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CMA NO.1515 OF 2020 and Cross Objection No.86 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 09 / 01 / 2025

JUDGMENT DELIVERED ON: 28 / 01 / 2025

CORAM:

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

**CMA NO.1515 OF 2020
AND CMP.NO.11190 OF 2020
AND CROSS OBJECTION NO.86 OF 2021**

CMA NO.1515 OF 2020

Cholamandalam MS General Insurance Co.Ltd.,
Chidambaram Complex,
III Floor, No.129, Kumaran Road,
Thiruppur.

... Appellant /
2nd Respondent

Vs.

1. Dhakshinamoorthy

... 1st Respondent /
Petitioner

2. P.Dhanasekaran

... 2nd Respondent /
1st Respondent

Cross Objection no.86 of 2021

A.Dhakshinamoorthy

... Cross Appellant /
Petitioner

Vs.



CMA NO.1515 OF 2020 and Cross Objection No.86 of 2021

Cholamandalam MS General Insurance Co.Ltd.,
Chidambaram Complex,
III Floor, No.129, Kumaran Road,
Thiruppur.

2. P.Dhanasekaran

... 1st Respondent /
2nd Respondent
... 2nd Respondent /
1st Respondent

PRAYER IN CMA.No.1515 of 2020 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated December 19, 2019 made in M.C.O.P.No.896 of 2017 on the file of the Motor Accident Claims Tribunal (Special District Judge), Tiruppur.

PRAYER IN CROSS OBJECTION No.86 of 2021 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to modify the Award dated December 19, 2019 made in M.C.O.P.No.896 of 2017 on the file of the Motor Accident Claims Tribunal (Special District Judge), Tiruppur.

CMA.No.1515 of 2020:-

For Appellant	:	M/s.R.Sreevidhya
For first Respondent	:	Mr.K.Myilsamy
For second Respondent	:	No Appearance

CROSS OBJECTION No.86 of 2021:-

For Cross Appellant	:	Mr.K.Myilsamy
For first Respondent	:	M/s.R.Sreevidhya
For second Respondent	:	No Appearance



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COMMON JUDGMENT

R.SAKTHIVEL, J.

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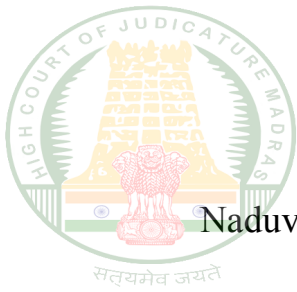
Feeling aggrieved by the Award passed by the Motor Accidents Claims Tribunal, Special District Judge, Tiruppur ('Tribunal' for short) in M.C.O.P.No.896 of 2017 dated December 19, 2019, the second respondent therein / Insurance company preferred this CMA.No.1515 of 2020, while the petitioner / claimant therein preferred Cross Objection No.86 of 2021 praying to enhance the compensation. This Common Judgment will now decide both, the Civil Miscellaneous Appeal and the Cross Objection.

2.For the sake of convenience, the parties herein will be referred to as per their rank in the Motor Claim original Petition.

3.The Insurance Company filed this appeal questioning the quantum of compensation awarded by the Tribunal; therefore, there is no need to deal with the aspect of liability.

Petitioner's case

4.The case of the petitioner is that on January 31, 2017, at about 09.00 hours, while the petitioner was riding a motorcycle bearing registration No.TN 37 M 6186 from south to north on the Avinashi to



Naduvacheri Road, near Ravuthampalayam Bus Stop, Avinashi, the first respondent was riding the motorcycle bearing registration No.TN-39-BY-5558 in a rash and negligent manner and collided with the petitioner. Due to the accident, the petitioner suffered a head injury and was immediately taken to The Revathi Medical Centre, Tiruppur where he was admitted as inpatient on January 31, 2017 and discharged on March 1, 2017. The discharge summary indicate the following injuries:-

- (I) RTA – HEAD INJURY, MULTIPLE INJURY
- (II) ACUTE EDH LEFT FRONTOPARITEAL REGION
- (III) ACUTE THIN SDH RIGHT FRONTAL REGION
- (IV) FRACTURE LEFT ORBIT MAXILLARY SINUS INVOLVING ALL WALLS – LEFORT III FRACTURE
- (V) BLUNT INJURY ABDOMEN
- (VI) MESENTRIC TEAR WITH SMALL BOWEL ISCHEMIA

