

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.1617 of 2016
and Cross Objection No.67 of 2016
and C.M.P. No.12216 of 2016

C.M.A. No.1617 of 2016

Bajaj Allianz General Insurance
Company Ltd.,
MRV Complex,
No.5, Second Line Beach Road,
Chennai-1. .. Appellant/2nd Respondent

Versus

1.Saravanan
2.Vadivel Murugan .. Respondents/1 & 2/Claimants 1st
Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 04.09.2015 made in M.C.O.P.No.3048/2011 on the file of the Motor Accidents Claims Tribunal, (VI Judge, Court of Small Causes), Chennai.

For Appellant : Mr.Srinivasan Ramalingam
For Respondents : Mr.F.Terry Chella Raja for
Mr.V.Velu for R1

Cross Objection No.67 of 2016

Saravanan .. Arssobjanur/Claimant

Versus

1.Bajaj Allianz General Insurance
Company Ltd., MRV Complex,
No.5, Second Line Beach Road,
Chennai-1
2.Vadivel Murugan .. Respondents1 & 2/Respondent No.2 & 1

Prayer: Cross Objection filed under Order 41 Rule 22 of C.P.C. against the judgment and decree dated 04.09.2015 made in M.C.O.P.No.3048/2011 on the file of the Motor Accidents Claims

Tribunal, (VI Judge, Court of Small Causes), Chennai.

For Appellant : Mr.F.Terry Chella Raja for
Mr.V.Velu

For Respondents : Mr.Srinivasan Ramalingam for R1

C O M M O N J U D G M E N T

The appeal has been filed by the Insurance Company, challenging the impugned award dated 04.09.2015 made in M.C.O.P.No.3048/2011 on the file of the Motor Accidents Claims Tribunal, (VI Judge, Court of Small Causes), Chennai, awarding a sum of Rs.11,78,000/- as against the claim of Rs.20,00,000/- for the multiple injuries sustained by the claimant. The Cross Objection has been filed by the claimant seeking enhancement of compensation.

2.With the consent of both parties, both the matters are taken up for common disposal.

3.According to the claimant, on 23-03-2011 at about 2.00 hours, while the claimant standing at OMR Road, Padur Village, Kancheepuram District, a Sumo Victa bearing Registration No.TN 10 W 3373, which was driven by its driver, came from Chennai to Kelambakkam direction in a rash and negligent manner and dashed the claimant. Due to the accident, the claimant sustained multiple injuries all over the body. According to the claimant, the accident had occurred only due to the rash and negligent driving of the driver of the said car.

4.Learned counsel appearing for the Insurance Company would submit that when the claimant has admitted in his claim petition that his monthly income was Rs.5,758/-, the learned Tribunal travelling beyond the claim petition, has fixed an un-reasonable amount of Rs.6,500/- as monthly income of the claimant, which is un-warranted and the same is liable to be interfered with. Adding further, he would submit that when the claimant had sustained simple injuries, the learned Tribunal without analysing the same in a proper manner, has fixed 50% towards permanent disability and it ought to have determined the functional disability for the whole body, but the same has not been done. When it is not a case of multiplier to be adopted, the learned Tribunal applied the multiplier '18' and also added 50% of the income towards future prospects and arrived at a huge amount towards loss of future earning capacity, which is huge and excessive. He would further submit that the amount awarded under various other heads are also arbitrary and therefore, the same are liable to be interfered with.

5.Learned counsel for the claimant would submit that when

the Doctor has deposed that the claimant has got a permanent difficulty in squatting and limping from the date of accident and on this score has fixed 30% disability separately and for the injuries sustained by the claimant namely malunited fracture right sacral ala and right left superior public rami, has fixed 30% disability separately and has fixed only 10% for post traumatic head ache, giddiness, tremorous left hand and leg memory deficit and altogether has fixed only 70% permanent disability, the learned Tribunal has reduced the same to 50% without any reason. Therefore, the reduction of disability is contrary to the disability certificate. On this score, he pleaded for restoration of the disability at 70%. He would further submit that the learned Tribunal has wrongly fixed a sum of Rs.15,000/- each towards loss of pain suffering and loss of amenities and therefore the same need enhancement.

