

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2015

CORAM

THE HONOURABLE MR.JUSTICE N. KIRUBAKARAN

C.M.A.No. 377 of 2014

and

CROSS. OBJ. No.36 of 2014

The Oriental Insurance Company Limited,  
Oriental House, 2<sup>nd</sup> Floor,  
Old No.115, New No.216  
Prakasam Salai, Broadway,  
Chennai 108.

... Appellant/R2

Vs.

1.M. Ravikumar

...Petitioner and  
1st Respondent

2.S.Samundeeswari

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgment dated 7<sup>th</sup> day of October, 2013 made in M.C.O.P.No.5562 of 2012, on the file of Motor Accident Claims Tribunal (V Court of Small Causes) of Madras.

Cross Appeal No. 36 of 2014:

The Oriental Insurance Company Limited,  
Oriental House, 2<sup>nd</sup> Floor,  
Old No.115, New No.216  
Prakasam Salai, Broadway,  
Chennai 108.

... Cross Appellant/R1

Vs.

1.M. Ravikumar

... R1/Appellant in CMA

2.S.Samundeeswari

...R2/R2

PRAYER IN Cross Appeal No. 36 of 2014: Cross Objection is filed to enhance the judgment and decree of the claims Tribunal in its award dated 07.10.2013 and made in MCOP.No.5562/2012 on the file of Motor Accident Claims Tribunal, V Judge Small Causes Court, Chennai.

For Appellant in CMA and  
For 1st Respondent in Cross.OBj : Mr.S. Manohar

For Respondent in CMA and  
For appellant in Cross.OBj : Mr.F. Terry Chellaraja  
For RR2 : Ex parte

#### O R D E R

The appeal has been preferred by the Insurance Company against the award of Rs.4,39,500/- as compensation for the injuries sustained by the first respondent in the accident which occurred on 17.11.2012, while he was crossing the road and hit by the car belonging to the second respondent and insured with the appellant Insurance Company.

2. Heard Mr.S.Manohar, learned counsel for the appellant and Mr.F.Terry Chellaraja, counsel appearing for the first respondent/claimant. The respondent also filed Cross Appeal to enhance the compensation awarded by the Tribunal. The only question to be decided is with regard to the quantum of compensation. The claimant sustained comminuted fracture on right shoulder joint back scapular body and the bone got united in compressed manner that the right shoulder muscles becoming stiff and contracted, the right shoulder movement restricted and became painful. Therefore, the PW2, doctor determined the disability at 45% as per Ex.P13, disability certificate. The said determination cannot be found fault with as it is supported by the other medical records, namely, Exs.P5 to P12. However, the Tribunal in the absence of any contra evidence with regard to disability determines the disability at 25%, which is unwarranted. Therefore, this Court redetermines disability at 45%. Though this Court determines disability at 45%, application of multiplier method as done by the Tribunal is deleted as it is unwarranted. Therefore, awarding a sum of Rs.3,000/- per percentage, this Court awards a sum of Rs.1,35,000/- towards disability. Rs.75,000/- awarded towards pain and sufferings is on the higher side and the same is reduced to Rs.40,000/-; Rs.50,000/- towards loss of amenities is confirmed; Rs.5,000/- awarded towards transportation is enhanced to Rs.15,000/-. Similarly, Rs.5,000/- towards extra nourishment is enhanced to Rs.14,000/-; Rs.10,149/- awarded towards medical expenses; Rs.5,000/- awarded to attendant charges, Rs.1,000/- awarded to damage to clothes are confirmed. Award of Rs.4,39,500/- is reduced to Rs.2,70,149/- and rounded off to Rs.2,70,000/- along with 7.5% interest as compensation.

3. The appellant is directed to deposit the modified award amount after deducting the amount already deposited, if any, within a period of four weeks from the date of receipt of the copy of the order. On such deposit, the respondent/claimant is permitted to withdraw the modified award amount within two weeks thereafter.

In the result, the appeal is partly allowed with the above modification and the compensation amount is reduced from Rs.4,39,500/- to Rs.2,70,000/-and the Cross Appeal filed by the claimant is dismissed. No costs.

Sd/-  
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gv

To

The (V Court of Small Causes) of Madras,  
Motor Accidents Claims Tribunal.

Copy To

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

+1cc to Mr.S.Manohar, Advocate, S.R.No.9800  
+1cc to M/s.M.Malar, Advocate, S.R.No.9837

सत्यमेव जयते

C.M.A.No. 377 of 2014  
and  
CROSS. OBJ. No.36 of 2014

SAI (CO)  
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