The discharge summary refers to the details of treatment given to the petitioner as follows:-

*“B NEGATIVE WHOLE BLOOD 3 UNITS, PACKED CELLS 1 UNIT
TRANSFUSION DONE*

COURSE IN HOSPITAL:

*THIS 46 YEARS OLD MALE CAME TO OUR HOSPITAL WITH ALLEGED
H/ORTA ON 31.01.2017 ON RECEIVING IN CASUALTY, PT UNCONSCIOUS,
RESTLESS, GCS 6/15. HEAD INJURY (+), LEFT UPPER EYE LID LACERATION
(+), B/L NASAL BLEED (+), LEFT EYE – NOT REACTING TO LIGHT, LEFT
THIGH PUNCTURE WOUND (+), PATIENT ADMITTED IN ICU, AIRWAY
SECURED WITH ET TUBE, CT BRAIN - SHOWING ACUTE EDH IN LEFT
FRONTOPARIETAL REGION CAUSING MIDLINE SHIFT TO RIGHT, ACUTE
THIN SDH IN RIGHT FRONTAL REGION, CECT ABDOMEN SHOWING*



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MESENTERIC CONGESTION AROUND SUPERIOR MESENTRIC VEIN, MODERATE FREE FLUID IN ABDOMEN - ? MESENTRIC TEAR, PATIENT TREATED BY INTENSIVIST, NEUROSURGEON, GERERAL SURGEON & ENT SURGEON & POSTED FOR CRANIOTOMY - EVACUATION OF ACUTE EDH & POSTED FOR EMERGENCY LAPAROTOMY - SMALL BOWEL RESECTION & ANASTAMOSIS ON 31.01.2017, POST PROCEDURAL PERIOD WAS UNEVENTFUL, X-RAY PELVIS SHOWING INCREASED AP AT SYMPHYSIS, PELVIC BINDER WAS APPLIED, OPHTHALMOLOGIST OPINION SOUGHT AND GUARDED PROGNOSIS OF LEFT EYE EXPLAINED TO THE ATTENDER, PATIENT WAS DIAGNOSED AS APIRATION PNEUMONIA & ELECTIVE TRACHEOSOTOMY DONE ON 03.02.2017, LEFT ORBIT & MAXILLARY SINUS FRACTURE - LEFORT III FRACTURE - ORIF DONE ON 03.02.2017 PT GCS IMPROVING, PATIENT CLINICALLY IMPROVING. PATIENT WEANING FROM VENTILATOR ON 05.02.2017. HENCE PATIENT SHIFTED TO ROOM ON 06.02.2017. PATIENT CLINICALLY IMPROVING, HENCE ADVICE DISCHARGE. CONDITION OF PATIENT AT DISCHARGE, CONSCIOUS, ORIENTED, RESPONDS TO ORAL COMMANDS, AFEBRILE, VITALS STABLE."

Accordingly, he seeks Rs.60,00,000/- (Rupees Sixty Lakhs Only) as compensation from the respondents.

Second respondent's case

5.The 2nd respondent – Insurance Company filed a counter affidavit stating that the first respondent did not have a valid driving license on the date of accident, which constitutes a breach of the insurance policy condition. The petitioner was also overspeeding which resulted in his inability to control the vehicle, leading to a collision with the 1st respondent's vehicle and causing the accident. The petitioner has no permanent income; hence, the compensation claimed by the petitioner is



excessive. The petitioner has to prove that the first respondent had a valid driving license and that his vehicle was insured and that the injuries sustained and the medical expenses incurred are genuine. Accordingly, the second respondent prayed to dismiss the original petition.

6.During enquiry, the petitioner was examined as PW1, one Mohan Kumar was examined as PW2 and Ex.P1 to Ex.P10 were marked. On the side of the respondents R.W.1 was examined and Ex.R1 to Ex.R5 were marked. Ex.C1 was marked as a Court document.

7.At the time of the accident, the petitioner was working in a private company and earning a montly salary of Rs.26,500/-. The petitioner spent a sum of Rs.6,57,890/- on medical expenses and other medical charges.