6.It is seen that when the poor claimant merely standing nearby the cool drink shop, was hit by the said offending vehicle. Due to the said accident, he was unable to continue his work as Electrician. The learned Tribunal, considering the injuries sustained by the claimant namely his left acetabulum left hip and muscles fibrosed left thigh flexion 60 degree IRER got limited to 50 degree and he finds difficulty to squat, limp and he also finds difficulty in continuous sitting and driving vehicles and to do his work and he also suffered from post traumatic head ache, giddiness, tremorous left hand and leg memory deficit, has fixed 50% towards permanent disability, which in my considered view seems to be exorbitant. As could be seen from the available records, it is reasonable to fix 40% towards permanent disability, hence, the same is fixed.

6.1.With regard to the monthly income of the claimant, it is seen that the claimant was earning a sum of Rs.5,758/- as monthly income, as per the claim petition. While considering the copy of the Indian Bank Pass Book, marked as Ex.P10, which shows that the claimant was an Electrician, TCS, Sipcot, Siruseri and the xerox copy of State Bank of Hyderabad, marked as Ex.P1, also shows the salary of the claimant as Rs.5,530/- per month, while so, when the learned Tribunal found that Rs.5,530/- per month was the income of the claimant, it is not known on what basis the learned Tribunal has fixed a sum of Rs.6,500/- as monthly income of the claimant. Therefore, this Court accepting the said Exhibits, is inclined to fix Rs.5,530/- as monthly income of the claimant and the same is hereby fixed.

6.2.While coming to the head 'pain and suffering' and 'loss of amenities', the claimant, after the accident was admitted in Chettinad Hospital, Chennai for treatment, as could be seen from Ex.P2/discharge summary issued by the above hospital for the injuries namely, fracture floor of left acetabulum involving

bone of superior conjoint radius, un-displaced fracture ala of right sacrum. As per Scan Report marked as Ex.P5, the claimant was taking treatment from 23.02.2011 to 12.04.2011 for various fractures sustained by him and therefore, this Court finds that the claimant would have suffered pain for long time. Instead of accepting Rs.15,000/- each fixed by the learned Tribunal, this Court is inclined to fix Rs.50,000/- each

under the head 'pain and suffering' and 'loss of amenities' and the same are hereby fixed.

6.3. In view of multiple injuries sustained at the age of 20 years, he would have lost the chance of getting suitable alliance in the marriage market and therefore, this Court finds it reasonable to fix a sum of Rs.50,000/- towards loss of marital prospects and the same is hereby fixed. This Court finds that the amount of compensation awarded under various other heads cannot be found fault. With this finding, the amount of compensation is modified as follows:

Medical expenses	..	Rs. 25,500/-
Transportation	..	Rs. 5,000/-
Extra nourishment	..	Rs. 20,000/-
Attender charges	..	Rs. 20,000/-
Damages to clothes	..	Rs. 5,000/-
Loss of future earning capacity ($5530+2765 \times 12 \times 18 \times 40\%$)	..	Rs.7,16,688/-
Loss of income for 3 months	..	Rs. 16,590/-
Pain and sufferings	..	Rs. 50,000/-
Loss of Amenities	..	Rs. 50,000/-
Loss of marital prospects	..	Rs. 50,000/-

		Rs.9,58,778/-

7. Accordingly, the appeal filed by the Insurance Company and the Cross Objection filed by the claimant stand disposed of. No costs. Consequently, connected CMP. is closed.

8. It is stated that 50% of the award amount has already been deposited by the Insurance Company. Therefore, the Insurance Company is directed to deposit the balance amount within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is open to the claimant to withdraw the same.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
(VI Judge, Court of Small Causes), Chennai.

+1cc to Mr.Srinivasan Ramalingam, Advocate, S.R.No.63703

+1cc to Mr.V. Velu, Advocate, S.R.No.63734

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md(16/12/2016)

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