

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2017

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

C.M.A. No.622 of 2011

and

MP.No.1 of 2013 in Cros. Obj. Sr.No.61682 of 2013

The Branch Manager,
ICICI Lombard General
Insurance Company Limited,
Branch Office,
Omalur Main Road,
Salem.

... Appellant in C.M.A.
and
2nd respondent in Cross Objection SR

Versus

1.B.C.R.Manogaran ... 1st respondent in C.M.A. and
appellant in Cross Objection SR

2.S.Prabakaran ... 2nd respondent in C.M.A. And
1st respondent in Cross Objection SR

PRAYER : Civil Miscellaneous Appeal and Cross Objection as
against the judgment and decree dated 16.08.2010 made in MCOP.
No.944 of 2008 on the file of the Motor Accident Claims Tribunal
(Chief Judicial Magistrate) at Dharmapuri.

Prayer in M.P.1 of 2013 in Cross.OBJ.No.Sr61682 of 2013:

Petition filed to condone the delay of 647 days in filing the
above cross objection against the order dated 16.08.2010 in
M.c.O.P.No.944 of 2008 on the file of the Motor Accident Claims
Tribunal (CJM), Dharmapuri.

For Appellant : Ms.Sreevidhya
For Respondents : Mr.V.Kumaravelu for R1
R2 - Ex-parte

COMMON JUDGMENT

As against the claim made for a sum of Rs.20,00,000/- for the injuries sustained by the claimant/first respondent in the accident that took place on 04.01.2008, the Tribunal has awarded a sum of Rs.7,75,500/-. Questioning the amount of compensation as excessive, the insurance company has filed this appeal. The claimant/first respondent, contending that such amount as compensation awarded is inadequate, filed the cross objection which is in S.R. Stage.

2. The learned counsel for the appellant/insurance company would submit that the fixing of permanent disability at 60% itself is excessive which resulted in awarding loss of future income at Rs.3,00,000/- and hence it requires reduction. It is also pointed that the first respondent herein has not filed any document to show his earning capacity.

3. The learned counsel for the claimant would submit that the injuries suffered by the claimant had resulted in disablement at 60% and whileso, the Tribunal should have awarded future medical expenses. The evidence of the Doctor would show that the claimant has to undergo a surgery in future and therefore, future medical expenses ought to have been awarded for post surgical expenses.

4. To find out the details of injuries sustained by the claimant, a perusal of the judgment is essential. The claimant had suffered fracture in right hip bone as well as the right leg. He was admitted initially at CMC Hospital, Vellore and shifted to Madras Apollo First Med Hospital, where he has taken treatment for 28 days as inpatient. Subsequently, he has taken treatment at his native place. As per the medical evidence, the claimant has suffered fracture posterior wall of the Acetabulum displaced (right hip). The Doctor has certified the injury as fracture injury.

5. The details of surgery undergone by the claimant has been indicated in the order of the Tribunal itself. According to the Doctor, due to the injuries, the claimant cannot sit with cross legs for a long time. When such a specific evidence was given by the Doctor, certifying the disability of the claimant at 60%, the Tribunal, for the purpose of assessing the compensation towards disability, has taken the percentage of disability only at 50%.

6. Medical expenses has been awarded in accordance with the medical bills produced. Loss of income for a period of six months has been considered at Rs.60,000/- (i.e. at Rs.10,000/-

p.m.). Extra Nourishment was awarded at Rs.5,000/-; Transportation at Rs.10,000/-; pain and suffering Rs.25,000/- and permanent disability at Rs.1,00,000/- (Rs.2000 per percentage of disability) and future loss of income at Rs.3,00,000/-.

7. It is pointed out by the learned counsel for the claimant that the award towards pain and suffering has to be enhanced especially he has sustained fracture of bone in the hip, but only a sum of Rs.1,00,000/- has been awarded. Further, when compensation towards future loss of earning has been awarded at Rs.3,00,000/-, the Tribunal ought to have awarded compensation towards loss of enjoyment of amenities.

8. Even though the award of compensation appears to be excessive under the head of future loss of income, still it is noticed that compensation under the head of loss of enjoyment of amenities has not been awarded. The compensation awarded under the head of disablement at Rs.1,00,000/- has to be bifurcated under the head of loss of enjoyment amenities for a sum of Rs.50,000/- and Rs.50,000/- alone would remain as disablement compensation. This disablement compensation at Rs.50,000/- is justified when the claimant has to walk with the assistance of walking stick.

9. In such circumstances, there is no justification in either reducing the compensation or to enhance it.

10. In view of the above, the appeal stands dismissed. MP No.1 of 2013 in Cross Objection SR No.61682 of 2013 has been filed to condone the delay of 647 days in filing the Cross Objection is also dismissed. Consequently, Cross Objection SR is rejected. No costs.

11. The appellant / Insurance company is directed to deposit the entire award amount, along with interest and costs as ordered by the Tribunal, less the amount already deposited, if any, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

vsi2

To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Dharmapuri.

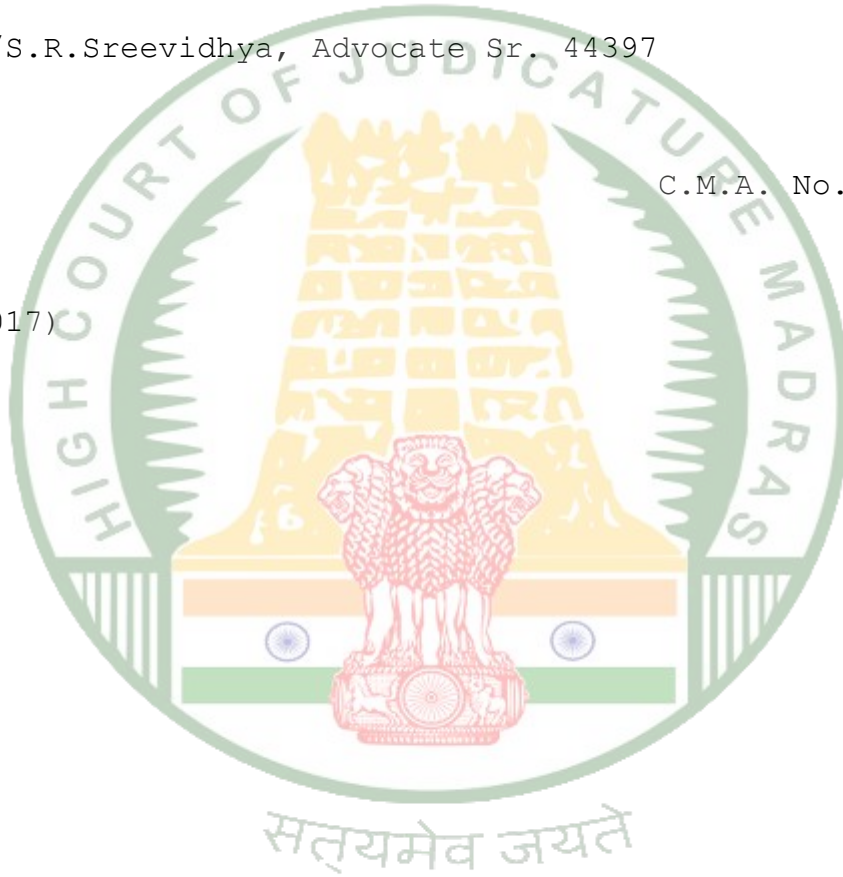
Copy to:

The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to M/S.R.Sreevidhya, Advocate Sr. 44397

C.M.A. No.622 of 2011

CP (CO)
VR(24/8/2017)



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