IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 02.11.2015

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A. No.154 of 2010 & Cross Objection No.22 of 2010
and MP.NO.1 of 2010

United India Insurance Co. Ltd.,
Motor Third Party Claims Office,
No.38, Anna Salai,
Chennai – 600 002. .. Appellant in CMA.154/10/R2 & 1st respondent in Cr.Obj.22/10

Vs

1.M.Venkatesan .. 1st Respondents in CMA.154/10/Claimant & Cross Objector in Cr.Obj.22/10

2.M.Paulraj .. 2nd Respondent in CMA.154/10/R1 & in 2nd Respondent Cr.Obj.22/10
(R2 set exparte in lower court

C.M.A.No.154 of 2010 is filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 31.08.2009 made in MCOP No.2807 of 2006 on the file of the Motor Accident Claims Tribunal (II Judge, Court of Small Causes) at Chennai.

Cross Objection No.22 of 2010 is filed under Order 41 Rule 22 of the Code of Civil Procedure against the judgment and decree dated 31.08.2009 made in MCOP No.2807 of 2006 on the file of the Motor Accident Claims Tribunal (II Judge, Court of Small Causes) at Chennai.

CMA No.154 of 2010

For Appellant : Mr.C.Paranthaman
For R1 : Mr.C.Munusamy
for M/s.C&K Law Firm

Cross Obj.No.22 of 2010

For Cross Objector : Mr.C.Munusamy
for M/s.C&K Law Firm
For R1 : Mr.C.Paranthaman

COMMON JUDGMENT

C.M.A.No.154 of 2010 is preferred by the appellant-Insurance Company against the award dated 31.08.2009 made in MCOP No.2807 of 2006 on the file of the Motor Accident Claims Tribunal (II Judge, Court of Small Causes) at Chennai.

2.Cross Objection No.22 of 2010 is filed by the claimant against the award dated 31.08.2009 made in MCOP No.2807 of 2006 on the file of the Motor Accident Claims Tribunal (II Judge, Court of Small Causes) at Chennai.

3. Background of the facts in a nutshell are as follows:

The claimant was injured in a motor vehicle accident that took place on 21.05.2006 at about 10.30 P.M. While the claimant was proceeding in his motor cycle bearing Registration No.TN-09-AF-1816 on Velachery Main Road, near Kamakodi Nagar, a Toyota Van bearing Registration No.TN-02-A-0558 was driven by its driver in a rash and negligent manner, dashed against the claimant, due to which, the claimant had sustained grievous injuries all over the body. The claimant was immediately admitted in Apollo First Med Hospital, Chennai. He claimed a sum of Rs.30,00,000/- as compensation. The appellant-Insurance Company resisted the claim.

4. After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to rash and negligent driving of the driver of the Toyota Van and awarded a compensation of Rs.8,95,360/- with interest at 9.5% per annum from the date of petition and the details of the same are as under:-

Loss of earning	-- Rs.28,000/-
Transport expenses	-- Rs.13,819/-
Extra nourishment	-- Rs.3,000/-
Damages to clothing & articles	-- Rs.1,000/-
Medical expenses	-- Rs.6,51,041/-
Future Medical expenses	-- Rs.50,000/-
For other expenses	-- Rs.1,000/-
Partial permanent disability	-- Rs.97,500/-
Pain and suffering	-- Rs.30,000/-
Loss of amenities	-- Rs.10,000/-
Loss of expectation of life	-- Rs.10,000/-
Total	-- Rs.8,95,360/-

Aggrieved by that award, the Insurance Company as well as the claimant have filed the present appeal and cross objection respectively.

5. Learned counsel appearing for the appellant/Insurance Company questioned only the quantum of compensation awarded by the Tribunal and contended that the amount awarded by the Tribunal is excessive, exorbitant, without basis and justification and the Tribunal ought not to have awarded Rs.50,000/- towards future medical expenses, when the claimant did not produce any acceptable material evidence for the same. Therefore, the award passed by the Tribunal is not in accordance with law and the same is liable to be set aside.

6. Learned counsel appearing for the respondent/claimant, who is the Cross Objector in Cross Objection No.22 of 2010, submitted that the Tribunal ought to have awarded the compensation as claimed by the claimant and the amount awarded under various heads is very low and the Tribunal has not followed the principles of assessment before passing the award. Hence, it is a fit case for enhancing the compensation.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. At the time of accident, the claimant was aged about 35 years old. As seen from Ex.P12-Salary cum service certificate issued by the Regional Manager of the Premier Auto Electric Limited, Chennai, it is clear that the injured was earning a sum of Rs.7,000/- per month. Due to the said accident that had occurred on 21.05.2006, he sustained the following injuries:

