

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2017

CORAM

THE HONOURABLE Mr.JUSTICE N.AUTHINATHAN

CMA.No.737 of 2010 & Cross Obj. No.30 of 2011

M/s.United India Insurance Co. Ltd.,
Branch Office,
No.2, Dr.Sankaran Road,
Namakkal Town,
Namakkal District.

....Appellant in CMA.737/ 2010
& 1st respondent in Cross.Obj.30/2011

-VS-

1.Gopi
....1st respondent in CMA.737/2010
& Cross Objector in Cross.Obj.30/2011

2.P.Gopi
Ex-parte before Tribunal
.... 2nd respondent in CMA.737/2010
& Cross.Obj.30/2011

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the Decree and Judgment dated 29.04.2009 made in M.C.O.P.No.337 of 2008, on the file of Motor Accident Claims Tribunal / Fast Track Court at Namakkal.

Cross Objection filed under Order 41 Rule 22 of C.P.C. against C.M.A.No.737 of 2010 on the file of this Hon'ble Court against Decree and Judgment dated 29.04.2009 made in M.C.O.P.No.337 of 2008, on the file of Motor Accident Claims Tribunal (Fast Track Court) Namakkal.

For appellant in CMA.737/2010
& 1st respondent

in Cross.Obj.30/2011 : Mr.T.Ravichandran

For 1st respondent in CMA.737/ 2010

& cross objector in Crl.Obj.30/2011: Mr.MA.P.Thangavel

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JUDGMENT

A claim petition in M.C.O.P.No.337 of 2008 was filed by the claimant/first respondent, claiming a compensation of Rs.10,00,000/- for the injuries sustained by him in the accident, which was resisted by the Insurance Company.

2. The Tribunal awarded Rs.6,23,325/- as against the claim of Rs.10,00,000/-. Challenging the quantum fixed by the

Tribunal, the Insurance Company preferred the present appeal. Claimant preferred the cross objection for enhancement.

3. The Tribunal awarded Rs.5,04,900/- under the head loss of earning capacity by adopting multiplier method. The learned counsel for the Insurance Company contended that this is not a fit case to apply multiplier method and there is no material to show that the injuries sustained by him affected his earning capacity.

4. The learned counsel for the claimant submitted that the Tribunal failed to take note of future prospects of the claimant and the injuries affected his earning capacity and the disablement was assessed at 100%.

5. The claimant is professional drum beater (Thappattam) and earning Rs.5,000/- per month. The Tribunal fixed his income as Rs.4,500/-. The claimant was 21 years at the time of accident. Having regard to the nature of profession of the claimant, the Tribunal correctly fixed his monthly income at Rs.4,500/ and it does not require any modification.

6. The claimant was initially admitted to Government Hospital, Namakkal and then shifted to C.M.Hospital, Namakkal and thereafter shifted to Balaji Hospital, Namakkal for better treatment. Wound certificate issued by the Balaji Hospital has been marked as Ex.P.2. The claimant sustained seven injuries and out of seven injuries, five injuries are grievous in nature and two are simple in nature. PW1's evidence is supported by the evidence of PW2 doctor, who issued wound certificate (Ex.P.8). After examination the doctor certified that the claimant suffered 55% disability. Doctor states that the claimant is unable to sit cross legged. The evidence given by the doctor coupled with wound certificate would show that the injuries sustained by the claimant affected his earning capacity. Therefore, it cannot be said that the Tribunal erred in adopting multiplier method for assessing the loss of income. Having regard to the age of the claimant and the injuries sustained by him, the tribunal awarded Rs.5,04,900/- under the head loss of income and disability. I do not find any valid reason to modify the compensation under this head.

7. The Tribunal awarded Rs.25,000/- under the head, pain and suffering, Rs.10,000/- towards extra nourishment and Rs.2,000/- towards transportation charges. Rs.5,04,900/- towards loss of earning capacity and permanent disability and Rs.81,425/- for medical expenses. In all, the Tribunal awarded a sum of Rs.6,23,325/- which, in my considered view, cannot be said to be high or said to be on lower side or excessive. The amounts awarded under these heads appear to be reasonable and they are confirmed.

8. In the above circumstances, the appeal of the Insurance Company and the Cross Objections are dismissed and the award of the Tribunal for Rs.6,23,325/- with interest at 7.5% p.a. is confirmed. The appellant-Insurance Company is directed to deposit the entire award amount of Rs.6,23,325/- with interest at the rate of 7.5% per annum and costs, less the statutory deposit, to the credit of M.C.O.P.No.337 of 2008, on the file of Motor Accident Claims Tribunal (Fast Track Court) Namakkal, within six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same with appropriate interest, by making necessary application before the Tribunal. There shall be no orders as to costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

1. The Motor Accident Claims Tribunal / Fast Track Court
Namakkal
2. The Record Keeper
V.R. Section High Court Madras.

+1 CC to Mr.T.Ravichandran, Advocate sr 12427
+1 CC to Mr.Ma.Pa. Thangavel, sr 12565

CMA.No.737 of 2010 &
Cross Objection No.30 of 2011

MG (CO)
sp/12/5

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