

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

CIVIL MISCELLANEOUS APPEAL No.2486 of 2015
and

Cross Objection No.108 of 2015

M/s.The New India Assurance Company Ltd.,
No.45, Moore Street,
V Floor, Chennai.

... Appellant in C.M.A.No.2486/2015
& 1st respondent in Cross Obj.
No.108/2015 II Respondent

VS.

1. S.Vinodh ... 1st respondent in C.M.A.No.2486/2015
Petitioner & Cross Objector in
Cross Obj.No.108 of 2015

2. J.A.Badhuraunisha Begam ... 2nd respondent in C.M.A.No.2486/2015
Ist Respondent
& Cross Obj. No.108/2015

Civil Miscellaneous Appeal No.2486 of 2015 filed under
Section 173 of the Motor Vehicles Act, 1988 and Cross Objection
No.108 of 2015 filed under Order 41 Rule 22 C.P.C. against the
judgment and decree dated 06.02.2015 in M.C.O.P.No.3833 of 2011
on the file of the Motor Accidents Claims Tribunal, V Judge,
Small Causes Court, Chennai.

For Appellant
in C.M.A.No.2486/2015
& 1st respondent
in Cross Obj. No.108/2015 : Mr.J.Micheal Visuvasam

For 1st respondent
in C.M.A.No.2486/2015
& Cross Objector
in Cross Obj.No.108/2015 : Mr.U.M.Ravichandran

* * * * *

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 and facts involved in both the appeal and the Cross Objection, are one and the same, they are taken up for disposal by a common judgment.

2. Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal, (V Court of Small Causes), Chennai, by its award dated 06.02.2015 in M.C.O.P.No.3833 of 2011, that it is on the higher side, the Insurance Company has filed C.M.A.No.2486 of 2015. Objecting the same, the claimant has come up with Cross Objection No.108 of 2015, seeking enhancement of compensation.

3. For the sake of convenience, the parties are hereinafter referred to as the 'claimant' and the 'Insurance Company'.

4. Heard Mr.J.Michael Visuvasam, learned counsel appearing for the Insurance Company and Mr.U.M.Ravichandran, learned counsel appearing for the claimant.

5. Brief facts leading to the filing of the claim petition, would run thus:

On 07.10.2010, about 12.00 hours, when the claimant was riding a Motor Cycle bearing Registration No.TN-05-AE-9678 proceeding from east to west direction on Strahans Road nearing Mosque, a Lorry bearing Registration No.TN-74-B-8996 came from the same direction in a rash and negligent manner, overlooking traffic rules and hit the claimant's vehicle, thereby, he fell down from the vehicle and sustained grievous injuries. Alleging that the owner of the Lorry and the Insurer of the Lorry are jointly and severally liable to pay compensation, the injured claimant filed a Claim Petition in M.C.O.P.No.3833 of 2011 restricting his claim to Rs.30 lakhs as compensation for the injuries sustained by him.

6. The Insurance Company resisted the claim petition, by denying the manner of accident and contending that the compensation claimed by the injured claimant is highly excessive.

7. On the side of the appellant/claimant, the claimant himself was examined as P.W.1; one Dr.N.Saichandran was examined as P.W.2; Mr.S.Prathaban, Shift Engineer of Park Hotel, where the claimant was working, was examined as P.W.3 and Exs.P1 to P23 were marked.

Ex.P-1	Copy of FIR
Ex.P-2	AR copy
Ex.P-3	Discharge Summary with continuous treatment records
Ex.P-4	Discharge Summary - I (Shepherd Nursing Home)
Ex.P-5	Discharge Summary - II (Shepherd Nursing Home)
Ex.P-6	Discharge Summary - III (Shepherd Nursing Home)
Ex.P-7	Discharge Summary - I (M.N.Orthopaedic Hospital)
Ex.P-8	Discharge Summary - II (M.N.Orthopaedic Hospital)
Ex.P-9	Estimation for future medical expenses
Ex.P-10	Medical Bills
Ex.P-11	Photos with CD
Ex.P-12	Disability Certificate
Ex.P-13	DME Certificate
Ex.P-14	Salary Certificate
Ex.P-15	Copy of Driving Licence
Ex.P-16	Continuous Treatment Record
Ex.P-17	X-ray films
Ex.P-18	Copy of Insurance Policy
Ex.P-19	Disability Certificate
Ex.P-20	X-ray film
Ex.P-21	Authorisation letter
Ex.P-22	Salary Slip
Ex.P-23	Copy of Identity Card

On the side of the Insurance Company, no witness was examined, but Wound Certificate was marked as Ex.R1 through the cross-examination of P.W.1.

