

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

C.M.A.No.2369 of 2015
and M.P.No.1 of 2015 and C.M.P.No.2024 of 2016
and C.M.P.No.8887 of 2016 in Cross Obj.Sr.33508 of 2016
and Cross Objection No.31 of 2016

C.M.A.No.2369 of 2015:-

The Oriental Insurance Company Ltd.,
Motor Third Party Claims
Hub Oriental House
2nd floor, No.216, Prakasam Salai
Broadway, Chennai-600 001 ...Appellant/Respondent-2

vs.

1.P.Durai ...1st Respondent/Petitioner
2.S.Siva ...2nd Respondent/Respondent-1.

Cross Objection No.31 of 2016

1.P.Durai ...Cross Objector/Ist Respondent
Vs.

1.The Oriental Insurance Co.Ltd
Motor Third Party Claims
Hub Oriental House, 2nd floor, No.216,
Prakasam Salai, Broadway,
Chennai-600 001 ..Respondent No.1/Appellant

2.S.Siva ..Respondent No.2/2nd Respondent

Common Prayer:- Civil Miscellaneous Appeal and Cross Objection
filed against the judgment and decree dated 18th day of August,
2014, made in M.C.O.P.No.2172 of 2012, on the file of Motor
Accident Claims Tribunal, (VI Court of Small Causes) Madras.

For Appellant in CMA
& for R1 in Cross Obj. : Mr.S.Manohar

For Respondent No.1 in CMA
& for Cross Objector : Mr.N.M.Muthurajan for R1.
Not ready in Notice for R2.

COMMON JUDGMENT

(Judgment of the Court was delivered by HULUVADI G. RAMESH,J.)

The Oriental Insurance Company Ltd., has filed C.M.A.No.2369 of 2015 challenging the quantum of compensation while the claimant/P.Durai has filed Cross Objection No.31 of 2016 seeking enhancement of the compensation made in M.C.O.P.No.2172 of 2012, dated 18.08.2014 on the file of Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

2. It is a case of injury. On 03.01.2012 at about 14.00 hours, while the claimant/P.Durai was riding the Motor Cycle bearing Regn.No.TN-04-L-7963 from Senthamangalam to Pillaichathiram along GWT Road, the Lorry, bearing Reg.No.AP-04-V-0589, driven in a rash and negligent manner, hit the claimant from behind, due to which, he fell down and sustained grievous injuries due to which he was admitted in the hospital for treatment. The claimant filed a claim petition in M.C.O.P.No.2172 of 2012 seeking compensation of Rs.15,00,000/-.

3. In support of the claim, the claimant examined himself as P.W.1 and one Doctor/K.J.Mathiazhagan who treated him was examined as P.W.2 and M.Mahadevan and D.Thenmozhi were examined as P.Ws.3 and 4 and Exhibits P.1 to P.15 were marked. On behalf of the Insurance Company, neither any witness was examined nor any document was marked before the Tribunal.

4. The Tribunal, after taking note of the oral evidence of P.W.1 and Exhibit P.1-Copy of F.I.R., held that due to the rash and negligent driving by the driver of the 2nd respondent's vehicle, the accident occurred and consequently, fixed the liability on the appellant/Insurance Company.

5. Before the Tribunal, the Doctor, P.W.2, stated in his proof affidavit that the injured claimant suffered the following injuries:-

"Sustained compound fracture left femur, comminuted fracture left frontal sinus, fracture left medial and lateral wall of left orbit, severe facial injuries, head injuries, lacerated injury over left upper eye lid, injury in left eye and other injuries. The internal fixation fixed at left femur is still at fractured site. The femur is mal-united. The fractured bones are mal-united. There is pain and stiffness in left leg and knee movement. He cannot walk freely. He cannot squat and use Indian toilet. Bending posture is very difficult for him. He cannot stand continuously for more than 15 minutes. Climbing stairs is

difficult. It is difficult for him to sit cross legged or squatting. He is also suffering with occasional head ache, vomiting and giddiness. For femur bone fracture the disablement assessed is at 35% and for skull fracture is at 30%, in total 65%. It is supported by Ex.P.14-Disability Certificate."

Based on the above evidence, the Tribunal fixed Rs.25,000/- towards "Disability".

6. The Tribunal following the decision in the case of Syed Sadiq and others Vs. Divisional Manager, United India Insurance Co.Ltd., reported in 2014 ACJ 627 and also pointing out that claimant's life needs hard work, fixed the income at Rs.15,000/- per month and added 50% towards future prospects and adopted proper multiplier. The Tribunal, calculated the loss of income during treatment period and arrived at Rs.45,000/-. Further, the Tribunal, granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Disability	Rs. 25,000/-
2	Pecuniary damages	Rs. 95,000/-
3	Loss of Earning power	Rs. 11,94,750/-
	Total	Rs. 13,14,750/-

7. Insofar as the issue regarding negligence is concerned, the learned counsel for the Insurance Company has no serious objection, hence, the same is confirmed.

