

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

CIVIL MISCELLANEOUS APPEAL No.2037 of 2015
and
Cross Objection No.98 of 2015

C.M.A.No.2037 of 2015 :

M/s.New India Assurance Co. Ltd.,
No.45, V Floor,
Moore Street,
Chennai 600 001. ... Appellant/Ist Respondent

vs.

1. P.Manoharan
2. P.Raja Boopathi ... Respondents/Petitioner & II Respondent

Cross Objection No.98 of 2015 :

P.Manoharan ... Cross Objector/I Respondent

vs.

1. The New India Assurance Company Limited,
No.45, V Floor, Moore Street,
Chennai 600 001.
2. P.Raja Boopathi ... Respondents/Appellant/2nd Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 and Cross Objection filed under Order 41 Rule 22 C.P.C. against the judgment and decree dated 13.11.2014 made in M.C.O.P.No.1289 of 2012, on the file of the Motor Accidents Claims Tribunal, (II Judge), Small Causes Court, Chennai.

For Appellant in
C.M.A.No.2037/2015
and 1st Respondent in
Cross Obj No.98/2015 : Mr.J.Chandran

For 1st Respondent in
C.M.A.No.2037/2015
and Cross Objector in
Cross Obj.No.98/2015 : Mr.V.Mohan Choudhary

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

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

Since the issue involved in both the Appeal and the Cross Objection is one and the same, they are taken up for disposal by a common judgment. For better understanding, the parties are hereinafter referred to as 'Insurance Company' and the 'claimant'.

2. Heard the learned counsel for the Insurance Company and the learned counsel appearing for the claimant.

3. Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal, (II Judge), Small Causes Court, Chennai vide judgment dated 13.11.2014 in M.C.O.P.No.1289 of 2012, the Insurance Company has filed C.M.A.No.2037 of 2015 and seeking enhancement of compensation, the claimant has come up with Cross Objection No.98 of 2015.

4. In an accident which occurred on 27.09.2011, about 9.00 p.m., when the claimant, Manoharan was driving his Car bearing Registration No.TN-19-B-1318 in East Coast Road from Payyanur towards Mahabalipuram, near Dhanalakshmi Engineering College, a Water Tanker Lorry bearing Registration No.TN-46-7538 came from Dhanalakshmi Engineering College towards E.C. Road at the junction and hit the claimant's car, thereby the claimant sustained grievous injuries. Alleging that the driver of the Tanker Lorry is responsible for the accident and that the owner and insurer of the Lorry are jointly and severally liable to pay compensation, the claimant filed a claim petition seeking a sum of Rs.21,00,000/- as compensation.

5. The Insurance Company resisted the claim petition before the Tribunal mainly questioning the rash and negligent driving of the claimant.

6. Before the Tribunal, in support of the claim, the claimant was examined as P.W.1; one Dr.K.J.Mathiazhagan was examined as P.W.2; one Dr.M.Saravana Bavanantham was examined as P.W.3 and Exs.P1 to P21 were marked, details of which are as follows:

Ex.P-1	Attested copy of F.I.R. In Cr.No.920/2011, registered at Mamallapuram Police Station
Ex.P-2	Copy of Rough Sketch
Ex.P-3	Outpatient Chit
Ex.P-4	Discharge Summary
Ex.P-5	Advance Receipts
Ex.P-6	Hospital Bills
Ex.P-7	Medical Bills
Ex.P-8	Scan Reports
Ex.P-9	X-ray Reports
Ex.P-10	Copy of Driving Licence of the petitioner
Ex.P-11	Copy of R.C. Book for petitioner's vehicle
Ex.P-12	Old X-ray films
Ex.P-13	Scan films
Ex.P-14	Photos of petitioner's vehicle
Ex.P-15	C.D.
Ex.P-16	Disability Certificate (P.W.2)
Ex.P-17	C.T. Scan film
Ex.P-18	C.T. Scan Report
Ex.P-19	Disability Certificate (P.W.3)
Ex.P-20	Scan Report
Ex.P-21	Scan film

On the side of the Insurance Company, one Dr.Sundarrajan, Plastic Surgeon, Apollo Hospital was examined as R.W.1, but no document was marked.

7. Taking note of the oral evidence of P.W.1 and Ex.P1 - F.I.R. the Tribunal, came to the conclusion that the accident took place due to the rash and negligent driving of the driver of the Tanker Lorry bearing Registration No.TN-19-B-1318 and awarded a sum of Rs.13,83,600/- as compensation to the claimant with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit, under the following heads:

Loss of income for six months	Rs. 48,000.00
Transportation	Rs. 15,000.00
Extra nourishment	Rs. 15,000.00
Damage to clothes	Rs. 1,000.00
Medical expenses	Rs. 7,00,000.00
Attender charges	Rs. 15,000.00
Loss of amenities of life	Rs. 25,000.00
Mental agony to the petitioner & Pain and suffering	Rs. 75,000.00
Permanent disability and Loss of earning capacity	Rs. 4,89,600.00
Total compensation	Rs.13,83,60 0.00

Challenging the said award that it is exorbitant, the Insurance Company has come up with the present appeal.

