



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A. (MD)No.1677 of 2013

& M.P(MD)No.3 of 2013

& CROSS OBJECTION (MD)No.11 of 2016

in C.M.A. (MD)No1677 of 2013

C.M.A. (MD)No.1677 of 2013 :

The ICICI Lombard General Insurance Co. Ltd.,
ICICI Bank Towers,
Pandra Kurla Complex,
Pandra (East) Mumbai-400 051,
Branch Office No.16,
North Veli Veethi,
Madurai,

...Appellant/Respondent No.2

Vs.

1.Selvaraj
2.K.Senthilkumar

... Respondent/Petitioner
...Respondent/Respondent-1

Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order and decretal order dated 25.04.2012 made in M.C.O.P.No.17 of 2007 on the file of the Motor Accident Claims Tribunal (Sub-Court) Ramanathapuram.

For Appellant : Mrs.K.R.Shiva Shankari
for Mr.S.Srinivasa Raghavan

For Respondents : Mr.R.J.Karthick for R1
for Mr. M.Saravanan
No Appearance for R2

CROSS OBJECTION (MD)No.11 of 2016:

1.M.Selvaraj ... Cross Objector/ 1st Respondent
Vs.

1.The ICICI Lombard General Insurance Co. Ltd.,
ICICI Bank Towers,
Pandra Kurla Complex,
Pandra (East) Mumbai-400 051,
Branch Office No.16,
North Veli Veethi,
Madurai.

...1st Respondent/Appellant



2.K.Senthilkumar

...2nd Respondent/ 2nd Respondent

Prayer: Cross Objection Petition is filed under Order XLI Rule 22 r/w Section 96(1) & (2) of the Code of Civil Procedure, to allow the above Cross Objection by enhancing the compensation amount awarded in M.C.O.P.No.17 of 2007 dated 25.04.2012 on the file of Motor Accident Claims Tribunal/Sub-Court, Ramanathapuram from Rs.6,74,025/- to Rs.20,97,211/-.

For Cross Objector : Mr.R.J.Karthick for
Mr.M.Saravanan

For Respondents : Mrs.K.R.Shiva Shankari
for Mr.S.Srinivasa Raghavan for R1

: No appearance for R2

COMMON JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the Insurance Company against the award of Rs.6,74,025/- (Rupees Six Lakhs Seventy Four Thousand Twenty Five only) for the injuries sustained by the first respondent, namely, M.Selvaraj, working as Sub-Inspector in Central Government, aged about 54 years, earning the monthly income of Rs.17,764/- in the accident occurred on 06.08.2006. The claimant has filed the Cross Objection, seeking enhanced compensation.

2. The first respondent/claimant was riding his two wheeler from West to East in Madurai - Rameshwaram Road (NH 49) and a Tractor driven in a rash and negligent manner came from the opposite side and dashed against the two wheeler causing the accident and resulting in injuries on the first respondent-claimant. Therefore, the claim petition.

3. On contest, the Tribunal found that the accident occurred because of the rash and negligent driving of the driver of the Tractor-Trailer and awarded a sum of Rs.6,74,025/- (Rupees Six Lakhs Seventy Four Thousand Twenty Five only). The said award is being challenged before this Court.

4. Heard Mrs.K.R.Shiva Shankari, learned Counsel appearing for the appellant-Insurance Company and Mr.R.J.Karthick, learned Counsel appearing for the respondent/claimant and also Cross-Objector.

<https://hcservices.courts.gov.in/hcservices/>
5. The only point which is urged before this Court, is the quantum of compensation.



6. The learned Counsel for the appellant contended that for pain and sufferings, a sum of Rs.1,00,000/- awarded by the Tribunal is on the higher side and the application of multiplier for this case is unwarranted.

