IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 400 of 2011
&
Cross-Objection No. 162 of 2011

ICICI Lombard General Insurance Co. Ltd.,
No.140, Nungambakkam High Road,
Chennai – 600 034. ... Appellant in C.M.A. No. 400 of 2011/1st respondent in Cross-objection No. 162 of 2011/2nd Respondent

Vs.

1. Abdullah ... 1st respondent in C.M.A. No. 400 of 2011/Cross-Objector in Cross objection. 162/2011/Petitioner

2. S. Nobinraj ... 2nd respondent in C.M.A. No.400 of 2011 as well as Cross-objection No.162 of 2011/1st Respondent

(R2 ex parte in Lower Court)

Prayer: Civil Miscellaneous Appeal and Cross-Objection as against the judgment and decree dated 29.06.2010 passed in M.C.O.P. No. 469 of 2008 by the Motor Accidents Claims Tribunal (VI Court of Small Causes), Chennai. Cross Objection under Order 41 Rule 22 CPC to modify the Tribunals award and enhance the compensation as prayed for in cross objection .

For Appellant in C.M.A. No.400 of 2011/1st respondent in Cross-objection No. 162 of 2011	:	Mrs. R. Sreevidhya for M/s.K.S.Narasimhan
For 1st respondent in C.M.A. No. 400 of 2011/Cross-Objector in Cross Objection No. 162/2011	:	Mr.G. Balaji Prasad
R2	:	Exparte before trial Court

J U D G M E N T

The Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the award of Rs.10,04,160/- as well as against the fastening of liability on them in respect of the accident, which occurred on 09.12.2007, in which the claimant/1st respondent in the appeal, got injured resulting in amputation of his left leg above knee.

2. The claimant has also preferred a Cross-Objection seeking enhancement of the compensation awarded by the Tribunal.

3. Heard Mrs.R. Sreevidhya, learned counsel for the Insurance Company and Mr. G. Balaji Prasad, learned counsel for the claimant.

4. Learned counsel for the appellant would submit that the accident occurred because of the collision of the two-wheeler driven by the claimant and a bus belonging to the State Transport Corporation, as evident from Ex-R2, Copy of Accident Register. The said document is the earliest document and there is no reference in the said document with regard to the involvement of the lorry insured with the appellant Insurance Company in the accident in question. Further, she would submit that, P.W.4, an eye-witness to the occurrence, had given the information for preparation of Accident Register, Ex-R2 and he could not have given a wrong information. Therefore, the learned counsel for the appellant would submit that the award passed by the Tribunal is liable to be set aside.

5. On the other hand, learned counsel for the claimant would submit that the First Information Report, Charge Sheet and Sketch would disclose that only the lorry insured with the appellant hit the two-wheeler and therefore, the Tribunal was right in coming to the conclusion that the accident occurred because of the negligence on the part of the driver of the lorry. Further, he would submit that though the Tribunal took Rs.5,000/- as the monthly income of the claimant, "Future Prospects" was not taken into consideration. According to him, the amounts awarded under the other heads are also low. Therefore, he seeks enhancement of the compensation awarded by the Tribunal.

6. A close scrutiny of the documents, especially, Ex-P1, FIR, Ex-P2, charge sheet and Ex-P12, rough sketch, would show that the accident occurred because of the lorry dashing against the two-wheeler. The Tribunal rightly rejected the theory putforth by the Insurance Company that the lorry was not involved in the accident as

FIR speaks about its involvement in the accident. The Insurance Company cannot take advantage, by relying on Ex-R2, as it was not signed by any of the parties, as rightly observed by the Tribunal. Moreover, P.W.4, an eye-witness to the occurrence, has categorically stated that at the time of accident, a lorry bearing Registration No. TCA 1020, coming behind, on the road, where the accident occurred, in a rash and negligent manner, tried to overtake the motor cycle, driven by the claimant, from the right side, but, could not do so, as an MTC bus was coming from the opposite side; therefore,the said lorry tried to overtake the two-wheeler from the left side and in that process, dashed against the two-wheeler. Hence, the finding rendered by the Tribunal that the accident occurred because of the rash and negligent driving by the driver of the lorry and that the lorry driver alone was responsible for the accident, cannot be found fault with and the contention putforth by the Insurance Company is rejected.

