

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2843 of 2014
and Cross Objection No.127 of 2014
and M.P.No.1 of 2014

C.M.A.No.2843 of 2014:-

United India Insurance Co.,Ltd.,
Door No.3, P.B.No.1122, DB Road,
RS. Puram, Coimbatore-641 002

..Appellant/III

Respondent

Vs.

1.T.Ganesan ..1st Respondent/Petitioner

2.A.Jayakumar ..2nd respondent
/1st respondent

3.Viswanathan ..3rd respondent
/2nd respondent

(R1 & R2 set exparte before the
Tribunal notice may be given up)

Cross objection No.127 of 2014:-

T.Ganesan

..Cross Objector

Vs

1.United India Insurance Co.,Ltd.,
Door No.3, P.B.No.1122, DB Road,
RS. Puram, Coimbatore-641 002

2.Jayakumar

3.Viswanathan

..Respondents

Prayer in CMA.No.2843/2014 and Cross Objection No.127 of 2014:-
Appeal and Cross Objection filed against the judgment and decree
dated 05.11.2013 passed in M.C.O.P.No.586 of 2013 on the file of
Motor Accidents Claims Tribunal, Chief Judicial Magistrate,
Coimbatore.

For appellant/Insurance company : : Mr.T.Ravichandran
CMA.No.2843/2014 and for R1 in
Cross Objection in CMA 2843/2014

for Respondent No.1/Cross Objector: : Mr.K.M.D.Muhilan
for R1

and for Cross Objector in Cross
Objection

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

CMA.No.2843 of 2014 is filed by the appellant/Insurance company and Cross Objection No.127 of 2014 is filed by the Petitioner/Claimant, challenging the judgment and decree dated 05.11.2013 passed in M.C.O.P.No.586 of 2013 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Coimbatore.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a case of injury. The case of the petitioner is that on 30.08.2010 at 7 p.m., as the petitioner was riding his motor cycle bearing Reg.No.TN-37-AT-0353 in Coimbatore to Pollachi Main road, while going near Malumichampatty from South to north, the 1st respondent who was driving Mahindra van bearing Reg.No.TN-22-B-8289 came in the opposite direction at high speed and unable to control the van, dashed against the two wheeler in which the petitioner and his friend were proceeding causing grievous injuries and also fracture to the petitioner. The accident occurred only due to the negligence of the 1st respondent careless driving. The said van bearing Reg.No.TN-22-B-8289 belongs to the 2nd respondent and the same was insured with the 3rd respondent. The petitioner was aged 36 years and by working as Salesman in a Private company was earning Rs.5000/-. Due to the injuries suffered by the petitioner, he is unable to attend to his normal work. Thus, the petitioner sought for a sum of Rs.5,00,000/- as compensation from the respondents.

3. Opposing the claim of the petitioner, by filing counter, the 3rd respondent/Insurance company contends that the accident does not occur due to negligence of the 1st respondent who was driving the Mahindra van belonging to the 2nd respondent. It was only due to the negligent act of the petitioner, the accident occurred. The claim of the petitioner about the nature of injury suffered by him, age, avocation and income is denied. The claim of the petitioner is exorbitant. Thus, the 3rd respondent Insurance company sought for dismissal of the petition.

4. Before the Tribunal, the petitioner examined himself as P.W.1 and the medical expert as P.W.2, produced documents Ex.P.1 to Ex.P.18 to prove his claim. On the side of the respondents, neither oral nor documentary evidence was let in. The tribunal, by analysing the overall evidence found that the negligence of the 1st respondent alone caused the accident, passed award of Rs.3,20,000/- payable by the respondents 1 to 3 to the petitioner. Aggrieved over the said finding of the Tribunal, the 3rd respondent/Insurance company has come forward with the present appeal. While not being satisfied with the quantum of the award, the petitioner/claimant has come forward with Cross Objection No.127 of 2014.

5. Heard both sides and perused the records carefully.

6. The learned counsel for the 3rd respondent/Insurance company/appellant contends that the quantum of the award passed by the Tribunal is highly exorbitant and the Tribunal wrongly applied multiplier method. The accident occurred only due to negligence of the petitioner and as such, he is not entitled to seek compensation. Thus, the 3rd respondent sought for setting aside the award passed by the Tribunal.

7. Per contra the Cross objector/Petitioner submits that he produced enough evidence to prove that his monthly income is Rs.5000/- but the tribunal fixed Rs.4500/- without any basis. The medical expert assessed permanent disability suffered by the petitioner as 44%. The Tribunal reduced the same to 22%, without any basis. The tribunal wrongly fixed the notional income of the petitioner at Rs.4500/- but calculated the compensation wrongly by taking Rs.2000/-. The correct multiplier is not applied. The amount awarded under different heads is very low. Thus the petitioner/claimant sought for enhancement of the award amount by allowing the cross objection.

8. Issue Regarding Negligence:- The petitioner who deposed as P.W.1 clearly stated about the manner in which the accident occurred. According to P.W.1, while he was riding his two wheeler, in Coimbatore to Pollachi Road, by keeping to the left side of the road, the Mahindra van came at high speed and dashed against the two wheeler driven by the deceased. The Police also registered the case as per Ex.P.1-FIR against the 1st respondent only. Further, the Police after completion of investigation filed Final report-Ex.P.2 against the 1st respondent driver. It is also clear from Ex.P.16-Copy of judgment passed in STC.No.2 of 2012 of Judicial Magistrate, Evening Court, Coimbatore, that the 1st respondent was found guilty and punished for the offence. Therefore from the above said discussion it is clear that the negligence of the petitioner alone caused the accident. In the absence of any contra evidence on the part of the respondents, the conclusion of the Tribunal in fixing the negligence on the

part of the 1st respondent driver alone resulted in the accident is just and proper and needs no interference.