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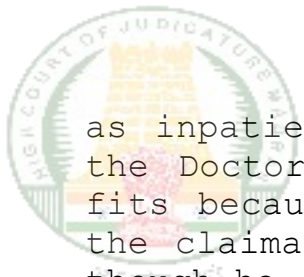
7. Whereas, Mr.R.J.Karthick, learned Counsel appearing for the respondent/claimant would submit that the injured was hardly 54 years and he has six years of balance service and therefore, taking 31 months salary alone as balance service period is erroneous and therefore, he seeks application of multiplier method. Further, he submit that some amount has to be awarded for future medical expenses, as the claimant voluntarily retired due to fits suffered by him because of the accident.

8. Since the quantum alone is in question, the negligence point is not in dispute.

9. The claimant sustained multiple fractures in the right hand. The following injuries were sustained by the claimant:

- "1) Right forearm both bone fracture
- 2) Right fronto temporo parietal subdural haematoma
- 3) Bleed in the interhemispheric fissure and in parietal Suelitentorium cere belli.
- 4) Compression or right lateral Vertical with minimal midline shift to left.
- 5) Longitudinal fracture of petrous part of left temporal bone with bleed in middle ear cavity and mastoid air cells.
- 6) Bleed in both sphenoid sinus.
- 7) Comminuted fracture of caracoid process of scapula with shoulder joint space widening on left side.
- 8) Fracture of posterior end of 4", 5th, 6th Ribs of left side.
- 9) Right fore arm comminuted fracture of distal end of both radius and ulna of right side."

10. P.W.4 and P.W.5 - Doctors spoke about the injuries and the disability sustained by him in the accident is fixed at 62%. P.W.4 and P.W.5 elaborately stated in the evidence that the right hand of the claimant has become useless due to multiple injuries and fractures. Even due to the injury in the head, he is suddenly suffering severe headache and is unable to concentrate in any work. Even for breathing, he is suffering pain due to the injuries in the rib bones. Apart from that, the claimant underwent a service injury in his right hand and a plate has been fixed inside. He was admitted in the hospital from 06.08.2006 to 01.09.2006 and thereafter, on 10.09.2006 to 01.10.2016 and totally he was treated



as inpatient for 54 days. It is also seen from the evidence of the Doctors that due to the injuries, the claimant is suffering fits because of the inability to make use of his right hand and the claimant applied for voluntary retirement on 01.01.2007, even though he could serve till 30.04.2012.

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11. When PW.5 and PW6 - expert Doctors spoke about 62% disability, in the absence of any contra medical evidence, the Tribunal should not have reduced the same. Even though the disability has been concluded under various heads to an extent of 62%, the total disability was rightly determined by the Tribunal at 40% and the same is confirmed.

12. However, because of the injuries and disabilities, the claimant voluntarily retired losing his salary, which he would have otherwise enjoyed during his service period and therefore, the multiplier method was rightly adopted by the Tribunal. Though the multiplier method was adopted by the Tribunal, it took a wrong period of balance service taking 58 years being the maximum period of service. Whereas, the Central Government servant could work upto 60 years. The Honourable Supreme Court in **Puttamma and others v. K.L.Narayana Reddy and another** reported in **2014 (1) TN MAC 481 (SC)**, did not approve the application of split multiplier. Therefore, the multiplier according to the age of the injured has to be applied.

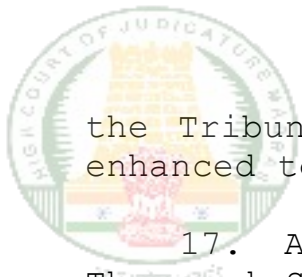
13. In this case, the age of the claimant is 54 years at the time of the accident and the appropriate multiplier is '11' as per the judgment of the Honourable Supreme Court in **Sarla Verma (Smt) and Others -Vs- Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**.

14. As per the judgment in **Rajesh and others -Vs- Rajbir Singh and others reported in 2013 (2) TN MAC 55**, 15% has to be added towards future prospects. Hence, along with 15% future prospects (Rs.17,764.00 + 15% i.e. = Rs.2,664.00), the monthly income would be Rs.20,428.60 (Rupees Twenty Thousand Four Hundred and Twenty Eight and paise sixty only). The loss of income would be Rs. 20428.60 x 12 x 11 x 40/100 = Rs.10,78,630.08 and rounded off to **Rs.10,78,630/-** (Rupees Ten Lakhs Seventy Eight Thousand Six Hundred and Thirty only).

