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C.M.A.No.2013 of 2023
and Cross.Obj. No.71 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.03.2024

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THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY

**C.M.A. NO. 2013 of 2023
CROSS OBJECTION NO. 71 of 2023
AND C.M.P. NO. 19519 OF 2023**

C.M.A. NO. 2013 of 2023

Reliance General Ins. Co. Ltd.
NGT Complex, B1, No.14, Ramasamy Street,
West Tambaram, Chennai 600 045.

.. Appellant

- Vs -

1. Mr.J.Sundaresan

2. Mr.V.Ashok

.. Respondents

CROSS OBJECTION NO. 71 OF 2023

J.Sundaresan

.. Cross Objector

- Vs -

1.V.Ashok

2.Reliance General Insurance Company Limited,
NTG Complex, B1, No.14, Ramasamy Street,
West Tambaram, Chennai- 600 045.

... Respondents



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Civil Miscellaneous Appeal filed u/s 173 of the Motor Vehicles Act against the judgment and decree dated 13.03.2018 passed by the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, made in MCOP No.646 of 2012.

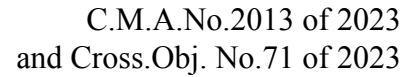
Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure to enhance the award amount in the decree and judgment dated 13.03.2018 passed by the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, made in MCOP No.646 of 2012.

For Appellant : Mrs.C.Bhuvanasundari
in CMA 2013/2023
Mr.P.R.Ponnusamy
for M/s.Anand and Suryas
in Cross.Obj.71 of 2023

For Respondents : Mr.P.R.Ponnusamy
for M/s.Anand and Suryas
in CMA.No.2013/2023
Mrs. Mrs.C.Bhuvanasundari
in Cross Obj. 71 of 2023

COMMON JUDGMENT

While the appeal has been filed by the Insurance Company challenging the negligence attributed on the part of the driver of the tanker



5. Learned counsel appearing for the Appellant/Insurance Company submits that the Claimant drove his motorcycle recklessly on the road where



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a tanker lorry was coming from the opposite direction, which resulted in the aforesaid accident, but the Tribunal failed to consider the said aspect and erroneously fixed the negligence on the part of the driver of the tanker lorry. The learned counsel further submitted that the Tribunal erred in fixing monthly income of the deceased at Rs.53,700/- and awarded compensation towards Loss of Income for three months, without examining the employer as to whether the claimant suffered any Loss of Income, due to the aforesaid accident, without assigning proper reason and without any documentary proof and that apart, the overall compensation awarded by the Tribunal is excessive and prays that this Court to interfere with the award *qua* quantum and allow this Appeal.

6. Per contra, learned counsel appearing for the Claimant/Cross Objector contended that the claimant was earning a sum of Rs.75,000/- per month and to prove the same, Ex.P15- Salary Certificate Statement has been filed, but the Tribunal, without considering the same, has fixed the monthly income of the Claimant only at Rs.53,700/- per month. It is further contended that though the disability assessed by two Doctors viz., P.W.2



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and P.W.3 are at 30% and 65% respectively, the Tribunal has taken partial permanent disability only at 30% and by fixing a sum of Rs.3,000/- per percentage, has awarded only a sum of Rs.90,000/- under the said head '**Disability**'. That apart, the cross objector has taken treatment as inpatient for 58 days, for which, the Tribunal ought to have adopted multiplier method, while determining the compensation towards Disability. He further submitted that the Claimant incurred a sum of Rs.12,47,246/- towards Medical Expenses for the treatment taken by him, in support of which Ex.P5-Medical Bills have been filed and out of the said amount, a sum of Rs.3,50,000/- was paid by New India Assurance Co., Ltd., and the remaining sum of Rs.7,83,397/- was paid by the Claimant, but, the Tribunal, without taking note of the same, has awarded a sum of Rs.2,34,403/= towards Medical Expenses. He further submitted that due to the aforesaid accident, the right leg of the Claimant was totally disfigured and therefore, the Tribunal ought to have awarded compensation towards Disfigurement. He further submitted that compensation awarded towards other heads is also very low and hence, prays for enhancement.



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7. This Court gave its anxious consideration to the arguments advanced by the learned counsel appearing on either side and also perused the oral and documentary evidence and the Award passed by the Tribunal.