7. As far as the quantum is concerned, the claimant, aged about 21 years, was working as a driver, earning about Rs.5000/- per month and the said amount was rightly taken as monthly income. However, “Future Prospects” was not considered as per the judgment of the Honourable Apex Court rendered in Santosh Devi V. National Insurance Company Ltd. and others reported in 2012 6 SCC 421. Hence, 50% has to be added towards “Future Prospects” considering the age of the claimant. The total monthly income of the claimant, after addition of 50% towards “Future Prospects”, would be,

Monthly Income	::	Rs.5000/-
Add: 50% towards Future Prospects	::	Rs.5000/- + 50% (Rs.5000/-)
Total monthly income	::	Rs.7500/-

8. The claimant sustained crush injury leading to amputation of left leg above knee and also sustained fracture of olecranium left and was treated as an in-patient from 09.12.2007 to 02.02.2008 at Stanley Medical College Hospital. He underwent surgery on 17.01.2008 whereby K wire fixation and amputation was done. Though the Doctor, P.W.2, deposed that permanent disability sustained is 80% because of amputation of leg and partial disability sustained is 20% because of fracture in left hand, the Tribunal fixed the disability at 80% pragmatically. As the claimant was deprived of carrying on his avocation as Driver, the Tribunal rightly applied multiplier method and adopting the same, “Loss of Income due to disability”, would be,

Loss of income due to disability at 80%	::	Rs.7500 x 12 x 17 x 80/100
	::	Rs.12,24,000/-

9. The Tribunal found that, for 6 months, the claimant could not do any work because he was under treatment as an in-patient for more than two months and also underwent surgery. Therefore, for "Loss of Income for 6 months", the Tribunal awarded Rs.30,000/- and the same is enhanced to Rs.45,000/- @ Rs.7500/- per month. The sum of Rs.10,000/- awarded towards "Transportation Expenses" is too low and the same is enhanced to Rs.20,000/-. Similarly, Rs.10,000/- awarded towards "Extra Nourishment" is enhanced to Rs.20,000/-. However, the amounts awarded under the heads "Damage to Clothing", "Attendant Charges", "Pain and Suffering" and "Medical Expenses", namely, Rs.1000/-, Rs. 30,000/-, Rs.1,00,000/- and Rs.7,100/- are very reasonable and hence, confirmed. The compensation awarded by the Tribunal, to the tune of Rs.10,04,100/- is enhanced to Rs. 14,47,100/-, rounded off to Rs. 14,50,000/-. The rate of interest awarded by the Tribunal, namely, 7.5% per annum remains unaltered.

10. The Insurance Company has already deposited the entire amount, awarded by the Tribunal, as per order dated 21.02.2011 in M.P. NO. 1 of 2011 passed by this Court and the claimant has also withdrawn 50% of the deposited amount. The claimant is now permitted to withdraw the remaining amount lying in deposit with proportionate accrued interest.

11. As far as the enhanced award amount, as per the modified award passed by this Court, is concerned, the Insurance Company is directed to deposit the enhanced award amount, with interest and costs, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to re-invest the same in interest bearing Fixed Deposit in Indian Bank, High Court Branch, Chennai, atleast for a period of three years. The claimant is permitted to withdraw interest accruing on such deposit once in three months. The claimant shall pay appropriate court-fee for the enhanced amount, if any.

12. In the result, the appeal filed by the Insurance Company is dismissed and the Cross-objection filed by the claimant is partly allowed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

nv

To

1.The MACT (VI Court of Small Causes),
Chennai.

2.The Section Officer,
VR Section,
High Court, Madras.

Copy To

The Manager,
Indian Bank,
High Court Branch,
Chennai - 104

+1cc to Ms.R.Sreevidya, Advocate, S.R.No.12040
+1cc to M/s.RS.Gangaram Prasad, Advocate, S.R.No.11636

C.M.A. No. 400 of 2011
&
Cross-Objection No. 162 of 2011

TEJ(CO)
CA(26/06/2015)