15. The amounts awarded by the Tribunal under the other heads, viz., a sum of **Rs.1,00,000/-** (Rupees One Lakh only) towards pain and sufferings; a sum of **Rs.50,000/-** (Rupees Fifty Thousand only) towards loss of amenities; a sum of **Rs.10,000/-** (Rupees Ten Thousand only) towards extra nourishment and a sum of **Rs.10,000/-** (Rupees Ten Thousand only) towards helper assistance were rightly given and the same are confirmed.

<https://hcservices.ecourts.gov.in/hcservices/>

16. A sum of Rs.5,000/- (Rupees Five Thousand only) awarded by



the Tribunal towards transportation is very low and the same is enhanced to **Rs.15,000/-** (Rupees Fifteen Thousand only).

17. A sum of **Rs.2,58,751/-** (Rupees Two Lakhs Fifty Eight Thousand Seven Hundred and Fifty One only) as per medical bills under Ex.A15 is confirmed.

18. A sum of Rs.20,000/- (Rupees Twenty Thousand only) awarded by the Tribunal towards future medical expenses is very low and taking into consideration the future surgery to take place and further treatment, more amount is required and therefore, the same is enhanced to **Rs.50,000/-** (Rupees Fifty Thousand only), which does not carry any interest.

19. Accordingly, The total award amount is arrived at as under:

Sl. No.	Heads	Amount awarded by Tribunal (Rs.)	Amount reduced/enhanced by this Court (Rs.)	Total (Rs.)
1.	For loss of income	2,20,274.00	(+) 8,58,356	10,78,630.00
2.	Pain & Sufferings	1,00,000.00	Nil	1,00,000.00
3.	Transport charges	5,000.00	(+) 10,000.00	15,000.00
4.	Attender charges	10,000.00	Nil	10,000.00
5.	Extra Nourishment	10,000.00		10,000.00
6.	Medical Bill	2,58,751.00	Nil	2,58,751.00
7.	Loss of amenities	50,000.00	Nil	50,000.00
8.	For future medical bills	20,000.00	(+) 30,000.00	50,000.00
Grand Total				15,72,381.00
Rounded off				15,70,000.00

20. The Tribunal awarded the interest at the rate of 7.5% per annum and the same is confirmed. The award of the Tribunal in other respects, remains unaltered.

21. Though the appeal is preferred by the Insurance Company against the award, in the facts and circumstances of the case and the evidence made available before this Court, this Court intends



to enhance the compensation as above, partly allowing the Cross Objection.

22. In the result, this Civil Miscellaneous Appeal is dismissed, however, enhancing the award amount from Rs.6,74,025/- (Rupees Six Lakhs Seventy Four Thousand Twenty Five only) to a sum of Rs.15,70,000.00 (Rupees Fifteen Lakhs Seventy Thousand only), along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs. The appellant-Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.17 of 2007 on the file of the Motor Accident Claims Tribunal (Sub-Court) Ramanathapuram, within a period of **four weeks** from the date of receipt of a copy of this judgment. On such deposit, the Tribunal shall transfer the amount to the claimant's Personal Savings Account Number through RTGS/NEFT system, after getting his Account Details, within a period of **one week thereafter**. No costs. Consequently, the connected Miscellaneous petition is also dismissed.

23. In view of the dismissal of C.M.A(MD)No.1677 of 2013, the cross objection in Cross Objection (MD)No.11 of 2016 is partly allowed. No costs.

Sd/-

Assistant Registrar(CSIII)

/True Copy/

Sub Assistant Registrar

gsr

TO

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

2.The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.R.J.Karthick, Advocate Sr.No. 10630

+1cc to Mr.S.Srinivasaraghavan, Advocate Sr.No. 10680

JAM/14.03.17 /PM/6p-5c

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