



C.M.A.(MD).No.820 of 2022 & Cros.Obj.(MD).No.42 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD).No.820 of 2022
and
Cros.Obj.(MD). No.42 of 2024
and
C.M.P.(MD).No.7680 of 2022

C.M.A.(MD).No.820 of 2022

The Branch Manager,
M/s. The Oriental Insurance Company Limited,
Near C.S.I Mission Hospital,
Main Road, Marthandam and Post,
Nalloor Village, Vilavancode Taluk,
Kanyakumari District.

... Appellant

Vs.

1.D.Velraj
2.Sam
3.Thomas Abraham

4.The Branch Manager,
M/s. The United India Insurance Company Limited,
P.P.K.Building, Main Road,
Marthandam and Post,
Nalloor Village, Vilavancode Taluk,
Kanyakumari District.

(Respondent Nos.2 to 4 given up)

... Respondents



C.M.A.(MD).No.820 of 2022 & Cros.Obj.(MD).No.42 of 2024

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.13 of 2019, dated 16.06.2022 on the file of the Motor Accident Claims Tribunal cum Subordinate Judge, Kuzhithurai.

For Appellant : Mr.C.Jawahar Ravindran
For R1 : Mr.G.Aravinthan
R2 to R4 given up

Cros.Obj.(MD).No. 42 of 2024

D.Velraj

Vs.

... Appellant

1.The Branch Manager,
M/s. The Oriental Insurance Company Limited,
Near C.S.I Mission Hospital,
Main Road, Marthandam and Post,
Nalloor Village, Vilavancode Taluk,
Kanyakumari District.

2.Sam

3.Thomas Abraham

4.The Branch Manager,
M/s. The United India Insurance Company Limited,
P.P.K.Building, Main Road,
Marthandam and Post,
Nalloor Village, Vilavancode Taluk,
Kanyakumari District.

... Respondents



Prayer: Cross Objection has been filed under Order XLI Rule 22 of Civil Procedure Code, to set aside the order dated 16.06.2022 passed in M.C.O.P.No. 13 of 2019 on the file of the Motor Accident Claims Tribunal cum Subordinate Judge, Kuzhithurai, Kanyakumari District, for enhancement of compensation, by allowing this Cross Appeal in the above Civil Miscellaneous Appeal.

For Appellant : M.G.Aravinthan

For R1 : Mr.C.Jawahar Ravindran

COMMON JUDGMENT

(Judgment of the Court was delivered by **K.K.RAMAKRISHNAN,J.**)

Challenging the order passed by the Motor Accident Claims Tribunal cum Subordinate Judge, Kuzhithurai in M.C.O.P.No.13 of 2019, dated 16.06.2022, the present Civil Miscellaneous Appeal has been filed by the Insurance Company.

2. Facts of the case:

The first respondent in C.M.A.(MD).No.820 of 2022, was riding his vehicle bearing Registration No.TN-75-H-5799 Pulsor 150 from Cheriyaakolla to Devicode road slowly by abiding all the traffic rules and reached near Kurakkode Junction and at that time the second respondent drove the vehicle



bearing Registration No.KL-19B-0500 Lorry from the opposite direction in a rash and negligent manner without sounding horn and without observing the traffic rules and dashed the first respondent's vehicle. In the said accident, he lost his right hand and sustained injuries all over the body. At the time of accident, he was aged about 33 years and he was a professional JCB Operator and he was working at Immanuel Earth Movers, Vellarada. Hence, he filed a claim petition before the Tribunal, seeking compensation of Rs.80,00,000/-. The Tribunal, awarded the compensation a sum of Rs.41,78,902/- to the claimant in M.C.O.P.No.13/2019.

3. The Insurance Company contested the claim petition by filing a counter and also disputed the disability and the negligence on the part of the Insurance Company.

4. Before the Tribunal, on the side of the petitioner, P.Ws.1 and 2 were examined and Exs.P1 to P18 were marked and on the side of the respondents, no oral and documentary evidence were let in. Ex.C1 was marked.



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5. Finding of the Tribunal:

The Tribunal, after considering the evidence adduced by the claimant and also Ex.C1, disability certificate issued by the Medical Board, fixed the negligence upon the insured vehicle and awarded a sum of Rs.41,78,902/- as compensation with interest at the rate of 7.5% from the date of petition till the date of realisation. The compensation awarded by the Tribunal under various heads are as follows:-

<i>Sl.No.</i>	<i>Heads</i>	<i>Amount in Rupees</i>
1	Compensation for injuries	36,00,000/-
2	Pain and Suffering and loss of future prospects	4,00,000/-
3	Medical Bills	1,38,902/-
4	Nutrition expenses	30,000/-
5	Transport Expenses	10,000/-
Total		Rs.41,78,902/-

6. Challenging the same, the present Civil Miscellaneous Appeal has been filed by the Insurance Company. The claimant/first respondent in the appeal has filed the Cross Objection for enhancement of compensation granted by the Tribunal. Both the appeals are taken up together for final disposal.



7. Submission of the learned counsel for the appellant:

The learned counsel appearing for the appellant/Insurance Company would submit that according to the claimant, he was a JCB Driver. He himself admitted in his cross-examination that there was no licence was produced for the said purpose. Further, P.W.2, who is the owner of the claimant, admitted that he has not maintained any proper record that the claimant was working under his control. Hence, fixing the monthly income of the claimant on the basis of Ex.P16 is not in accordance with law and he seeks reduction of the said amount.