8.The Tribunal after hearing both sides and considering the evidence available on record concluded that the petitioner suffered 80% disability due to the head injury, he could not earn. Further, the Medical Board, Government Hospital, Tiruppur, assessed his disability as 80% permanent. The Tribunal, therefore, concluded that the petitioner has lost



his earning capacity. Accordingly, the Tribunal concluded that the petitioner suffers with 90% functional disability. Further, the Tribunal, based on Ex.P6 income tax return and evidence of PW2 and salary certificate, determined the petitioner's loss of annual income at Rs.3,78,150/-. The petitioner was 48 years old. Therefore, the Tribunal applied a 30% future prospectus and adopted a multiplier of 13 and finally arrived at the loss of earning capacity at Rs.48,36,780/- The break up of the Award as hereunder:-

Sl.No.	Heads	Amount
1.	Loss of Income (4,13,400x13x90/100)	Rs.48,36,780/-
2.	Pain and suffering	Rs.1,00,000/-
3.	Extra nourishment	Rs.25,000/-
4.	Attender charges	Rs.15,000/-
5.	Transport expenses	Rs.15,000/-
6.	Loss of income during treatment period	Rs.26,130/-
7.	Medical expenses	Rs.6,57,890/-
	Total	Rs.56,75,800/-

Questioning the quantum of compensation awarded by the Tribunal, the Insurance Company filed this appeal.

9.When the matter was taken up on December 11, 2024, this Court directed the petitioner / claimant to appear before this Court on January 9, 2025. On January 9, 2025, the petitioner / claimant appeared



before this Court. This Court interacted with the petitioner. In this case at the instance of the appellant the petitioner was directed to appear before the Coimbatore Medical College Hospital, Coimbatore District, as per order dated June 28, 2024. As per the order of this Court, the Coimbatore Medical College Hospital examined the petitioner / claimant and sent a report. The said report has been marked as Ex.C2 in the CMA. The Coimbatore Medical Board assessed the petitioner's / claimant's disability at 67%. It was also determined that the petitioner suffers 61% Locomotor Disability and 20% Visual Disability. The Medical Board, therefore, ultimately calculated the overall disability at 67%.

10.The learned counsel appearing for the appellant / insurance company would submit that as per Ex.C1 disability certificate issued by Government Hospital Tirupur, the petitioner suffered 80% permanent disability. As per Ex.C2 issued by the Coimbatore Medical College Hospital, the petitioner suffers 67% disability. The petitioner is not taking any further treatment. After the treatment, the petitioner is alright and he has no disability. Therefore, the tribunal was incorrect in adopting multiplier method. Furthermore, the Tribunal erred in calculating 90% functional disability without any basis. Accordingly, the learned



counsel prayed to allow this Civil Miscellaneous Appeal.

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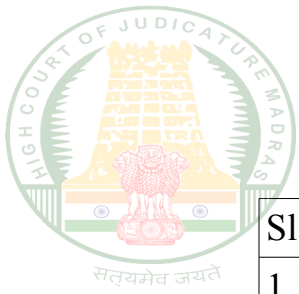
11.Per contra, the learned counsel for the petitioner / claimant would argue that through Ex.C1 disability certificate issued by Government Hospital, Tiruppur, the petitioner's disability was assessed at 80% whereas, the Coimbatore Medical College Hospital assessed it at 67% permanent disability. The petitioner was working in Parameswari Textiles and earned a sum of Rs.26,500/-. However, due to the accident, the petitioner suffered a brain injury and lost his job. Hence, he cannot continue his job. Hence although the Medical Board assessed 67% functional disability, the petitioner's ability to work was significantly impacted. In view of the nature of job to be performed by the petitioner and due to the injury, he lost his job. Therefore, the functional disability is 100%. Ex.P6 to Ex.P8 along with the evidence of PW2 clearly show the petitioner earned a sum of Rs.26,500/- per month. Accordingly, the petitioner / claimant seeks an enhancement of compensation.

