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C.M.A.Nos.752 of 2021 and 995 of 2022

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

**DATED : 04.12.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.DHANDAPANI**

**C.M.A.Nos.752 of 2021 and 995 of 2022**

**And**

**C.M.P.No.7374 of 2022**

Subramani

... Appellant in C.M.A.752/2021

The Divisional Manager,  
United India Insurance Company Ltd.,  
Divisional Office, Muthaiya Complex,  
Mettur Road, Erode.

... Appellant in C.M.A.995/2022

**Vs.**

1.Muniappan @ Palaniappan  
2.Mani

3.The Divisional Manager,  
Divisional Office,  
United India Insurance Company Ltd.,  
Office at Muthaiya Complex,  
Mettur Road, Erode.

(The respondents 1 and 2 are remained  
ex-parte before the Tribunal, hence  
notice may be dispensed with  
for R1&2 in this appeal) ... Respondents in C.M.A.752/2021

1.Subramani  
2.Muniappan @ Palaniappan  
3.Mani ... Respondents in C.M.A.995/2022



C.M.A.Nos.752 of 2021 and 995 of 2022

**Prayer in C.M.A.No.752 of 2021:**

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Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, for enhancement of the compensation in the award dated 27.02.2020 made in M.C.O.P.No.213 of 2017 on the file of Motor Accidents Claims Tribunal/ IV Additional District Court, Bhavani at Erode District.

**Prayer in C.M.A.No.995 of 2022:**

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 27.02.2020 made in M.C.O.P.No.213 of 2017 on the file of the Motor Accidents Claims Tribunal/ IV Additional District Judge, Erode at Bhavani.

For Appellants : Mr.M.Lokesh  
in C.M.A.No.752 of 2021

Mr.D.Bhaskaran  
in C.M.A.No.995 of 2022

For Respondents : R1 and R2 – NDW  
vide VPSR 91639 dt.16/12/20  
Mr.D.Bhaskaran for R3  
in C.M.A.No.752 of 2021

Mr.M.Lokesh for R1  
R2 and R3 – Given up  
vide order dt.8/4/24  
in C.M.A.No.995 of 2022

**COMMON JUDGMENT**

These civil miscellaneous appeals have been filed against the



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judgment and decree dated 27.02.2020 in M.C.O.P.No.213 of 2017 passed by the Motor Accident Claims Tribunal/ IV Additional District Judge, Erode at Bhavani, Erode District.

2.The petitioner before the Motor Accident Claims Tribunal is the appellant in C.M.A.No.752 of 2021 (hereinafter referred to as 'claimant'). The third respondent before the Motor Accident Claims Tribunal is the appellant in C.M.A.No.995 of 2022 (hereinafter referred to as 'Insurance Company').

3.The learned counsel appearing for the claimants submitted that on 25.02.2017 at about 08.00 p.m., the claimant was riding the motorcycle bearing Registration No.TN-52-Z-4725 on Kolathur to Kannamoochi Main Road near Muniappan Koil, Nanjundapuram Paalam. At that time, the driver of the lorry bearing Registration No.TCI 9987 which came in the opposite direction, drove the vehicle in a rash and negligent manner and dashed against the motorcycle, due to which, the claimant sustained injuries. Thereafter, the injured claimant filed claim petition claiming compensation of Rs.20 Lakhs and the Tribunal after adjudication awarded a sum of Rs.9,34,457/- rounded upto



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Rs.9,34,460/-, with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit of entire award amount and directed the Insurance Company to deposit the compensation amount with proportionate costs.

4.The learned counsel appearing for the claimant further submitted that the claimant is a lorry driver by profession and he possessed heavy vehicles licence and was earning a sum of Rs.30,000/- per month and due to the accident, he lost four toes in the right leg and he is unable to continue his avocation as before, thereby, the Tribunal awarded compensation by applying multiplier method, however, the Tribunal fixed a sum of Rs.6,500/- as the monthly income of the claimant which is very meagre. The learned counsel further submitted that as per the ratio laid down by the Hon'ble Supreme Court in *Sarla Varma and Ors. v. Delhi Transport Corporation and Anr.* reported in 2009 (2) L.S. 29 (S.C.), the Tribunal ought to have fixed a sum of Rs.15,000/- as the monthly income of the claimant and the compensation awarded under the other heads are also very very meagre and hence, the appellants are entitled for enhanced compensation.



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5.The learned counsel appearing for the Insurance Company submitted that the Medical Board assessed the disability of the claimant as 20% permanent disability, however, the Tribunal without any evidence, on its own, fixed the disability of the claimant as 75% functional disability, which is not admissible one. The learned counsel further submitted that the compensation awarded under various heads are on higher side.

6.Heard the learned counsel appearing for the Insurance Company as well as the learned counsel appearing for the claimant and perused the materials available on record.

7.The accident and the manner in which the accident happened are not disputed. Though the claimant examined himself as P.W.1 and the Insurance Company examined R.W.1, both of them did not examine any independent eye witness and the fact remains that F.I.R. was registered as against the driver of the vehicle insured with the Insurance Company and final report has also been filed against him. In the absence of any independent eye witness, the Tribunal fastened



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the entire negligence on the part of the driver of the vehicle insured with the Insurance Company, which need not be interfered with.