8. Submission of the learned counsel for the Respondent:

The learned counsel appearing for the claimant would submit that original salary certificate of the claimant was marked as Ex.P16 and P.W.2, owner of the vehicle, in his evidence deposed that the injured claimant was working under him and he gave a sum of Rs.25,000/- as salary. Hence, the Tribunal fixed a sum of Rs.25,000/- as monthly income of the claimant. In view of the above, there is no reason to reduce the same. Further, he would submit that no amount was awarded towards notional heads viz., marital aspect and other aspects. Hence, he filed the Cross Appeal, seeking enhancement of compensation.



9. This Court heard the rival submissions made on either side and perused the award passed by the Tribunal.

10. Since the appellant/insurance company filed this appeal relating to the *quantum aspect only*, this Court does not delve into the merits on the aspect of negligence and other aspects.

11.The following point arise for consideration of this appeal:

(i) Whether the quantum of compensation awarded by the Tribunal is correct or not?

12. Discussion on quantum:

P.W.2 is the owner of the JCB. He deposed before the Tribunal that the injured claimant P.W.1 was working under his control as JCB Driver. He also confirmed the issuance of Ex.P16 viz., the salary certificate of the claimant. Further, the claimant has also obtained certificate from the Department of Employment and Training Industrial School, which was marked as Ex.P14. Hence, there is no justification in disbelieving the evidence of P.W.2 that the claimant acted as a Driver of JCB. Hence, this Court comes to the conclusion that the claimant was working as a JCB Driver. But, P.W.2 has not produced any record to corroborate the payment of salary of Rs.25,000/- per



month to the claimant. Therefore, this court is unable to take the monthly salary of the claimant of Rs. 25,000/-. But over all assessment of his experience and the educational qualification and special certificate obtained by him to operate JCB, this Court inclines to fix the monthly income as Rs.20,000/-. Therefore, this Court reduces the monthly income from Rs. 25,000/- to Rs.20,000/-

12.1.Calculation of the amount:

- (i) Monthly income = Rs.20,000/-
(ii) Annual Income (Rs.20,000/- X 12) = Rs.2,40,000/-
(iii) Multiplier 16
(Rs.2,40,000/- X 16) = Rs.38,40,000/-
(iv) For 75% permanent disability
Rs.38,40,000/- X 75/100 = Rs.28,80,000/-
(v) **Loss of income** = **Rs.28,80,000/-**

12.2. The non-pecuniary damages is calculated as follows:-

<i>Heads</i>	<i>Amount in Rupees</i>
Pain and suffering and loss of future prospects	Rs. 4,00,000/-
Medical Bills	Rs. 1,38,902/-
Nutrition expenses	Rs. 30,000/-
Transport Expenses	Rs. 10,000/-

12.3. The learned tribunal judge has considered the grievous injuries sustained by the claimant and assessment of the 75% total permanent disability



ascertained by the medical board and his right hand amputation and his discomfort and inconvenience to discharge his daily duty and the future course of suffering, correctly awarded Rs.4,00,000/- under the head of pay and suffering and loss of future prospect. Apart from that the learned tribunal judge has correctly awarded medical expenses, nutrition expenses and transport expenses. Therefore, there is no need to interfere with.

13.Conclusion:

For the foregoing reasons, the compensation awarded by the Tribunal to the claimants is modified as follows:-

<i>Sl. No.</i>	<i>Head</i>	<i>Amount awarded by the Tribunal (in Rupees)</i>	<i>Amount awarded by this Court (in Rupees)</i>	<i>Status</i>
1.	Compensation for injuries (20,000/- x 12 x 16 x 75/100)	Rs.36,00,000/-	Rs.28,80,000/-	Reduced
2.	Pain and suffering (Rs.2,00,000/-) and loss of future prospects (Rs.2,00,000/-)	Rs. 4,00,000/-	Rs. 4,00,000/-	Confirmed
3.	Medical Bills	Rs. 1,38,902/-	Rs. 1,38,902/-	Confirmed
4.	Nutrition expenses	Rs. 30,000/-	Rs. 30,000/-	Confirmed
5.	Transport Expenses	Rs. 10,000/-	Rs. 10,000/-	Confirmed
	Total	Rs.41,78,902/-	Rs.34,58,902/-	Reduced

13.1. So far as the contention of the learned counsel for the claimant that there was no award for marital aspect is concerned, the Tribunal has awarded a sum of Rs.4,00,000/- towards pain and suffering and loss of future



prospects. Hence, there is no need to award under the head of loss of marital prospects. Therefore, this Court finds no reason to accept the argument of the learned counsel for the claimant.

14. In the result, the Civil Miscellaneous Appeal filed by the Insurance Company is partly allowed and the Cross Objection filed by the Claimant is dismissed. The compensation awarded in M.C.O.P.No.13 of 2019 on the file of the Motor Vehicle Accidents Claims Tribunal, Subordinate Judge, Kuzhithurai, dated 16.06.2022 is hereby modified from Rs.41,78,902/- to Rs.34,58,902/-. The appellant/Insurance Company is directed to deposit the modified award amount with accrued interests and costs, less any amount, if already deposited, within a period of four weeks from the date of receipt of a copy of this order. Upon such deposit, the claimants is permitted to withdraw the same. The appellant/insurance company is permitted to withdraw the remaining amount. No costs. Consequently, the connected Miscellaneous Petition is closed.

[V.B.S.,J.] [K.K.R.K.,J.]
07.03.2024

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Internet : Yes/No
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To

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Kuzhithurai.
- 2.The Branch Manager,
M/s. The United India Insurance Company Limited,
P.P.K.Building, Main Road,
Marthandam and Post,
Naloor Village, Vilavancode Taluk,
Kanyakumari District.
- 3.The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN,J.
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