

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.12.2016

Pronounced on : 24.05.2017

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.2133 of 2015
& Cross Objection No.101 of 2015

&

MP.No.1/2015

The Oriental Insurance Co. Ltd.,
Oriental House, 2nd Floor, Old No.115,
New No.216, Prakasam Salai,
Broadway, Chennai - 108 ... Appellant in C.M.A. &
R-1 in Cross-objection.

..Vs..

1. Gopal @ Franklin ... R-1 in C.M.A. &
1st Cross-Objector in Cross-objection.
2. M.Sathish ... R-2 in both C.M.A. &
Cross-objection

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, and Cross Objection filed under Order 21 and Rule 22 of the CPC., against the award dated 18.11.2013 made in MCOP No.5765 of 2012 on the file of the Motor Accident Claims Tribunal, V Judge, Small Causes Court, Chennai.

For Appellant in CMA &
For R-1 in Cross-obj. : Mr. M.Krishnamoorthy
For R-1 in CMA &
For Cross-objector in Cross-Obj.: Mr. Terry Chellaraja,
for, M/s. M.Malar
For R-2 in both CMA & Cross-Obj.: Exparte.

WEB COPY
COMMON JUDGMENT

The claimant, Gopal @ Franklin, aged 34 years, earning a sum of Rs.500/- per day, by doing Centering Work, met with an accident on 06.10.2012, while traveling as pillion rider in the motorcycle bearing Registration No.TN09-BQ-1671. He took treatment as inpatient at Government Hospital at Chennai, for two days, i.e., on 06.10.2012 and 07.10.2012 and thereafter, he

took treatment at Kalyani Hospital, Chennai. He suffered fracture in the right zygomatic arch and multiple injuries all over the body. He filed a claim petition, claiming a sum of Rs.6,00,000/-, as compensation. The Tribunal awarded a sum of Rs.3,98,146/- rounded to Rs.3,98,150/-, as compensation.

1.1. Aggrieved over the quantum of compensation as exorbitant, the Insurance Company has preferred the Appeal. Claiming the award as insufficient, the claimant has filed the Cross-Objection.

2. The details of the award passed would be helpful to the Court, in order to decide the justifiability of the quantum of compensation:-

Loss of income for two months -	Rs. 12,000/-
Transportation -	Rs. 5,000/-
Extra nourishment -	Rs. 5,000/-
Damage to clothes -	Rs. 1,000/-
Medical expenses -	Rs. 39,746/-
Attendant charges -	Rs. 5,000/-
Pain and sufferings -	Rs. 50,000/-
Loss of amenities -	Rs. 50,000/-
Loss of earning power -	Rs. 2,30,400/-

	Rs.3,98,146/-

3. The Tribunal has relied upon the evidence of P.W.2- Dr.Thiyagarajan, who has assessed the disability at 40%, as partial permanent. He has stated that there is mal-union of jawbone and the implant is yet to be removed and the fracture in the jawbone causing dis-figuration.

4. The Tribunal has relied upon the celebrated decisions, which deals with the effect and impact of disability upon the earning capacity of the injured. The Tribunal has chosen to take the loss of earning power at 20% and has adopted multiplier method of quantification. Taking the monthly income at Rs.6,000/-, adopting the multiplier of '16', in respect of 20% disablement, the loss of earning capacity has been awarded at Rs.2,30,400/-.

5. The learned counsel for the appellant / Insurance Company would submit that there is no proof adduced to show the income and therefore, the Tribunal ought not to have fixed the monthly income at Rs.6,000/-. It is also submitted that the amount awarded under the head of loss of enjoyment of amenities is on the higher side.

6. A perusal of the discharge summary (Ex.P-5) would go to show that the petitioner has suffered injuries over right forehead, middle forehead, right maxilla, abrasion in the right shoulder and fracture in the right zygomatic arch. The part, in which the claimant has suffered injury, is very sensitive and the pain would be more severe. Moreover, because of the injury, the injured would not have been in a position to take regular solid food atleast for few months. Because the injured was doing Centering Work, the fracture in the facial bone and the head injury would naturally make it difficult to stand in the hot sun. Therefore, definitely, the earning power of the injured is likely to be affected and it may be 20% as found by the Claims Tribunal.

6.1. Considering the age of the claimant, the compensation awarded towards loss of enjoyment of amenities cannot be said to be excessive.

7. The contention of the learned counsel for the appellant is that, there is evidence to show that the injured was inpatient only for five days and not thereafter and therefore, the amount awarded under various heads is excessive.

7.1. Medical technology has advanced so much, so that there may not be any necessity to stay in the hospital for long number of days and that does not mean that the injury is not severe. The Tribunal has considered the award under appropriate heads.

8. The learned counsel appearing for the claimant reiterated the grounds made in the cross-objection. As the claim has been considered under appropriate heads, there is no scope for enhancing the compensation. Hence, both the Civil Miscellaneous Appeal and the Cross Objection stand dismissed. No costs. Consequently, the connected MP is closed.

-Sd/-
सतयामेव जयते
Assistant Registrar(CS VIII)

//True Copy//

WEB COPY
Sub Assistant Registrar

srk

To

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

Civil Miscellaneous Appeal No.2133 of 2015
and Cross Objection No.101 of 2015

rj(co)
aa14/06/2017



WEB COPY