"Multiple fractures on the right leg, thigh, ankle and foot. Serious injuries over intestine and bladder. Lacerated injuries on the left leg. Abrasions on both hands. Dislocation of right elbow. Multiple injuries on all over the body. "

Immediately after the accident, he was admitted in Appollo First Med Hospital, Poonamallee High Road, Chennai and thereafter, he was taking treatment as inpatient from 21.05.2006 to 27.05.2006 and he is still taking treatment. To support such claim, he produced discharge summary, medical bills, certificate for future medical expenses, X-Ray and CD, which were marked as Exs.P1 to P9. On scrutinizing such exhibits, the Tribunal has awarded just and reasonable compensation, except on the heads of pain and suffering and permanent disability, which, in my view, cannot be a just compensation given the context of the case as he had undergone four surgeries as narrated above, therefore, in view of the ratio laid down by the Hon'ble Apex Court in the case of Ibrahim v. Raju and others (2011 ACJ 2845), compensation awarded by the Tribunal on the said heads will have to be modified. In the said judgment, the Hon'ble Apex Court, by taking note of the ratio laid down in Raj Kumar v. Ajay Kumar ((2011) 1 SCC 343) that a person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury and that he has to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he sued to earn or could have earned, held thus:

> 11. In Ward v. James (1965) 1 All ER 563, the Court of Appeal, while dealing with a case under Section 6 of the Administration of Justice (Miscellaneous Provisions) Act, 1933 made some important observations, which are extracted below:
>
> "Although you cannot give a man so gravely injured much for his `lost years', you can, however, compensate him for his loss during his shortened span, that is, during his expected `years of survival'. You can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to a back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet judges and juries have to do the best they can and give him what they think is fair. No wonder they find it well nigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The judges have worked out a pattern, and they keep it in line with the changes in the value of money."
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> 12. In R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. and others (1995) 1 SCC 551, this Court while dealing with a case involving claim of compensation under the Motor Vehicles Act, 1939, referred to the judgment in Ward v. James (supra), Halsbury's Laws of England, 4th edn., vol. 12 (page 446) and observed:
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> "Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of

money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

In the same case, the Court further observed:

"In its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards."

13. In Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka (2009) 6 SCC 1, the three-Judge Bench was dealing with a case arising out of the complaint filed under the Consumer Protection Act, 1986. While enhancing the compensation awarded by the National Consumer Disputes Redressal Commission from Rs.15 lakhs to Rs.1 crore, the Bench made the following observations which can appropriately be applied for deciding the petitions filed under Section 166 of the Act: "We must emphasise that the court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not,

and should not, come in the way of making a correct assessment, but if a case is made out, the court must not be chary of awarding adequate compensation. The "adequate compensation" that we speak of, must to some extent, be a rule of thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned. At the same time we often find that a person injured in an accident leaves his family in greater distress vis-`-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity."

(emphasis supplied)

14. In Reshma Kumari and others vs. Madan Mohan and another (2009) 13 SCC 422, this Court reiterated that the compensation awarded under the Act should be just and also identified the factors which should be kept in mind while determining the amount of compensation. The relevant portions of the judgment are extracted below:

"The compensation which is required to be determined must be just. While the claimants are required to be compensated for the loss of their dependency, the same should not be considered to be a windfall. Unjust enrichment should be discouraged. This Court cannot also lose sight of the fact that in given cases, as for example death of the only son to a mother, she can never be compensated in monetary terms. The question as to the methodology required to be applied for determination of compensation as regards prospective loss of future earnings, however, as far as possible should be based on certain principles. A person may have a bright future prospect; he might have become eligible to promotion immediately; there might have been chances of an immediate pay revision, whereas

in another (sic situation) the nature of employment was such that he might not have continued in service; his chance of promotion, having regard to the nature of employment may be distant or remote. It is, therefore, difficult for any court to lay down rigid tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort of hypotheses or guess work may be inevitable. That may be so. In the Indian context several other factors should be taken into consideration including education of the dependants and the nature of job. In the wake of changed societal conditions and global scenario, future prospects may have to be taken into consideration not only having regard to the status of the employee, his educational qualification; his past performance but also other relevant factors, namely, the higher salaries and perks which are being offered by the private companies these days. In f act while determining the multiplicand this Court in O riental Insurance C o. Ltd. v. Jas huben held that even dearness allowance and perks with regard thereto from which the family would have derived monthly benefit, must be taken into consideration. One of the incidental issues which has also to be taken into consideration is inflation. Is the practice of taking inflation into consideration wholly incorrect? Unfortunately, unlike other developed countries in India there has been no scientific study. It is expected that with the rising inflation the rate of interest would go up. In India it does not happen. It, therefore, may be a relevant factor which may be taken into consideration for determining the actual ground reality. No hard-and-fast rule, however, can be laid down therefor."
(emphasis supplied)