8. The learned counsel for the injured claimant submitted that the doctor has assessed the disability of the injured claimant at 65%, however, the Tribunal has taken only 30% and adopted a multiplier of 15. He also argued that towards "Loss of Amenities", "Pain and Suffering", "Future Medical Expenses" no amounts have been awarded by the Tribunal and sought for enhancement of compensation.

9. On the other hand, the learned counsel appearing for the appellant/Insurance Company contended that the compensation awarded for the injury sustained by the claimant is on the higher side and prayed for reduction of compensation on all heads.

10. Having gone through the award passed by the Tribunal and also going through the nature of injuries suffered by the claimant in the accident and taking into account the fact that the Tribunal has not granted any amount towards "Loss of Amenities", "Pain and Suffering", this court is inclined to

enhance the compensation awarded to the claimant and accordingly, this court awards a sum of Rs.50,000/- under the head "Loss of Amenities" and a sum of Rs.50,000/- under the head "Pain and Suffering".

11. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl.N o.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Disability	Rs. 25,000/-	Rs. 25,000/-
2	Pecuniary damages	Rs. 95,000/-	Rs. 95,000/-
3	Loss of earning power	Rs.11,94,750/-	Rs. 11,94,750/-
4	Loss of Amenities	---	Rs. 50,000/-
5	Pain and Suffering	---	Rs. 50,000/-
	Total		Rs. 14,14,750/-

12. In the result, the Civil Miscellaneous Appeal is dismissed. The Cross Objection is allowed. Since the Cross Objection has been filed with the delay of 120 days and the compensation granted by the Tribunal is enhanced, the claimant is not entitled to claim any interest for the period of delay in filing the Cross Objection.

- (i) The award of the Tribunal is enhanced to Rs.14,14,750/- from Rs.13,14,750/-. Thus, a sum of Rs.1,00,000/- is awarded over and above the compensation granted by the tribunal.
- (ii) The award amount will carry interest at the rate of 7.5% per annum from the date of petition in M.C.O.P.No.2172/2012 till the date of deposit as ordered by this Court.
- (iii) This Court by order dated 16.10.2015 directed the appellant/Insurance Company to deposit 75% of the award amount along with accrued interest. In view of the compensation, being enhanced by this court, the Insurance Company is directed to deposit the balance amount of compensation along with interest, less the amount already deposited within a period of four weeks from the date of receipt of a copy of this order.
- (iv) On such deposit, the claimant is permitted to withdraw the enhanced award amount by filing proper application before the Tribunal. However, for the enhanced amount, no interest will be paid to the claimant. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra.

(v) There will be no order as to costs in this appeal.

(vi) Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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

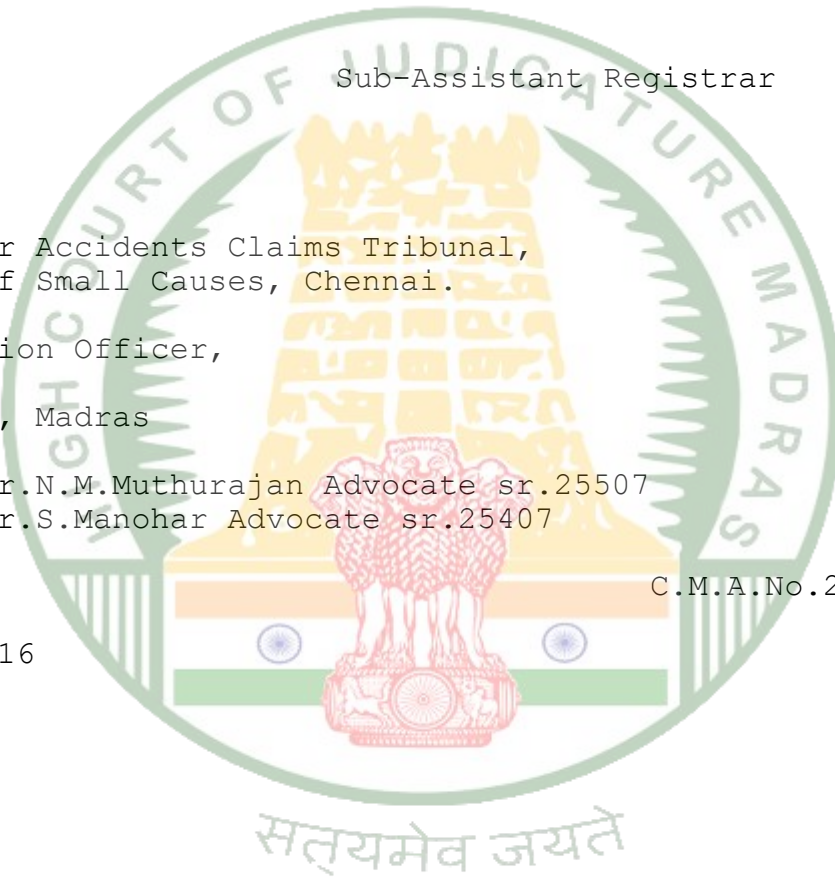
2.The Section Officer,
VR Section
High Court, Madras

+1 cc to Mr.N.M.Muthurajan Advocate sr.25507

+1 cc to Mr.S.Manohar Advocate sr.25407

C.M.A.No.2369 of 2015

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