8. Learned counsel for the Insurance Company contended that the Tribunal ought to have disbelieved the evidence of P.W.2-Dr.Mathiazhagan, who has not treated the claimant, since the disability assessed by him at 50% towards facial bones will not cause loss of earning. It is also his contention that the Tribunal went wrong in taking the monthly income of the claimant at Rs.8,000/-.

9. While so, the learned counsel appearing for the claimant contended that the Tribunal ought to have awarded more compensation taking note of the injuries sustained by the claimant and sought dismissal of the appeal.

10. Heard the submissions made by the learned counsel on either side and gone through the material documents available on record.

11. At the time of accident, i.e. on 27.09.2011, the injured claimant was aged 28 years. Though, according to the claimant, he is the Proprietor of GM Transport, earning a sum of Rs.10,000/- per month, the Tribunal, finding no proof in support of his income, fixed a sum of Rs.8,000/- as his monthly income.

In Syed Sadiq vs. Divisional Manager, United India Insurance Company Limited, (2014) 2 SCC 735, the Apex Court fixed the monthly income of a vegetable vendor at Rs.6,500/- per month. Relying upon the said judgment and also taking note of the escalating price index, this Court fixes Rs.7,000/- as the monthly income of the injured claimant. As far as the multiplier of '17' adopted by the Tribunal, we do not find any error in it.

12. As regards the injuries sustained by the claimant, P.W.2-Dr.K.J.Mathiazhagan examined the claimant, assessed his disability at 50% as partial permanent for fracture of facial bones and issued Disability Certificate vide Ex.P16. He has deposed that the fractures are malunited; there is facial disfigurement, weakness of upper limb muscles, difficulty in biting/swallowing hard food substances and also difficulty in lifting heavy objects. Further P.W.3, Dr.M.Saravana Bavanantham, who examined the claimant, assessed his disability at 45% as partial permanent for head injuries and deposed that the claimant has post-traumatic vertigo, sensory ataxia and post-traumatic headache. Though, P.W.2 and P.W.3 - Doctors have assessed the partial permanent disability of the claimant at 50% and 45%, respectively, the Tribunal, fixed the total permanent disability of the claimant at 30% only. This Court, on going through the oral and documentary evidence with respect to the injuries sustained by the claimant and the treatment given to him, is of the view that the claimant is getting better after the facial surgery and hence, fixes the total permanent disability at 25%.

13. Thus, taking the monthly income of the claimant at Rs.7,000/-, fixing the multiplier of '17' and the percentage of permanent disability at 25%, a sum of Rs.3,57,000/- is arrived as the revised compensation towards "permanent disability and loss of earning capacity".

14. As regards the heads "Transportation charges", "Extra nourishment", "Damage to clothes", "Attender charges", "Loss of amenities" and "Pain and Suffering", we confirm the compensation awarded by the Tribunal towards the same, as it is just and reasonable. As far as a sum of Rs.7,00,000/- awarded towards "Medical expenses" is concerned, since there is sufficient proof to support the claim, this Court confirms the compensation towards the same. Since enough amount is awarded towards "permanent disability and loss of earning power", the compensation awarded under the head "'loss of income for six months" stands deleted.

15. Thus, the compensation awarded by the Tribunal is modified and the claimant is entitled to a sum of Rs.12,03,000/- (Rupees Twelve Lakhs Three Thousand only) as revised

compensation. Interest awarded by the Tribunal at 7.5% per annum from the date of filing the claim petition till the date of deposit is confirmed. Break-up details of the revised award are as under:

Heads	Compensation awarded by the Tribunal	Revised Compensation awarded by this Court
Loss of income for six months	Rs. 48,000.00	-
Transportation	Rs. 15,000.00	Rs. 15,000.00
Extra nourishment	Rs. 15,000.00	Rs. 15,000.00
Damage to clothes	Rs. 1,000.00	Rs. 1,000.00
Medical expenses	Rs. 7,00,000.00	Rs. 7,00,000.00
Attender charges	Rs. 15,000.00	Rs. 15,000.00
Loss of amenities of life	Rs. 25,000.00	Rs. 25,000.00
Mental agony to the petitioner & Pain and suffering	Rs. 75,000.00	Rs. 75,000.00
Permanent disability and Loss of earning capacity	Rs. 4,89,600.00	Rs. 3,57,000.00
Total compensation	Rs.13,83,600.00	Rs.12,03,000.00

16. The Insurance Company is directed to deposit the entire amount awarded by this Court, less the amount already deposited, along with accrued interest to the credit of M.C.O.P.No.1289 of 2012 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai, within a period of eight (8) weeks from the date of receipt a copy of this judgment. On such deposit being made, the claimant is permitted to withdraw the amount, as per the revised award. It is also made clear that the award amount shall be paid to the claimant by the Tribunal in the form of a crossed Account Payee Cheque, favouring only the claimant and it should not be issued in favour of any other person/Company.

17. In fine, C.M.A.No.2037 of 2015 filed by the Insurance Company is partly allowed with the above observation and Cross Objection No.98 of 2015 filed by the claimant is dismissed. No costs. Consequently, connected M.P.No.1 of 2015 in C.M.A.No.2037 of 2015 is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To:

The Motor Accidents Claims Tribunal,
(II Judge), Small Causes Court,
Chennai.

+1cc to M/S.Mohan Choudary, Advocate SR.16071

Common Judgment
in
C.M.A.No.2037 of 2015
and
Cross Objection No.98 of 2015

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