

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.12.2016

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.2403 of 2014 and Cross Objection No.109 of 2014
and

M.P.No.1 of 2014

C.M.A.No.2403 of 2014

M/s.Cholamandalam Ms General Insurance Co. Ltd.,
No.1, Village Road,
T.P. Cell, Nungambakkam,
Chennai-600 006. .. Appellant/2nd Respondent

Versus

1.Janakiraman ..1st Respondent/Petitioner
2. Mr.K.Babu .. 2nd Respondents/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act,
1988 against the Judgment and decree in MCOP No.460 of 2012,
dated 08.10.2013 on the file of the Motor Accidents Claims
Tribunal, 5th Court of Small Causes, Chennai.

For appellant : Mr.N.Vijayaraghavan
For respondent : Terry Chellaraja (R1)
No appearance (R2)

Cross Objection No.109 of 2014

Janakiraman .. Cross Appellant

Versus

1. M/s.Cholamandalam Ms General Insurance Co. Ltd.,
No.1, Village Road,
T.P. Cell, Nungambakkam,
Chennai-600 006.
2. K.Babu .. Respondents

Cross Objection filed under Order 41 Rule 22 of Civil
Procedure Code, against the award dated 08.10.2013 and made in
MCOP No.460/2012 on the file of the Motor Accident Claims
Tribunal V Judge, Small Causes Court, Chennai.

For cross objector appellant :Terry Chellaraja
For 1st Respondent :Mr.N.Vijayaraghavan

J U D G M E N T

While the insurance company has filed the appeal
challenging the quantum of compensation awarded by the Motor
Accidents Claims Tribunal, V Court of Small Causes, Chennai, on

08.10.2013, in M.C.O.P.No.460 of 2012, as excessive the claimants have preferred the cross objection contending that the compensation awarded by the Tribunal is inadequate.

2. Brief Facts:

On 15.12.2011 at about 18.30 hours while the claimant was travelling as a pillion rider in a Two Wheeler bearing Reg. No.TN-21-R-5220 at Sirukkarana Road, Cheyyur Taluk, a Tractor bearing Reg. No.TN-21-K-7384 came from the opposite direction in a rash and negligent manner and dashed against the claimant as a result of which, he has sustained grievous Injuries.

3. The claimant filed the claim petition before the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai, seeking compensation for a sum of Rs.15,00,000/- restricted to Rs. 6,00,000/-, for the injuries sustained by the petitioner in the said accident.

4. Two witnesses were examined on the side of the claimant and Exs.P1 to P11 were marked. Neither any witness was examined on the side of the respondents nor any documents were marked.

5. On considering the oral and documentary evidence adduced on behalf of the claimant, the Tribunal quantified the compensation in respect of injuries sustained by the claimant at Rs.5,32,336/-. The break-up details of the compensation awarded are as follows:

Loss of income for 2 months	-	Rs. 35,778/-
Transportation	-	Rs. 5,000/-
Extra Nourishment	-	Rs. 5,000/-
Damage to Clothes	-	Rs. 1,000/-
Medical Expenses	-	Rs. 37,090
Attender Charges	-	Rs. 5,000
Pain and Suffering	-	Rs. 50,000
Loss of Amenities	-	Rs. 50,000
Loss of Earning Power	-	Rs.3,43,468/-

Total	-	Rs.5,32,336/-

6. Learned counsel for the appellant in submitted that the medical expenses incurred by the claimant was not supported by Medical Bills and therefore the claimant is not entitled for the Medical Expenses. It is the further contention of the learned counsel for the appellant that the claimant was working as a constable in Border Security Force (BSF) Dehli, at the time of accident and medical expenses incurred by the petitioner has already been reimbursed and hence the Insurance Company is not liable to pay the medical expenses to the claimant.

7. On the contention that the claimant is not entitled to medical expenses, as no bills have been produced to support the expenses incurred, the said contention needs to be rejected on

the ground that the accident is not disputed so also the injuries sustained by the claimant. Treatment is not given free of cost and the claimant would definitely have incurred medical expenses. Therefore, absence of documentary evidence would not curtail consideration of compensation towards medical expenses.

