

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No.672 of 2011

&

Cross-Objection No. 62 of 2015

&

M.P. No. 1 of 2011

The Manager,
The Cholamandalam MS General
Insurance Co. Ltd.,
"Dare House", New No.2,
Old No. 234, NSC Bose Road,
Chennai -1.

...Appellant in C.M.A. No.
672/2011/1st respondent in
Cross-Objection No. 62/
2015 (2nd Respondent)

Vs.

1. J. Mohamed Arif

... 1st respondent in C.M.A.
No.672/2011/Cross-
Objector (Petitioner)

2. S. Abdul Samad

... 2nd respondent in appeal
(2nd respondent ex parte in Lower Court as well as Cross-objection
and hence notice may be dispensed with). (1st Respondent)

Prayer: Civil Miscellaneous Appeal and Cross-Objection as against
the judgment and decree dated 18.09.2010 passed in M.C.O.P. No. 2069
of 2006 by the Motor Accidents Claims Tribunal (II Court of Small
Causes), Chennai.

For Appellant in appeal/
1st respondent in
Cross-Objection :: Mr.M.B. Raghavan

For Respondents
R1 in appeal/Cross
Objector :: Mr.A.A. Venkatesan
R2 in appeal/
Cross-Objection :: Ex parte

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.5,65,300/- passed by the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai, in favour of the 1st respondent in the appeal/claimant for the injuries sustained by him in the accident, which occurred on 06.07.2005. Challenging the said award, the claimant has also preferred Cross-Objection No. 62 of 2015.

2. Heard Mr.M.B. Raghavan, learned counsel for the Insurance Company and Mr.A.A. Venkatesan, learned counsel for the claimant.

3. It is seen from the records that the claimant sustained communitated fracture of lower femur with fracture medial condyle tibia and he was admitted as an in-patient in Aysha Hospital on 06.07.2005 and discharged on 16.07.2005. Surgery was conducted on 06.07.2005 and the surgery procedure was Orif with Cobra Plate Fixation closed screw fixation of Tibial condyle. Thereafter, he was admitted on 11.05.2005 and discharged on 12.05.2005 and again, he was admitted on 12.06.2006 and discharged on 17.06.2006, as evident from Ex-P8, Discharge Summary issued by the said hospital. A perusal of Ex-P8 would reveal that the claimant underwent surgery again during which time the implant plate screws were removed. Even thereafter, the claimant had taken further treatment in Bone and Joint Hospital, as could be seen from Ex-P10, the out-patient service card issued by the said hospital. On account of the injuries sustained, the claimant is unable to walk fast, climb stairs, squat on the floor and use Indian toilet. Moreover, he is not in a position to travel and also drive vehicle. Eventhough the Doctor assessed the disability at 60%, the Tribunal, based on Doctor's evidence and medical records, fixed the disability at 40%, which is very reasonable and the same is confirmed.

4. Eventhough the claimant claimed that he is a Civil Contractor, the Tribunal, in the absence of any documentary evidence, fixed the notional income of the claimant at Rs.3000/- per month and awarded a sum of Rs. 6000/- (Rs.3000 x 2) towards "Loss of Income for 2 months during treatment period". Towards "Continuing Permanent Disability", a sum of Rs.40,000/- was awarded @ Rs.1000/- per percentage of disability. Though a sum of Rs.1 lakh was claimed towards "Medical Expenses", the Tribunal, based on Ex-P11, medical bills, rightly awarded a sum of Rs.88,300/-. The other amounts, namely, Rs. 2000/- awarded towards "Extra Nourishment", Rs.1000/- awarded towards "Transport Charges" and Rs.20,000/- towards "Pain and Suffering" are reasonable and are confirmed. While calculating "Loss of Future Income", though the Tribunal wrongly deducted one-third towards "Personal Expenses" of the claimant and took Rs.2000/- as his monthly earning and arrived at Rs.4,08,000/- by applying multiplier 17, (Rs.2000 x 12 x 17) under the said head, taking into consideration, the nature of injuries sustained by the claimant and

the overall compensation amount granted by the Tribunal, namely, Rs.5,65,300/- this Court is not inclined to interfere with the award passed by the Tribunal and the same is confirmed. The rate of interest awarded by the Tribunal @ 7.5% per annum is also confirmed.

5. The appellant Insurance Company is directed to deposit the entire award amount, together with accrued interest and costs, after deducting the amount, if any, already deposited, 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 claimant is permitted to withdraw the same within a period of one week thereafter.

6. In the result, the Civil Miscellaneous Appeal and the Cross-Objection are dismissed. No costs. Connected M.P. is closed.

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s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

1. The MACT (II Court of Small Causes), Chennai.
2. The Section Officer,
V.R.Section, High Court,
Madras-104.

+ 1 cc to Mr.A.A.Venkatesan, Advocate SR 30463

+ 1 cc to Mr.N.Vijayaraghavan, Advocate SR 30201

nm(co)
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