

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.10.2016

Coram:-

The Hon'ble Mr. Justice M.DURAI SWAMY
and
The Hon'ble Mr. Justice R.SURESH KUMAR

C.M.A.No.1882 of 2012 and
Cross Objection No.76 of 2013

The Branch Manager

M/s Iffco Tokio General Insurance Co. Ltd.,
Coimbatore, Tamil Nadu

... Appellant in
C.M.A.No.1882/12/
1st respondent in
Cross Objn.No.76/13/2nd
Respondent in MCOP No.31/09

vs.

1. T.J.Haribabu

...1st respondent in

C.M.A.No.1882/12/...Cross Objector in
Cross Objn.No.76/13/Petitioner in MCOP
No.31/09

2. P.Yuvaraj

(2nd Respondent set
exparte in Lower Court)

...2nd respondent in

CMA Cross Objn/1st
Respondent in MCOP 31/09

C.M.A. And Cross Objection filed against the judgment and
decree dated 22.12.2011 made in M.C.O.P.No.31 of 2009 on the
file of the Motor Accident Claims Tribunal, Subordinate Court,
Hosur.

For Appellant in

C.M.A.No.1882/12/

1st respondent in

Cross Objn No.76/13

: Mr.N.Vijayaraghavan

For 1st respondent in

C.M.A.No.1882/12/

Cross Objn.No.76/13

Cross Objector in

: Mr.P.A.Sudesh Kumar

R2

: Exparte

J U D G M E N T

(Judgement of the court was delivered by M.DURAISWAMY, J.,)

The Insurance Company has filed the above Civil Miscellaneous Appeal challenging the award passed in M.C.O.P.No.31 of 2009, on the file of the Motor Accident Claims Tribunal, (hereinafter referred to as "the Tribunal"), Subordinate Court, Hosur. Aggrieved over the very same award, the 1st respondent/Claimant has filed the Cross Objection for enhancement of the compensation.

2. The 1st respondent/claimant filed the original petition before the Tribunal claiming a total compensation of Rs.50,00,000/- for the injuries sustained by him in the road accident that had occurred on 19.10.2008.

3. Before the Tribunal, on the side of the claimant, 3 witnesses were examined and 18 documents, Exs.P-1 to P-18 were marked and on the side of the respondents neither any witness was examined nor any document was marked.

4. The Tribunal after taking into consideration the oral and documentary evidences, awarded a total compensation at Rs.33,69,000/- together with interest @ 7.5 % p.a. Aggrieved over the said award, both the Insurance Company as well as the claimant are before this Court.

5. The learned counsel appearing for the appellant/Insurance Company submitted that the appellant is challenging only the quantum of compensation in this appeal.

6. Heard Mr.N.Vijayaraghavan, learned counsel appearing for the Insurance company and Mr.P.A.Sudesh Kumar, learned counsel appearing for the claimant.

7. The claimant was aged 32 years at the time of accident. Hence, the Tribunal adopted the multiplier of 18 and took the monthly salary of the claimant as Rs.14,200/- for the purpose of calculating the compensation. Before the Tribunal, the claimant was examined as P.W.1; the Doctor was examined as P.W.2 and the mother of the claimant was examined as P.W.3. The claimant sustained head injury and as per Ex.P.3, wound certificate, the permanent disability was fixed at 60%. P.W.Nos.2 and 3 have spoken about the injury sustained by the claimant and they have also deposed that the claimant is suffering from memory loss and is not in a position to go for

any employment. The claimant also produced Ex.P.17 and P.18, the report of St.John's Medical College Hospital, wherein it has been stated that the Neuro Physical Assessment reveals a diffuse involvement. From the injury sustained by the claimant and also taking into consideration the evidence of P.Ws.2 and 3 and also the documents marked as Exs.P3, P11, P17 and P18, we are of the considered view that the Doctor had rightly assessed the permanent disability at 60%, which was also taken into consideration by the Tribunal below.