8. On the ancillary contention that the claimant being employed and the employer having reimbursed the medical expenses is concerned, the said contention deserves acceptance. Accordingly, the amount awarded by the Tribunal towards medical expenses is rejected.

9. The records reveal that the Tribunal has awarded a sum of Rs.35,778/- under the head loss of income for two months. However, the same is not supported by documentary evidence. The documents available on record only supports the case of the claimant that he was under treatment for a period of one month. In such circumstances, this Court is of the considered view that the compensation under the head loss of income stands reduced to one month, i.e., to a sum of Rs.17,889/=. Insofar as the compensation awarded under the head loss of earning power at Rs.3,43,468/- is concerned, /-, the Tribunal has appreciated the evidence available on record and has awarded just and reasonable compensation under the said head. Accordingly, the same is confirmed.

10. Insofar as the grounds raised by the claimant in the cross objection seeking enhancement of compensation, no ground, much less substantial ground has been raised by the cross objector. The cross objection is totally devoid of merits and, accordingly, the same deserves to be rejected.

11. In the result, the Civil Miscellaneous Appeal is partly allowed reducing the compensation from Rs.5,32,500/- to Rs.4,77,357/- which is payable, with interest @ 7.5% per annum from the date of petition till the date of deposit. The Cross Objection filed by the claimant stands dismissed. No costs.

12. It is represented that the appellant/Insurance Company has already deposited a sum of Rs.3,00,000/-. The balance amount along with interest shall be deposited to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

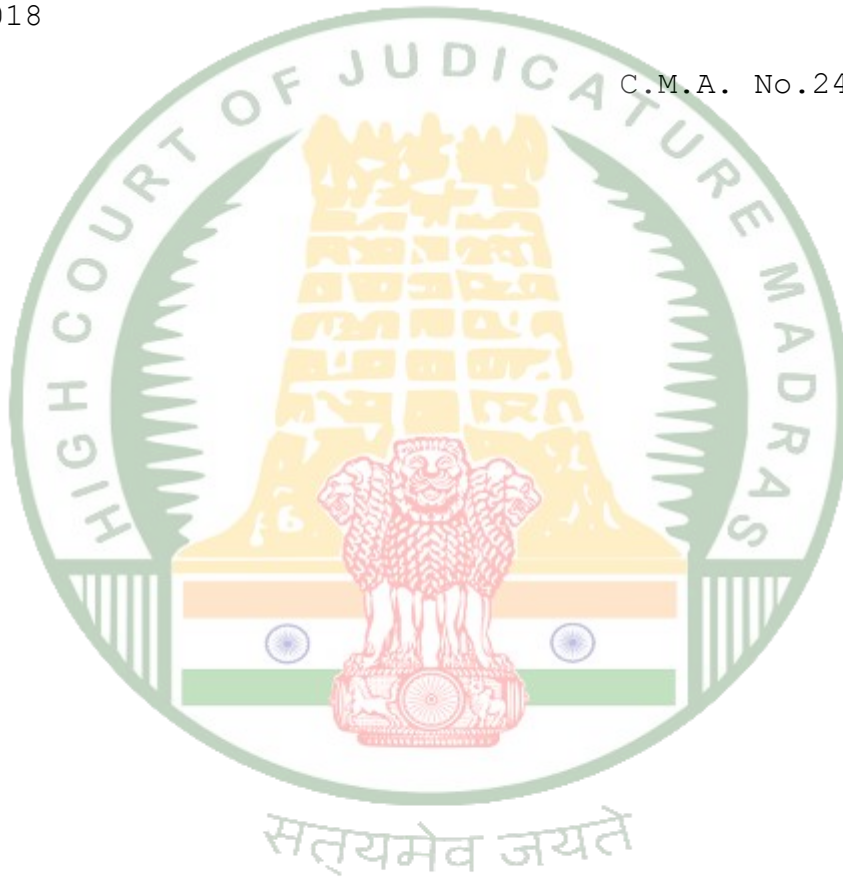
Arr/GLN

To

1. Motor Accidents Claims Tribunal,
5th Court of Small Causes, Chennai.
2. The Section Officer, VR Section,
High Court, Madras.(2 copies)

PPA (CO)
sm:12.4.2018

C.M.A. No.2403 of 2014



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