9.1. Issue Regarding Quantum:- The 3rd respondent/Insurance company contends that the quantum of award passed by the Tribunal is on the higher side. Refuting the said contention, the learned counsel for the Petitioner/Claimant seeks enhancement of the award amount stating that the quantum arrived at by the tribunal is very low.

9.2. Injury and Treatment:- The petitioner states that he suffered following injuries in the accident:-

"Blood injury at right shoulder, right forehead, right cheek, right ear and multiple injuries all over the body."

Immediately after the accident, he took treatment in Abirami Hospital, Sundarapuram, Coimbatore, wherein, he was treated as inpatient from 30.08.2010 to 31.08.2013. Thereafter, the petitioner underwent treatment as inpatient from 01.09.2010 to 07.09.2010. The petitioner underwent surgical treatment; a plate and screw is fixed in right clavicle. To prove the nature of injury suffered by him, Ex.P.5-Wound certificate, Ex.P.7-Discharge summary of Sri Abirami Hospital, Coimbatore, and Ex.P.8-Discharge summary of Richmond Hospital, Coimbatore, are produced. The petitioner states that he underwent treatment at Ganga Hospital, Coimbatore, and Discharge summary issued by the said Hospital is produced as Ex.P.10 and Ex.P.11. The Petitioner states that for the head injury suffered by him, Treatment notes of Surya Neuro Centre, is produced in Ex.P.9 series. It is therefore clear from the above that the Petitioner suffered serious permanent disability.

9.3.Disability:- The doctor who deposed as P.W.2 stated that he examined the Petitioner in person and also took X-Ray/Ex.P.18 to assess the disability suffered by him. According to P.W.2, the petitioner suffered multiple fracture and plate has been fixed in clavicle region. According to PW2 doctor, the gripping power of the petitioner is reduced and he is walking with limp and the ability to lift weight is reduced. P.W.2 stated that the partial permanent disability suffered by the Petitioner is at 44% and issued Ex.P.19 disability certificate. There is no evidence let in by the respondents to disprove the assessment made by P.W.2. Thus the Tribunal is not justified in reducing the disability suffered by the petitioner and fixing it as 22%. In this regard, following the Ruling reported in 2017 (1) TNMAC 251, [P.Elangovan Vs. S.Murali and others] and 2013(2)TN MAC 669, [M.Thirunavukkarasu Vs. P.T.S.M.Dhasthagir and 2.National Insurance Company Ltd.,], this court is of the view that as the evidence of P.W.2/doctor regarding disability assessed is not contradicted by any material by the 3rd respondent/Insurance

company, therefore, The Tribunal is not justified in reducing the disability suffered by the petitioner. Hence, this court deems it fit to fix the Partial Permanent disability at 44% instead of 22% fixed by the tribunal.

9.4. Compensation for disability:- The petitioner states that he was earning Rs.5000/- per month by working as Sales man but no proof is filed for the same. As such it is proper to fix notional monthly income at Rs.4000/- Considering the fact that the petitioner has suffered 44% disability, it will be appropriate to apply multiplier method to arrive at the compensation for Partial Permanent disability. Following the Ruling of the Apex Court reported in 2009 (2) TNMAC 1(SC) in Smt.Sarla Verma and Others., Vs. Delhi Transport Corporation and Another, the multiplier to be applied for the Petitioner aged 36 years is '15'. Accordingly, the calculation is as follows:-

$$4000 \times 12 \times 15 \times 44 / 100 = \text{Rs.}3,16,800/-.$$

Thus, a sum of Rs.3,16,800/- is awarded under the head "Partial Permanent disability." Further, taking into consideration the overall facts and circumstances of the case, this court while confirming the compensation awarded by the Tribunal under the heads "Medical expenses"; "Pain and suffering" is inclined to modify the compensation under other heads and the same is as shown below:-

Sl. No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Partial permanent disability	Rs.1,26,720/-	Rs.3,16,800/-.
2.	Pain and suffering	Rs. 25,000/-	Rs. 25,000/-
3.	Mental agony	Rs. 25,000/-	----
4.	Transport expenses	Rs. 5,000/-	Rs. 5,000/-
5.	Extra nourishment	Rs. 5,000/-	Rs. 20,000/-
6.	Medical expenses	Rs.1,03,780/-	Rs.1,03,780/-
7.	Loss of earning	Rs. 4,500/-	---
8.	Future loss of earning	Rs. 25,000/-	---
9.	Loss of amenities	---	Rs. 10,000/-
	Total	Rs.3,20,000/-	Rs.4,80,580/-

10. In the result,

(i) C.M.A.No.2843 of 2014 filed by the Insurance Company is dismissed; Cross Objection No.127 of 2014 filed by the Petitioner in MCOP.No.586 of 2013 is allowed.

(ii) The Cross Objector/Petitioner is entitled to award amount of Rs.4,80,580/- (Rupees Four Lakhs Eighty Thousand five

hundred eighty only] which carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation;

(iii) The appellant in CMA.No.2843 of 2014/3rd respondent/Insurance company is directed to deposit the enhanced award amount of Rs.4,80,580/- along with accrued interest and cost, within a period of four weeks from the date of receipt of a copy of this order, less the amount already deposited.

(v) On such deposit, the cross objector/petitioner is permitted to withdraw the same, by filing necessary application before the Tribunal. No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nvsri

To

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

2.The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to M/s.T.Ravichandran Advocate sr 29775

+1 cc to M/s.K.M.D.Muhilan Advocate sr30264

C.M.A.No.2843 of 2014
and Cross Objection No.127 of 2014

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mp(co)
aa20/06/2018

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