15. In Arvind Kumar Mishra v. New India Assurance Company Limited and another (2010) 10 SCC 254, the Court considered the plea for enhancement of compensation made by the appellant, who was a student of final year of engineering and had suffered 70% disablement in a motor accident. After noticing the factual matrix of the case, the Court observed:

> "We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered."
> (emphasis supplied)

9. In the case on hand, the injured was 35 years old at the time of accident. He was earning a sum of Rs.7,000/- per month in a private limited as stated above. The said accident resulted in causing multiple fractures over right leg thigh, ankle and foot, serious injuries over intestine and bladder and dislocation of right elbow, apart from sever injuries all over his body. After the said accident that had occurred on 21.05.2006, he took treatment in Soundarapandian Bone and Joint Hospital, Chennai, as inpatient in the Intensive Care Unit till 27.05.2006 and surgery as seen from the Discharge Summary, marked as Ex.P.1. Thereafter, he took treatment in Apollo First Med Hospital from 28.05.2006 to 19.06.2006, whereby he underwent two more surgeries on his right leg and plate and screws were implanted. Even thereafter, he was experiencing abdominal pain, therefore, he again took treatment in Apollo First Med Hospital on 30.08.2006 and underwent surgery on 31.08.2009. In spite of repeated surgeries, the injured/claimant is still taking treatment for the injuries that had occurred on fateful day. Therefore, it is a fit case where this Court can enhance the compensation by following the principles laid down in Ibrahim's case (cited supra). Accordingly, by taking note of the fact that the claimant underwent four surgeries and he even now taking treatment, this Court deems fit to enhance the compensation awarded under the head of pain and suffering, therefore, at the rate of Rs.4,500/- for each surgery, a sum of Rs.1,80,000/- is hereby awarded towards pain and suffering, instated of Rs.30,000/- awarded by the Tribunal.

10. Further, P.W.2-Doctor assessed the disability at 90%, however, the tribunal has reduced the same into 65%, for, the P.W.2 termed it as a partial permanent disability, therefore, in my view, the same cannot be disturbed. The Tribunal fixed Rs.1,500/- per percentage, which, in my view, can be enhanced to Rs.3,000/- per percentage in view of the recent judgment of this Court in National Insurance Company Limited vs. G.Ramesh, reported in 2013 (2) TN MAC 583. Accordingly, a sum of Rs.1,95,000/- (65 x 3000) is hereby awarded towards permanent

disability, instated of Rs.97,500/- awarded by the Tribunal. The details of the modified compensation as per the above said discussions are as under:-

Loss of earning	--	Rs.28,000/-
Transport expenses	--	Rs.13,819/-
Extra nourishment	--	Rs.3,000/-
Damages to clothing & articles	--	Rs.1,000/-
Medical expenses	--	Rs.6,51,041/-
Future Medical expenses	--	Rs.50,000/-
For other expenses	--	Rs.1,000/-
Permanent disability	--	Rs.1,95,000/-
Pain and suffering	--	Rs.1,80,000/-
Loss of amenities	--	Rs.10,000/-
Loss of expectation of life	--	Rs.10,000/-
Total	--	Rs.11,42,860/-

The Tribunal has fixed the rate of interest at 9.5% p.a from the date of petition, which, I feel, is just and reasonable, therefore, the same is not disturbed.

11. Learned counsel appearing for the appellant-Insurance Company submitted that they have already deposited a sum of Rs.8,00,000/- as per the order of this Court on 02.02.2010. Learned counsel appearing for the claimant submitted that the claimant had already withdrawn a sum of Rs.5,00,000/- as per the direction of this Court in the above said order. Therefore, the appellant - Insurance Company is directed to deposit the balance award amount i.e. Rs.3,42,860/- (11,42,860-800000) to the credit of MCOP No.2807 of 2006, on the file of the Motor Accidents Claims Tribunal (II Judge, Court of Small Causes), Chennai, within a period of eight weeks from the date of receipt of a copy of this judgment and on such deposit, the claimant is directed to withdraw the entire award amount lying in the said credit, on making proper application.

12. With the above modification, the Civil Miscellaneous Appeal is dismissed and Cross Objection is allowed. No costs. Consequently miscellaneous petition closed.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

rkm

To

1.The Motor Accidents Claims Tribunal,
II Judge, Court of Small Causes,
Chennai.

Copy to: The Section Officer,
VR Section, High Court, Madras

+ 1 cc to Mr.C.Paranthaman, Advocate SR.59784
+ 1 cc to M/c. C. Munusamy, Advocate Sr.59834

C.M.A. No.154 of 2010 &
Cross Obj. No.22 of 2010

KSJ(CO)
EU 22.02.16