12.This Court considered the submissions of both sides. An FIR was registered against the first respondent vehicle. Based on the evidence of PW1 coupled with the other evidence, the Tribunal concluded



that the accident occurred due to the rash and negligent driving of the first respondent. The insurance company did not adduce any evidence contrary to the petitioner's evidence. Hence, the first respondent is held responsible for the accident. The respondent side established that at the time of accident, the rider of the first respondent's vehicle did not possess a valid driving licence to ride the motorcycle. Hence, the Tribunal directed the second respondent / insurance company to pay the compensation to the petitioner and recover the same from the first respondent thereafter. To that extent, this Court is of the view that the Tribunal finding is correct.

13.As far as quantum of compensation is concerned, Ex.C1 assesses the disability at 80%, whereas, Ex.C2 mentions 67% permanent disability. The petitioner /claimant appeared before this Court. This Court interacted with the petitioner / claimant and observed the scar from the injury. In view of the brain injury, the petitioner is unable to continue the job, through in Ex.C2, 67% permanent disability has been assessed. Taking note of the petitioner's financial loss and his earning capacity, this Court is of the view that the petitioner would have lost at least 90% of his functional disability. Ex.P6 to Ex.P8 are the income tax returns filed by the petitioner to prove his income.

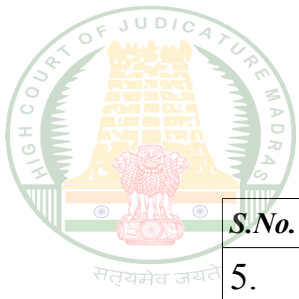


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Sl.No.	Exhibits	Assessment year	Income from Salary
1.	Ex.P6	2014-2015	Rs.2,52,000/-
2.	Ex.P7	2015-2016	Rs.2,88,000/-
3.	Ex.P8	2016-2017	Rs.3,18,000/-

14. Moreover, PW2, the employer of the petitioner was examined and deposed that the petitioner earned a sum of Rs.26,500/-, and to that effect, issued a salary certificate. The petitioner's date of birth is 10.06.1968 and the accident occurred on January 30, 2017. At the time of the accident, the petitioner had completed 49 years. Hence, as per the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi & Others [2017 (16) SCC 680]***, 25% future prospectus shall be applied. As per the judgment of the Hon'ble Supreme Court in ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Another [2009 (6) SCC 121]***, proper multiplier 13 is correct. Therefore, this Court arrives at a sum of Rs.3,97,500/- p.a. as compensation under the head 'loss of income'. The compensation is calculated as detailed below:-

S.No.	Head	Amount
1.	Loss of income (3,18,000+79,500(25%) 3,97,500 x 13x90/100)	Rs.46,50,750/-
2.	Pain and suffering	Rs.1,00,000/-
3.	Extra nourishment	Rs.25,000/-
4.	Attender charges	Rs.15,000/-



S.No.	Head	Amount
5.	Transport expenses	Rs.15,000/-
6.	Medical expenses	Rs.6,57,890/-
	Total	Rs.54,63,640/-

15.Since the multiplier method was adopted by the Tribunal while awarding compensation, awarding loss of income during treatment period is hereby *set aside*.

16.In the result, the cross objection No.86 of 2021 is dismissed. The appeal filed by the second respondent / insurance company in CMA.No.1515 of 2020 is partly allowed and the compensation awarded by the Tribunal viz. **Rs.56,75,800/- is hereby reduced to Rs.54,63,640/-** (Rupees fifty four lakhs sixty three thousand and six hundred and forty only). The respondent / Insurance Company is directed to deposit the reduced compensation along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount if any already deposited to the credit of M.C.O.P.No.896 of 2017 on the file of Motor Accidents Claims Tribunal Special District Judge, Tiruppur, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment. Thereafter, recover the compensation amount from the first



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respondent. No costs. Consequently, connected miscellaneous petition is closed.

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[J.N.B., J.]

[R.S.V., J.]

28 / 01 / 2025

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
av/tk

To

The Motor Accidents Claims Tribunal,
Special District Judge
Tiruppur.



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CMA NO.1515 OF 2020 and Cross Objection No.86 of 2021

J.NISHA BANU, J.

AND

R.SAKTHIVEL, J.

av/tk

PRE-DELIVERY JUDGMENT MADE IN
CMA NO.1515 OF 2020
and
Cross Objection no.86 of 2021

28 / 01 / 2025

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