IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 15.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.561 of 2025 and
Cross objection No.14 of 2025 and
CMP No.4293 of 2025

CMA No.561 of 2025

Reliance General Insurance Co. Ltd.,
Branch Manager, 4/3-1 & 3/2 M, 11th Main,
3rd Block, Jaya Nagar, Bangalore 560 061. ... Appellant

Vs.

1. Muniraj
2. S.Prasanna ... Respondents

Prayer in CMA No.561 of 2025: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the award and decree dated 05.04.2016 made in MCOP No.289 of 2013 on the file of the Sub Court, Motor Accident Claims Tribunal, Hosur.

Cross Objection No.14 of 2025

Muniraj .. Cross Objector

Vs.

1. Reliance General Insurance Co. Ltd.,
   The Branch Manager, 4/3-1 & 3/2 M, 11th Main,
   3rd Block, Jaya Nagar, Bangalore 560 061.

2. S.Prasanna ... Respondents

Prayer in CMA No.561 of 2025 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the award and decree dated 05.04.2016 made in MCOP No.289 of 2013 on the file of the Sub Court, Motor Accident Claims Tribunal, Hosur.

Prayer in Cross Objection No.14 of 2025: Cross objection filed under Order 41 Rule 22 of CPC against the award and decree dated 05.04.2016 made in MCOP No.289 of 2013 on the file of the Sub Court, Motor Accident Claims Tribunal, Hosur.

In CMA No.561 of 2025

For appellant : Mr. S.Arunkumar

For Respondents : Mr.P.Dinesh Kumar
for M/s Mukund R.Pandian for R1
Notice dispensed with for R2

In Cross obj.No.14 of 2025

For Cross objector: Mr. P.Dinesh Kumar
for M/s Mukund R.Pandian

For Respondents : Mr.S.Arunkumar for first respondent
Notice dispensed with for R2

COMMON JUDGMENT

This civil miscellaneous appeal has been filed by the insurance company and the cross objection has been filed by the injured claimant and both have been filed challenging the award passed by the Tribunal in MCOP No.289 of 2013, dated 05.04.2016.

2. For the sake of convenience, the parties are referred to as per their ranking in CMA No.561 of 2025.

3. According to the first respondent/injured claimant, he was

travelling in a bullock cart along with one Srikanth and his son Barath. When they were proceeding in Hosur-Krishnagiri National Highway, a container lorry belonged to the second respondent and insured with the appellant herein came in a rash and negligent manner and dashed against the bullock cart from the back side. As a result of accident, the first respondent/ claimant sustained grievous injuries and he was treated in hospital. Hence, the first respondent filed a claim petition before the Tribunal seeking compensation of Rs.50,00,000/-

4. The second respondent herein remained exparte before the Tribunal and the appellant herein, insurer of the container lorry filed counter and contested the claim petition. It was the case of the insurer before the Tribunal that the accident had occurred only due to the rash and negligent driving of the bullock cart by its driver.

5. The Tribunal, based on evidence available on record, came to the conclusion that the accident had occurred only due to the negligent driving of the container lorry by its driver and accordingly, directed the insurance company to pay compensation in its capacity as insurer of the

container lorry. The amount payable to the claimant was quantified at Rs.19,40,000/-. Aggrieved by the said award passed by the Tribunal, the insurance company has filed the present appeal and not satisfied with the quantum of compensation, the claimant filed the Cross Objection seeking enhancement of compensation.

6. The learned counsel for the appellant/insurance company would submit that the claimant has not subjected himself for examination by the medical Board and therefore, the Tribunal committed an error in fixing 75% disability, based on the disability certificate issued by the private doctor.

7. The learned counsel for the first respondent/injured claimant would submit that the notional income of Rs.6,500/- fixed by the Tribunal is very meager and hence, the same requires enhancement.

8. In the present case on hand, the accident had occurred in the year 2012, well prior to the judgment delivered by a Division Bench of this Court in ***The Branch Manager, TATA AIG General Insurance***

Company Limited Vs. Prabhu and another reported in ***2016 (1) TANMAC 609***, in which it was held that examination of the injured by the Medical Board is a compulsory one. Therefore, since the accident in the instant case had occurred prior to the direction issued by the Division Bench of this court in the above mentioned case, the claimant can very well rely on the evidence of PW3 doctor and the disability certificate issued by him.

9. It is seen from the records that the PW3, who examined the claimant deposed that he was an orthopaedic surgeon and due to the head injury suffered by the claimant, he was disabled from attending the day to day activities and hence, he fixed 75% disability. Though he deposed about the neurological deficit suffered by the claimant, as seen from his evidence, he was only an orthopaedic surgeon. The claimant has not examined any neurologist to prove the alleged neurological deficit suffered by him.

10. It is the case of the claimant that the deceased was a painter

and due to the injury suffered by him, he is not in a position to discharge his duties as painter. Therefore, the amount fixed by the Tribunal at Rs.6,500/- as notional income needs enhancement.

11. The Tribunal fixed a sum of Rs.6,500/- as notional income of the deceased, based on the judgment of the Apex Court in ***Syed Saidq and others Vs. Divisional Manager, United India Insurance Company Limited reported in2014(1) TN MAC 459 (SC)*** and applied multiplier method. The Tribunal also granted 50% enhancement towards future prospects. But, the claimant is not in permanent employment and hence, as per the law settled by the Apex Court in ***Pranay Sethi*** Case, the claimant is entitled to only 40% enhancement towards future prospects. Therefore, 50% future prospects fixed by the Tribunal is on higher side and the same is reduced to 40%. Though the Tribunal had taken 75% disability as assessed by the orthopaedic surgeon, it appears, he is not a doctor, who treated the claimant at the time of accident. Further, he is not an expert in neurology. Taking into consideration all the above factors, this court feels that there is no necessity to enhance the notional income of Rs.6,500/- fixed by the

Tribunal.

12. As discussed earlier, the evidence of PW3 and the disability certificate issued by him, which was marked as Ex.P29, cannot be ignored merely on the ground that the claimant was not examined by the Medical Board, since the accident had occurred prior to the delivery of judgment by the Division Bench in the ***Prabhu case*** cited supra. Therefore, I do not find anything to interfere with the findings of the Tribunal and hence, the impugned award passed by the Tribunal is affirmed.

13. Accordingly, the CMA No.561 of 2025 filed by the insurance company is dismissed. The Cross Objection No.14 of 2025 filed by the claimant is also dismissed. Connected miscellaneous petition is closed.

14. The appellant/ insurance company is directed to deposit the compensation amount as awarded by the Tribunal 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. On such

deposit being made, the first respondent/claimant shall be permitted to withdraw the compensation amount along with interest and costs, less the amount if any, already withdrawn, by making formal application before the Tribunal. There shall be no order as to costs.

15. It is seen that the first respondent/ claimant is represented by his wife before the Tribunal. Therefore, if any application is filed by the first respondent rep. by his wife for withdrawal of the amount, the Tribunal shall permit the claimant, after due verification.

15.04.2025

Index :Yes/No
Speaking order : Yes/No
Neutral citation : Yes/No
mst

To

1. The Sub Judge,
   Motor Accident Claims Tribual, Hosur.

2. The Section Officer,
   V.R. Section, Madras High Court.

S.SOUNTHAR, J.
mst

CMA No.561 of 2025 and
Cross Objection No.14 of 2025

15.04.2025