8. The Tribunal, taking note of the oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving of the driver of the Lorry, bearing Registration No.TN-74-B-8996 and fixed the liability to compensate the claimant, on the Insurance Company. Taking into account the avocation and income of the deceased, the Tribunal arrived at a sum of Rs.38,48,000/- (Rupees Thirty Eight Lakhs and Forty Eight Thousand only) as compensation payable to the

claimants with interest at 7.5% per annum. The details of the award passed by the Tribunal under different heads, are tabulated below:

Transportation	Rs. 25,000.00
Extra nourishment and miscellaneous expenses	Rs. 1,00,000.00
Attender charges	Rs. 25,000.00
Medical expenses	Rs. 2,30,000.00
Future medical expenses	Rs. 1,00,000.00
Disability	Rs. 2,10,000.00
Loss of earning during the period of treatment	Rs. 2,40,000.00
Loss of earning capacity	Rs. 22,68,000.00
Damages for pain, suffering and trauma	Rs. 3,00,000.00
Disfigurement	Rs. 50,000.00
Loss of amenities & Loss of marital status	Rs. 3,00,000.00
Total compensation	Rs.38,48,000.00

9. Learned counsel appearing for the Insurance Company would contend that a sum of Rs.38,48,000/- awarded by the Tribunal with interest at 7.5% p.a. in favour of the claimant as against the claim of Rs.30 lakhs, is exorbitant. He would mainly contend that though the Doctor assessed the permanent disability of the claimant at 70%, the Tribunal erred in accepting the same overlooking the fact that the partial permanent disablement assessed at 70% by P.W.2, Doctor was only with specific reference to the right upper limb.

10. In reply, the learned counsel appearing for the claimant would contend that the Tribunal ought to have fixed the permanent disability of the claimant at 100% instead of 70%, taking into account the avocation of the claimant and the injuries sustained by him. He would submit that the Tribunal/High Court has the power to grant an award even beyond the claim of the claimant.

11. We have heard the rival submissions of the learned counsel on either side and perused the material documents available on record. The only question before us is whether the quantum of compensation awarded by the Tribunal is reasonable or on the higher side.

12. On a perusal of the records, it is seen that the claimant had been working as a A.C. Mechanic in 'The Park' Hotel, Chennai and has been earning a sum of Rs.10,000/- per month. To prove his avocation and salary, one Mr.S.Prathaban, Shift Engineer of the Hotel 'The Park', was examined as P.W.3 and Ex.P14 - Salary Certificate was marked. The Discharge Summaries of the claimant marked vide Exs.P3 to P8 would reveal

that the claimant had sustained grievous injuries all over his body and had been treated as an inpatient in Government Stanley Hospital for about two months and had also taken treatment as inpatient in Shepherd Nursing Home, where, implant removal with debridement was done and in M.N.Orthopaedic Hospital, where, he underwent surgery. Undoubtedly, the accident has badly injured the right arm of the claimant. There is a large gap in the right humerus causing abnormal mobility and his right forearm is hanging without stability. Hands are the best tools for any mechanic. That too, when the injured claimant has sustained 70% disability in his right hand, it is highly impossible for him to continue his avocation as a Mechanic.

13. In view of the above, while assessing the quantum of compensation awarded by the Tribunal, it is seen that under the head 'Loss of earning capacity', the Tribunal, fixing the monthly income of the claimant at Rs.10,000/-, adding 50% of the income of the claimant of Rs.10,000/- towards future prospects, and applying the multiplier of '18', has awarded a sum of Rs.22,68,000/- (Rs.10,000/- + Rs.5,000/- x 12 x '18' x 70%) as compensation to the claimant. Taking note of the injuries sustained by the claimant, this Court is not inclined to interfere with the compensation awarded under this head and accordingly, the compensation of Rs.22,68,000/- awarded to the claimant towards 'Loss of earning capacity' is confirmed.

14. As far as the compensation awarded under the head 'Medical expenses' is concerned, we find that the claimant has filed Ex.P10 - Medical Bills in support of his claim. Also, considering the treatment and surgeries undergone by the claimant, the compensation of a sum of Rs.2,30,000/- awarded towards 'Medical expenses' is confirmed.