8.Insofar as the quantum of compensation is concerned, the tribunal after elaborately discussing the factual aspects awarded a sum of Rs.7,60,500/- for functional disability, Rs.19,500/- for loss of income during treatment period, Rs.25,000/- for pain and sufferings, Rs.15,000/- for extra nourishment, Rs.10,000/- for transportation, Rs.79,957/- for medical bills, Rs.19,500/- for attender charges, Rs.5,000/- towards damage of clothes and articles and arrived at a total compensation of Rs.9,34,457/- rounded upto Rs.9,34,460/-, with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit of entire award amount.

9.The Medical Board assessed the disability of the claimant as 20% permanent disability, however, the Tribunal without any evidence, on its own, fixed the disability of the claimant as 75% functional disability, which is not sustainable one. It is not in dispute that due to the accident, the claimant lost four toes in the right leg and he is unable to continue his avocation as before. Hence, this Court fix



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the disability of the claimant as 35% functional disability. The Tribunal has fixed a sum of Rs.6,500/- as the monthly income of the claimant which is very meagre and contrary to the ratio laid down by the Hon'ble Supreme Court in *Sarla Varma and Ors. v. Delhi Transport Corporation and Anr.* reported in 2009 (2) L.S. 29 (S.C.). Hence, this Court fix the monthly income of the claimant as Rs.14,000/- including 25% future prospectus. The Tribunal has rightly adopted the multiplier 13. Accordingly, the amount awarded for functional disability works out to Rs.7,64,400/- [Rs.14,000/- X 12 = Rs.1,68,000/-; Rs.1,68,000/- X 13 = Rs.21,84,000/-; Rs.21,84,000/- X 35/100 = Rs.7,64,400/-].

10.The amount awarded under the heads pain and sufferings, extra nourishment, attender charges, in the opinion of this Court are low and this Court is inclined to enhance the amount awarded under the said heads. Accordingly, the amount awarded under the head pain and sufferings is enhanced to Rs.60,000/- from Rs.25,000/-, the amount awarded under the head extra nourishment is enhanced to Rs.30,000/- from Rs.15,000/-, the amount awarded under the head attender charges is enhanced to Rs.30,000/- from Rs.19,500/-. The



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amount awarded under the head damage to clothes and articles, in the opinion of this Court is high and this Court is inclined to reduce the amount awarded under the said head. Accordingly, the amount awarded under the head damage to clothes and articles is reduced to Rs.1,000/- from Rs.5,000/-. The amount awarded under the heads transportation, medical bills, in the opinion of this Court are just and reasonable and the same are confirmed. The amount awarded under the head loss of income during treatment period, in the opinion of this Court is not necessary and the same is deleted.

11.Accordingly, the compensation amount is re-assessed as follows:

| <b>S.No.</b> | <b>Description</b>                     | <b>Amount Awarded by the Tribunal</b> | <b>Amount Awarded by this Court</b> |
|--------------|----------------------------------------|---------------------------------------|-------------------------------------|
| 1.           | Functional disability                  | Rs.7,60,500/-                         | Rs.7,64,400/-                       |
| 2.           | Loss of income during treatment period | Rs. 19,500/-                          | ---                                 |
| 3.           | Pain and sufferings                    | Rs. 25,000/-                          | Rs. 60,000/-                        |
| 4.           | Extra nourishment                      | Rs. 15,000/-                          | Rs. 30,000/-                        |
| 5.           | Transportation                         | Rs. 10,000/-                          | Rs. 10,000/-                        |
| 6.           | Medical bills                          | Rs. 79,957/-                          | Rs. 79,957/-                        |
| 7.           | Attender charges                       | Rs. 19,500/-                          | Rs. 30,000/-                        |
| 8.           | Damage to clothes and articles         | Rs. 5,000/-                           | Rs. 1,000/-                         |
|              | Total                                  | Rs.9,34,460/-                         | Rs.9,75,357/-                       |



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12.The claimant is entitled to total compensation of Rs.9,75,357/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit of entire award amount.

13.The civil miscellaneous appeals are disposed of in the above terms. The judgment and decree dated 27.02.2020 in M.C.O.P.No.213 of 2017 passed by the Motor Accident Claims Tribunal/ IV Additional District Judge, Erode at Bhavani, Erode District, is modified to the above extent.

14.The Insurance Company/ appellant in C.M.A.No.995 of 2022 is directed to deposit the modified/ enhanced award amount before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant/ appellant in C.M.A.No.752 of 2021 is permitted to withdraw the entire modified/ enhanced award amount along with accrued interest and proportionate costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal. The claimant shall not be entitled to any interest for the period of delay, if any, in filing/ representing the appeal. The claimant is directed to pay



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the requisite Court fee for the enhanced compensation amount, if required. The Tribunal shall disburse the enhanced amount upon production of certified copy showing proof of payment of Court fee by the claimant/ appellant in C.M.A.No.752 of 2021.

15.The civil miscellaneous appeals are disposed of in the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

**04.12.2024**

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Index: Yes/ No  
Speaking Order: Yes/ No  
NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal/  
IV Additional District Judge,  
Erode at Bhavani, Erode District.



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**M.DHANDAPANI,J.**  
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**C.M.A.Nos.752 of 2021  
and 995 of 2022  
And  
C.M.P.No.7374 of 2022**

**04.12.2024**