800 \times 12 \times 16 \times (60/100) = Rs.19,35,360/-$.



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11. Insofar as the compensation awarded by the Tribunal under other heads namely “medical expenses”, “pain and sufferings”, “transportation” and “damages to clothes” are concerned, this Court finds that the same are just and proper and the same are hereby confirmed.

12. Thus, the compensation awarded by the Tribunal is modified as under :-

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Loss of earning capacity	12,56,640/-	19,35,360/- (enhanced)
Medical expenses	15,212/-	15,212/-
Future medical expenses	Nil	1,00,000/- (awarded)
Pain and sufferings	48,000/-	48,000/-
Attender charges & Extra nourishments	15,000/-	50,000/- (enhanced)
Transportation charges	10,000/-	10,000/-
Damages to clothes	1,000/-	1,000/-
Loss of amenities	48,000/-	Nil
Loss of income due to disability at 60% (Rs.5,000/- per percentage)	3,00,000	Nil
Total	16,93,852/-	21,59,572/-

13. Consequently, the total compensation amount of **Rs.16,93,852/-** awarded by the Tribunal is hereby modified and enhanced to **Rs.21,59,572/-**



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which shall carry interest at the rate of **7.5%** per annum from the date of claim petition till the date of deposit.

14. In the result, the Civil Miscellaneous Appeal filed by the Insurance Company and Cross objection filed by the claimant are partly allowed on the following terms:-

(i) The appellant, Insurance Company is directed to deposit the entire amount awarded by this Court along with interest at the rate of 7.5 % p.a. and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any.

(ii) On such deposit being made by the appellant/Insurance Company, the Tribunal shall transfer the amount directly to the claimant's respective bank account through RTGS within a period of three weeks thereon.

(iii) The first respondent/claimant is entitled to withdraw the entire award amount, less the amount already withdrawn, if any, by making necessary application before the Tribunal.

iv) The first respondent/claimant is directed to pay the court fee for the enhanced compensation, if any.

v) There shall be no order as to costs.



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Index : Yes / No

NCC : Yes / No

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To

1. The Motor Accident Claims Tribunal,
Special Sub Judge, Krishnagiri.

2. The Section Officer,
V.R. Section,
High Court, Madras.

Krishnan Ramasamy,J.,

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