15. Taking note of the ratio laid down in Syed Sadiq and others v. Divisional Manager, United India Insurance Co. Ltd., (2014 ACJ 627), wherein, a Full Bench of the Apex Court awarded compensation towards 'Loss of earning during the period of treatment', the Tribunal, on considering the crush injuries, fracture, dislocation of right humerus and surgeries undergone by the claimant and the prolonged treatment taken by him, awarded a sum of Rs.2,40,000/- towards 'Loss of earning during the period of treatment', which in our view, is correct and it need not be modified.

16. For the permanent disability of 70% sustained by the claimant, the Tribunal has awarded a sum of Rs.2,10,000/-, i.e. fixing a sum of Rs.3000/- for each percentage of disability. Taking note of the compensation of a sum of Rs.22,68,000/- awarded under the head 'loss of earning capacity', this Court is inclined to modify the compensation towards 'Permanent Disability' as Rs.1,40,000/-.

17. As far as the compensation awarded under the head 'Extra nourishment' is concerned, we feel that it is on the higher side and the same is modified to a sum of Rs.50,000/-. Also, the compensation of a sum of Rs.1,00,000/- awarded under the head 'Future Medical Bills' is modified to a sum of Rs.50,000/-.

18. Further, the Tribunal has awarded a sum of Rs.3,00,000/- towards 'Pain and Suffering' and a sum of Rs.3,00,000/- towards 'Loss of amenities' and 'Loss of marital status', which according to us, are certainly on the higher side. This Court is inclined to modify the compensation under the head 'Pain and Suffering' to a sum of Rs.2,50,000/-. Since enough compensation has been awarded under the head 'loss of earning capacity', the claimant is entitled to a sum of Rs.1,00,000/- towards 'Loss of Marital status' alone.

19. As far as the compensation of a sum of Rs.25,000/- awarded towards 'Transportation charges'; Rs.25,000/- awarded towards 'Attender Charges' and a sum of Rs.50,000/- awarded towards 'Disfigurement' are concerned, this Court is of the view that they need not be modified and are accordingly confirmed.

20. In all, the award of Rs.38,48,000/- passed by the Tribunal is modified to a sum of Rs.34,28,000/- (Rupees Thirty Four Lakhs Twenty Eight Thousand only). Break-up details of the revised award are as under:

Heads	Amount awarded by the Tribunal	Revised Award of this Court
Transportation	Rs. 25,000.00	Rs. 25,000.00
Extra nourishment	Rs. 1,00,000.00	Rs. 50,000.00
Attender charges	Rs. 25,000.00	Rs. 25,000.00
Medical expenses	Rs. 2,30,000.00	Rs. 2,30,000.00
Future medical expenses	Rs. 1,00,000.00	Rs. 50,000.00
Permanent Disability	Rs. 2,10,000.00	Rs. 1,40,000.00
Loss of earning during the period of treatment	Rs. 2,40,000.00	Rs. 2,40,000.00
Loss of earning capacity	Rs.22,68,000.00	Rs.22,68,000.00
Damages for pain, suffering and trauma	Rs. 3,00,000.00	Rs. 2,50,000.00
Disfigurement	Rs. 50,000.00	Rs. 50,000.00
Loss of amenities & Loss of marital status	Rs. 3,00,000.00	Rs. 1,00,000.00
Total compensation	Rs.38,48,000.00	Rs.34,28,000.00

21. Accordingly, the Cross-Objection No.108 of 2015 filed by the claimant is dismissed and the Civil Miscellaneous Appeal No.2486 of 2015 filed by the Insurance Company is partly allowed as follows:

(i) The award of the Tribunal is reduced from Rs.38,48,000/- to a sum of Rs.34,28,000/- (Rupees Thirty Four Lakhs Twenty Eight Thousand only).

(ii) The interest granted by the Tribunal at 7.5% per annum from the date of filing the claim petition till the date of deposit, is confirmed.

(iii) It is reported that certain amount is deposited to the credit of the M.C.O.P.No.3833 of 2011. It is needless to mention that if no amount is deposited by the Insurance Company, it shall deposit the entire award amount as ordered by this Court within a period of six (6) weeks from the date of receipt of a copy of this order.

(iv) On such deposit, the claimant is entitled to withdraw the award amount along with accrued interest.

(v) 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.

(vi) There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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-s/d-

Assistant Registrar (CSVI)

True Copy

Sub-Assistant Registrar

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To :

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

2.The Section Officer,
V.R.Section High Court,
Chennai

+3 cc to Mr.UM.RaviChandran Advocate sr.10323 & 10346

Common Judgment
in

C.M.A.No.2486 of 2015
& Cross Obj. 108 of 2015

tej(co)
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