

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 22.11.2018

DELIVERED ON 27.11.2018

CORAM:

THE HONOURABLE MRS. JUSTICE.R.HEMALATHA

CMA.No.3054 Of 2008  
and  
Cross Objection No.74 of 2008

In CMA No.3054 of 2008

M/s National Insurance Company Limited,  
Branch Office,  
Door No.37/2 E, Salem Main Road,  
Mettur Dam R.S.Salem District .... Appellant/2nd respondent

Vs.

1. P.Rajkumar .... 1st respondent/claimant
2. V.Govindaraj .... 2nd respondent/1st respondent

In Cross objection No.74 of 2008

P.Rajkumar .... Cross objector/1st respondent

Vs.

1. M/s National Insurance Company Limited,  
Branch Office, 37/2E, Salem Main Road,  
Mettur Dam R.S., Salem District. .... 1<sup>st</sup> Respondent/Appellant

2. V.Govindaraj .... 2<sup>nd</sup> Respondents/2<sup>nd</sup> Respondents

Prayer in CMA 3054 of 2008 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 03.03.2008 made in M.C.O.P.No.84 of 2005 on the file of the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Salem.

Prayer in Cross objection No.74 of 2008: Cross objection filed under Order 41 Rule 22 of the Code of Civil Procedure seeking

enhancement of compensation awarded in M.C.O.P.No.84 of 2005 on the file of the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Salem on 03.03.2008.

In CMA No.3054 of 2008

For Appellant : Mr.D.Bhaskaran  
For 1st Respondent : Mr.N.Manoharan  
For 2nd respondent : No appearance.

In Cross Objection No.74 of 2008

For Cross objector : Mr.N.Manoharan  
For 1st Respondent : Mr.D.Bhaskaran  
For 2nd respondent : No appearance.

#### C O M M O N J U D G M E N T

The appellant, M/s National Insurance Company Limited, Mettur Dam R.S. Salem District has filed the appeal in CMA 3054 of 2008 under Section 173 of the Motor Vehicles Act against the award dated 03.03.2008 passed by the Chief Judicial Magistrate, Salem in MCOP No.84 of 2005 and the claimant in the said claim petition has filed cross objection No.74 of 2008 seeking enhancement of the compensation awarded by the tribunal.

2. The claimant in the above claim petition in MCOP No.84 of 2005 sought a compensation of Rs.7,00,000/- for the injuries sustained by him in a road accident that took place on 16.11.2004.

3. The brief case of the claimant: The claimant aged 30 years was a load man working under the owner of the minidor auto bearing registration No.TN 30- Z-5257. On 16.11.2004, the claimant loaded tomatoes at Senguttaikkadu and started proceeding towards Mettur market. At about 12.30 hours, the driver of the minidor auto, drove the vehicle rashly and negligently, as a result of which, the minidor auto toppled and the claimant sustained injuries all over his body. Immediately, he was rushed to the Government Hospital, Mettur and thereafter got admitted himself at Gokulam Hospital for better treatment. According to the claimant, the accident had happened on account of the rash and negligent driving of the driver of the minidor auto and that since the said vehicle was insured with the second

respondent, both of them are jointly and severally liable to pay compensation to the claimants.

4. The tribunal after analysing the evidence on record, awarded a compensation of Rs.1,51,898/- together with interest at the rate of 7.5% p.a.

5. Aggrieved over the same, the National Insurance Company has filed the appeal contending that the compensation awarded by the tribunal is on the higher side, while the claimant filed cross objection seeking enhancement of the award amount.

6. Mr.D.Baskaran, learned counsel appearing for the appellant would contend that since the claimant is only a gratuitous passenger, the insurance company is not liable to pay compensation to him.

7. A perusal of the policy shows that apart from covering third party and personal accident claim, a sum of Rs.25 was paid as premium for W.C.Employee. The contention of the learned counsel for the appellant is that, this W.C.Employee is for the driver. However, as per Indian Motor Tariff 39, Premium amount of Rs.25/- would cover driver or cleaner or conductor. The claimant had travelled in the minidor auto only as a load man and this was also accepted by RW1, the Senior Assistant, National Insurance Company in his deposition before the tribunal. The trial court has in fact dealt with this aspect in extenso and concluded that the Insurance policy covers the claimant, which cannot be faulted with.

8. As far as the quantum of compensation is concerned, the tribunal awarded the following amounts under various heads.

| Sl.No | Heads                                             | Rs.      |
|-------|---------------------------------------------------|----------|
| 1     | Disability $15000 \times 17 \times 35\% = 89,250$ | 89,250   |
| 2     | Pain and sufferings                               | 10,000   |
| 3     | Transportation                                    | 5,000    |
| 4     | Extra nourishment                                 | 5,000    |
| 5     | Attendor's Charges                                | 5,000    |
| 6     | Medical Expenses (based on Ex.P8, P9 and P11)     | 37,648   |
|       | Total                                             | 1,51,898 |

9. The main contention of the appellant is that the tribunal should not have adopted multiplier method, since the injuries sustained by the claimant are not serious in nature and would not have any impact on his earning capacity. On the contrary, the learned counsel appearing for the claimant/cross objector would contend that the award amount passed by the trial court is very meagre, especially, when the disability suffered by the claimant is assessed as 35% by the Doctor.

10. A perusal of records shows that the claimant had sustained fracture on his upper and lower jaw and a steel rod was implanted by performing an operation. Doctor Shamugam (PW2), has assessed the partial permanent disability as 50%. However, the trial court has fixed the permanent disability as 35%, without assigning any reasons. Hence, the partial permanent disability is taken up as 50%. Though the trial court is not justified in adopting multiplier method for the injuries sustained by the claimant, a sum of Rs.3000 per percentage i.e.  $50 \times 3000 = 150000$  should be awarded towards partial permanent disability. In addition, a sum of Rs.10,000/- is awarded towards extra nourishment. In so far as the award passed under other heads are concerned, they cannot be said to be on the higher side.

11. The revised compensation under various heads are noted below.

| Sl.No | Heads                                         | Rs.      |
|-------|-----------------------------------------------|----------|
| 1     | Partial permanent disability (3000x50)        | 1,50,000 |
| 2     | Pain and sufferings                           | 10,000   |
| 3     | Transportation                                | 10,000   |
| 4     | Extra nourishment                             | 5,000    |
| 5     | Attendor's Charges                            | 5,000    |
| 6     | Medical Expenses (based on Ex.P8, P9 and P11) | 37,648   |
|       | Total                                         | 2,17,648 |

12. In the result,

(i) The appeal in C.M.A.No.3054 of 2008 is dismissed.

No costs.

(ii) The Cross objection No.74 of 2008 is allowed and

the claimant is entitled to a compensation of Rs.2,17,648/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and the claimant is directed to pay necessary court fee for the enhanced compensation amount.

(iii) The appellant/National Insurance Company is directed to deposit the Award amount of Rs.2,17,648/- along with interest, within a period of 4 weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the Insurance Company, the claimant is entitled to withdraw the same, after following due process of law.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

mst

To

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

Copy To

The Section Officer,  
V.R. Section, High Court,  
Madras. (2 copies)

+1cc to Mr.N.Manokaran, Advocate, S.R.No. 81115, 81111

सत्यमेव जयते

CMA.No.3054 of 2008 and  
Cross objection No.74 of 2008

SSI (CO)  
GN(03/06/2019)

WEB COPY