8. As far as fixation of negligence on the part of the driver of the tanker lorry is concerned, the Tribunal, considering Ex.P1-F.I.R. copy and Ex.P2- Rough Sketch coupled with evidence of P.W.1, has rightly come to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the tanker lorry belonging to the 1st Respondent and therefore, the contention of the learned counsel for the Appellant/Insurance Company that the accident occurred due to the negligence of the injured/Claimant cannot be accepted.

9. As far as compensation awarded towards Medical Expenses is concerned, during one of the previous hearings, after arguing the matter at length, both the parties agreed to verify Ex.P5-Medical Bills and get back to this Court. Today, the Claimant has filed a working sheet, as per which, after deducting the amount paid by the Insurance Company, a sum of



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Rs.7,83,339/- is to be paid to the Claimant towards Medical Expenses.

Accordingly, on the basis of the working sheet submitted by the claimant, to which, the learned counsel for the insurance company has no objection, this Court awards a sum of Rs.7,83,339/- to the claimant under the head "**Medical Expenses**" as against the compensation of Rs.2,34,403/- awarded by the Tribunal under the said head.

10. In the case of hand, at the time of accident, the Claimant was 31 years and due to the aforesaid accident, the Claimant has taken treatment as inpatient for 58 days and 9 surgeries were performed in his right leg. P.W.2- Dr.M.Saravanabavanantham, assessed partial permanent disability of the Claimant @ 30% and P.W.3-Dr.K.J.Mathiazhagan assessed partial permanent disability @ 65%, but the Tribunal without considering all these aspects has fixed disability @ 30%, which, in the opinion of this Court is very low. This Court, taking note of the age of the claimant, nature of injuries and the period of treatment, deems it fit to fix disability at 75% and accordingly partial permanent disability of the claimant is fixed @75% and by taking 75%, the compensation awarded towards "**Disability**" stands



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enhanced from **Rs.90,000/- to Rs.2,25,000/-** (75x3000).

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11. This Court, considering the grievous nature of injuries and in view of the fact that due to the aforesaid injuries, the Claimant's right leg was totally disfigured, this Court is of the view that a sum of Rs.50,000/- can be awarded towards disfigurement. Accordingly, a sum of Rs.50,000/- is awarded under the head "**Disfigurement**" and that apart since the compensation awarded towards Future Medical Expenses is very low, the same stands enhanced from Rs.25,000/- to Rs.50,000/-. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	90,000/-	2,25,000/-	Enhanced
2.	Pain and suffering	2,00,000/-	2,00,000/-	Confirmed
3.	Extra nourishment	1,00,000/-	1,00,000/-	Confirmed



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
4.	Transport to Hospital	75,000/-	75,000/-	Confirmed
5.	Damages to clothes	1,000/-	1,000/-	Confirmed
6.	Attender charges	11,600/-	11,600/-	Confirmed
7.	Medical Expenses	2,34,403/-	7,83,339/-	Enhanced
8.	Future Medical Expenses	25,000/-	50,000/-	Enhanced
9.	Loss of Income	1,61,100/-	1,61,100/-	Confirmed
10	Loss of Amenities	25,000/-	25,000/-	Confirmed
11	Disfigurement	NIL	50,000/-	Granted
	Total	Rs.9,23,103/-	Rs.16,82,039/-	Enhanced by Rs. 7,58,936/-

12. In the result, the Civil Miscellaneous Appeal is dismissed and the cross objection is partly allowed.

13. The compensation awarded by the Tribunal at Rs.9,23,103/- is hereby enhanced to Rs.16,82,039/- together with interest at the rate of 7.5%



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per annum from the date of petition till the date of deposit. The Appellant-Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of **six weeks** from the date of receipt of a copy of this judgment to the credit of **M.C.O.P.No.646 of 2012** on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai. On such deposit being made, the Tribunal is directed to transfer the Award amount, directly to the Bank account of the Appellant/Claimant through RTGS, within a period of **three weeks**. The Cross Objector/Claimant shall pay necessary Court fee, if any, on the enhanced compensation. No costs. Consequently, connected miscellaneous petition is closed.

28.03.2024

Index : Yes / No

Internet : Yes / No

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To

1. The Motor Accident Claims Tribunal
(II Court of Small Causes), Chennai.
2. The Section Officer,
VR Section,
High Court,
Madras.



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KRISHNAN RAMASAMY, J

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