8. The Tribunal, while calculating the compensation, fixed the functional disability at 75%. The learned counsel appearing for the appellant/Insurance Company submitted that fixation of 75% for functional disability is on the higher side for the reason that there is no evidence produced on the side of the claimant to establish that the functional disability was 75%. On a perusal of the evidence of P.W.2, it is clear that the Doctor had stated that the functional disability of the claimant would be 75% and the permanent disability would be 60%. It is pertinent to note that the Insurance Company has not cross examined P.W.2 with regard to this aspect. However, for arriving at the functional disability at 75%, the Doctor has not stated the basis for arriving at the said figure. In the absence of any basis for fixing the functional disability at 75% and in the absence of any concrete evidence, the Tribunal should not have taken the functional disability at 75%. In these circumstances, we are of the view that the functional disability can be fixed at 60%, taking into consideration the wound certificate marked as Ex.P.3 and the evidence of P.Ws.2 and 3. In Ex.P.3, the permanent disability has been fixed at 60%. Therefore, it would be appropriate to fix the functional disability at 60% instead of 75%.

9. The learned counsel appearing for the appellant/Insurance Company submitted that the Tribunal had wrongly adopted the multiplier of 18. As per Sarla Verma's case, the correct multiplier would be 16. The learned counsel appearing for the claimant has fairly submitted that since the claimant was aged 32 years, as per Sarla Verma's case, the correct multiplier would be 16. In view of the ratio laid down by the Hon'ble Supreme Court of India in the Judgment reported in 2009 (6) S CC 121 (Sarla Verma (Smt.) and others vs. Delhi Transport Corporation and another), we fix the multiplier at 16.

10. The learned counsel appearing for the 1st respondent/claimant submitted that the Tribunal has not awarded any compensation towards pain and suffering, loss of amenities, attendant charges and Transport and Extra nourishment. Since it is settled position that the claimant is entitled to just compensation, it would be appropriate to award compensation under those heads. Accordingly, we award a sum of Rs.1,00,000/-

towards pain and suffering, a sum of Rs.25,000/- towards loss of amenities, a sum of Rs.20,000/- towards Transport and Extra nourishment and a sum of Rs.1,29,360/- towards medical expenses. Since the claimant requires attender throughout his life, we are of the view that a sum of Rs.1,00,000/- can be awarded towards attendant charges.

11. If the compensation is worked out as stated above, the modified award amount of the Tribunal would be as follows:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount granted by this Court (Rs.)
1	Loss of earning capacity	32,40,000/-	23,04,000/-
2	Medical expenses	1,29,360/-	1,29,360/-
3	Pain and Suffering	-	1,00,000/-
4	Loss of Amenities	-	25,000/-
5	Attendant Charges	-	1,00,000/-
6	Transport and Extra Nourishment	-	20,000/-
	Total	33,69,000/-	26,78,360/-

12. In all, the claimant is entitled to a total compensation of Rs.26,78,360/- together with interest at the rate of 7.5% p.a. as awarded by the Tribunal.

13. Accordingly, the Civil Miscellaneous Appeal is partly allowed in the following terms:-

(i) The award of the Tribunal is reduced to Rs.26,78,360/- from Rs.33,69,000/-

(ii) The interest granted at 7.5% p.a. is confirmed.

(iii) Pursuant to the interim order granted by this Court in M.P.No.1 of 2012 on 25.06.2012, the Insurance Company has deposited the entire award amount with accrued interest and costs to the credit of M.C.O.P.No.31 of 2009 on the file of the Motor Accidents Claims Tribunal (Subordinate Court), Hosur and in M.P.No.1 of 2013, by order dated 23.07.2013, this Court has permitted the claimant to withdraw 25% of the amount deposited by the Insurance Company. In view of the same, the claimant is permitted to withdraw the entire award amount now modified by this Court along with proportionate interest less the amount

already withdrawn by filing necessary application before the Tribunal. It is made clear that the Insurance Company is entitled to withdraw the excess amount deposited by them.

and the Cross Objection filed by the claimant stands dismissed. There will be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
Subordinate Judge, Hosur.

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

+1cc to Mr.Pa.Sudesh kumar, Advocate sr.59087

C.M.A.No.1882 of 2012 and
Cross Objection No.76 of 2013

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