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C.M.A. No.1239 of 2021, Cros.Obj. No.46 of 2021 and C.M.P. No.6285 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

**C.M.A. No.1239 of 2021, Cros.Obj. No.
46 of 2021 & C.M.P. No.6285 of 2021**

The Branch Manager,
United India Insurance Co. Ltd.,
36, Katpadi Road,
Gandhi Nagar,
Vellore - 636 006.

.. Appellant in C.M.A. No.1239 of 2021 &
1st respondent in Cros.Obj.No.46 of 2021

Vs.

1.Sumankumar

.. 1st respondent in C.M.A. No.1239 of 2021 &
Cross Objector in Cros.Obj.No.46 of 2021

2.S.Ezhil Kumar

.. 2nd respondent in both cases

Prayer in C.M.A. No.1239 of 2021: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 06.08.2019 made in M.C.O.P. No.214 of 2018 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Hosur.

Prayer in Cros. Obj. No.46 of 2021: Cross Objection filed under Order 41 Rule 22 of C.P.C. against the judgment and decree dated 06.08.2019 made in M.C.O.P. No.214 of 2018 on the file of the Motor Accident



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Claims Tribunal, Additional District Judge, Hosur.

For Appellant in C.M.A. No.1239 of 2021 &
1st respondent in Cros.Obj.No.46 of 2021

: Mr.J.Chandran

For 1st respondent in C.M.A. No.1239 of 2021 &
Cross Objector in Cros.Obj.No.46 of 2021

: Mr.SP.Yuvaraj

For second respondent

: No appearance

COMMON JUDGMENT

This appeal has been filed by the Insurance Company, questioning the quantum of compensation awarded by the Tribunal to the claimant.

2.The claimant has filed Cross Objection No.46 of 2021 seeking for enhancement of compensation.

3.Since the appeal as well as the Cross Objection arise out of the very same award, they are disposed of by a common judgment.

4.The Tribunal, under the impugned award, had directed the Insurance Company to pay the claimant a compensation of Rs.33,23,602/- for the injuries sustained by him as a result of an accident, caused by a vehicle, insured with the Insurance Company as detailed hereunder:



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S.Nos.	Head	Amount awarded by the Tribunal
1.	60% earning capacity	Rs.11,66,400.00
2.	Transportation charges	Rs. 25,000.00
3.	Nutrition charges	Rs. 70,000.00
4.	Attender charges	Rs. 2,00,000.00
5.	Pain and suffering	Rs. 1,00,000.00
6.	Discomfort, frustration and loss of social enjoyment	Rs. 50,000.00
7.	Medical bills	Rs. 8,45,642.00
8.	Future prospects	Rs. 4,66,560.00
9.	Artificial limb	Rs. 4,00,000.00
	Total	Rs.33,23,602.00

5. Due to the accident, the claimant sustained amputation on his left leg and also sustained bodily injuries. The nature of injuries sustained by the claimant and the fact that the claimant's left leg was amputated on account of the accident have not been disputed by the Insurance Company before the Tribunal as seen from the evidence available on record. The claimant did not possess a valid driving licence at the time of the accident. He was a rider of the motor cycle, insured with the appellant. The fact that the claimant was not possessing a driving licence at the time of accident has not been disputed by the claimant. The Insurance company has examined the RTO official to prove that the



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claimant was not possessing a valid driving licence at the time of the accident. However, the Tribunal, under the impugned award, has not fixed any contributory negligence on the part of the claimant for not possessing a driving licence at the time of accident. Since the accident happened in the year 2014, this Court fixes the contributory negligence of the claimant at 10%, which the Tribunal failed to fix on the part of the claimant.

6.Insofar as the quantum of compensation awarded by the Tribunal is concerned, the total compensation of Rs.33,23,602/-, determined by the Tribunal, is a just compensation and there is neither any scope for enhancement nor any scope for reduction.

7.Though the learned counsel for the claimant would submit that the notional monthly income fixed by the Tribunal at Rs.9,000/- is low and it has to be enhanced, the said contention is rejected by this Court as the Tribunal, only after giving due consideration to the fact that the claimant was a Vegetable Vendor and the year of the accident, has assessed the notional monthly income at Rs.9,000/-. The Medical Board has assessed the permanent disability of the claimant at 60%. Therefore,



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the compensation of Rs.11,66,400/- towards loss of 60% earning capacity, determined by the Tribunal, is a correct assessment.

8.Though the learned counsel for the Insurance Company would contend that the Tribunal ought not to have fixed entire 60% as permanent disability for assessing the loss of earning capacity as the said 60% determined by the Tribunal is not functional disability, this Court is of the considered view that since the claimant has got one of his legs amputated as a result of the accident, 60% disability fixed by the Medical Board was rightly taken to be the functional disability of the claimant. Having lost one of his legs, the claimant, as a Vegetable vendor, would not be in a position to do his regular activities and would have certainly lost his earning capacity.

9.Hence, there is no infirmity in the assessment of the compensation of the Tribunal towards Loss of earning capacity granting Rs.11,66,400/-. The Tribunal has awarded a compensation of Rs.25,000/- towards Transportation, Rs.70,000/- towards Nutrition charges, Rs.2,00,000/- towards attender charges, Rs.1,00,000/- towards pain and suffering, Rs.50,000/- towards Discomfort, frustration and loss



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of social enjoyment, Rs.8,45,642/- towards Medical bills, Rs.4,66,560/- towards Future prospects and Rs.4,00,000/- towards Artificial limb, which are supported by oral and documentary evidence and it is a just compensation, which does not call for any interference by this Court.

10.For the foregoing reasons, excepting for fixing 10% contributory negligence on the part of the claimant for not possessing a valid driving licence at the time of the accident, the determination of the compensation at Rs.33,23,602/- fixed by the Tribunal is a correct determination and it is a just compensation.

11.In the result, C.M.A. No.1239 of 2021 is partly allowed and Cros. Obj. No.46 of 2021 is dismissed by confirming the impugned award excepting for fixing the contributory negligence of the claimant at 10% for not possessing the valid driving licence at the time of accident and the Insurance Company is directed to deposit the entire award

amount, after deducting 10% from and out of the same towards the contributory negligence of the claimant.



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12. Accordingly, the insurance company is directed to deposit 90% of the award amount as fixed by the Tribunal, 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.214 of 2018 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Hosur 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 an application being made, the Tribunal shall transfer the amount lying to the credit of M.C.O.P. No.214 of 2018 to the bank account of the claimant directly through RTGS, within a period of one week thereafter. No costs. Consequently, connected C.M.P. is closed.

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ABDUL QUDDHOSE, J.

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To

- 1.The Motor Accident Claims Tribunal,
Additional District Judge, Hosur.
2. The Section Officer,
V.R. Section,
High Court, Madras.

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