IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2018

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THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

Civil Miscellaneous Appeal No.689 of 2007 and
Cross Objection No.32 of 2012

C.M.A.No.689 of 2007:-

Messers The Oriental Insurance Co. Ltd.,
Zonal Office – 2, Suguna Buildings,
Avanashi Road,
Coimbatore – its Branch Office
D.No.2, VT.L.Buildings,
No.8, Esplanade,
Chennai – 108. ... Appellant/3rd Respondent

Vs

1.M.Prakash ... 1st Respondent/Petitioner
2.N.Somu ... 2nd Respondent/1st Respondent

3.Messers South India Corporation Ltd.,
18C, Rukmani Lakshmipathy Salai,
Egmore, Chennai – 8. ...3rd Respondent/2nd Respondent

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree made in M.A.C.T.O.P.No.193 of 2005 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge), at Coimbatore dated 07.04.2006.

For Appellant : Mr.M.Krishna Moorthy

For 1st Respondent : Mr.S.Sankaralingam

For Respondents 2 & 3: Set Exparte

Cross Objection No.32 of 2012:-

M.Prakash .. Cross Objectioner/1st Respondent/Petitioner

vs.

1.Messers The Oriental Insurance Co. Ltd.,
Zonal Office – 2, Suguna Buildings,
Avanashi Road,
Coimbatore – its Branch Office
D.No.2, VT.L.Buildings,
No.8, Esplanade,
Chennai – 108.

... 1st Respondent/Appellant/3rd Respondent

2.N.Somu ... 2nd Respondent/1st Respondent

3.Messers South India Corporation Ltd.,
18C, Rukmani Lakshmipathy Salai,
Egmore, Chennai – 8.

... 3rd Respondent/3rd Respondent/2nd Respondent

For Cross Objectioner : Mr.S.Sankaralingam

For 1st Respondent : Mr.M.Krishna Moorthy

For Respondents 2 &3 : Set Exparte

COMMON JUDGMENT

C.M.A.No.689 of 2007 was preferred by the appellant/The Oriental Insurance Co. Ltd., against the the judgment and decree passed in M.A.C.T.O.P.No.193 of 2005 dated 07.04.2006.

2.Cross Objection No.32 of 2012 was filed by the Cross Objectioner/claimant.

3.For the sake of convenience, the Oriental Insurance Co. Ltd., is mentioned as appellant and the cross objectioner is mentioned as claimant in this judgment.

4.The facts of the claim petition is that on 20/21.09.2003, the early morning (1.30 hours) when the claimant was proceeding in his motorcycle from West to East direction and while he was nearing the PSG College, the goods Vehicle bearing Registration No.TN 01 M 8709 came in the opposite direction, in a rash and negligent manner, driven by its Driver, hit against the claimant and caused severe injuries. The Coimbatore East Police Station has also registered a case against the Driver of the said vehicle. After the accident, the claimant was admitted in the hospital and after treatment, he sustained 50% disability and he has also incurred huge medical expenses. Hence, the petitioner claimed a compensation of Rs.19,00,000/- before the Tribunal.

5.The Tribunal after analysing the evidence and documents placed by both sides, has awarded a sum of Rs.12,41,260/- as follows;

Sl.No	Head	Amount awarded
1	Loss of Income (by fixing monthly income at Rs.9,000 per month with multiplier of 18 and 30% disability)	5,83,200
2	Pain & Suffering	10,000
3.	Mental agony	5,000
4.	Medical Expenses	6,38,210
5	Transport Charges	3,850
6	Extra Nourishment	1,000
		12,41,260/-

6. Aggrieved against the same, the Insurance Company/appellant has preferred this appeal on the ground that the award passed by the Tribunal @ Rs.12,41,260/- is an excessive one, when the injured person has sustained only fracture injuries. The disability assessed by the Doctor at 45% is not proved by examining the same Doctor who issued the certificate. The income of the injured claimant fixed at Rs.9,000/- per month is excessive and the sum awarded under disability by taking 30% is also improper. Regarding the termination of service of the claimant also not proved before the Tribunal.

7.Though the Insurance Company/appellant preferred this appeal on all these grounds, the specific point raised before this Court is only with regard to the multiplier method adopted by the Tribunal while calculating the loss of income of the claimant. It is also argued by the learned counsel for the appellant that though the claimant in the claim petition has stated that his monthly income was Rs.8,800/-, including incentive and all other benefits, the Tribunal has fixed his monthly income at Rs.9,000/-. But however, the appellant Insurance Company is not very much insisting on that aspect.

8.When the only point that was vehemently argued by the learned counsel for the appellant Insurance Company is that only a lump sum amount has to be awarded while calculating the loss of income of the claimant whereas, the Tribunal has applied the multiplier method.

9.Cross Objection No.32 of 2012:-

The Cross Objection filed by the claimant on the ground that the injured claimant had suffered 10 fracture injuries which are very much revealed by the documents (Exs.A.6 to A.9, A.16, A.17, A.20 and A.21). The learned counsel for the claimant has submitted that the injured claimant was admitted in the hospital for treatment for four times and totally for 72 days, he was admitted in the hospital as inpatient. Ex.A.8 is also the document which clearly shows the medical expenses incurred by the injured claimant.

10.The further argument advanced by the learned counsel for the claimant is that the Tribunal has not considered the future medical expenses that would be incurred by the claimant.

11. But, on the side of the appellant Insurance Corporation, it is also argued that if the claimant needs further medical treatment, then, by this time, that would have been met by the claimant and for that, no document has been filed before the Court.

12. It is the grievance of the claimant that when the Doctor has assessed the disability at 45%, the Tribunal has taken only 30%. When the claimant has sustained such number of fracture injuries on all over the body, the disability taken by the Tribunal is not justified. It is also pointed out by the claimant that as per the evidence of P.W.2, who has deposed that the claimant's eye vision partially affected and he suffer difficulties in breathing. His normal work also very much affected because of the disability and hence, the sum awarded by the Tribunal under this head is very much meager.

13.The other grievance pointed out by the claimant is that the Tribunal ought to have awarded Rs.11,70,000/- by taking the monthly income at Rs.12,755/- of the claimant for determining the loss of earning power. The sum awarded under the head pain and suffering is very meager i.e., Rs.20,000/-. When the injured person sustained fracture injuries all over the body and underwent number of surgeries, the sum awarded under the head is very much low since every time, he had to suffer a unbearable pain.

14.The further argument advanced by the learned counsel for the claimant is that, the sum awarded under the heads, mental agony; extra nourishment and transportation charges by the Tribunal is also on the lower side. On the whole, the argument advanced by the learned counsel for the claimant is that, the Tribunal has not considered the loss of earning of the claimant during medical treatment, disfigurement, shortening of foot, discomfort, frustration, hardship and loss of amenities and hence, compensation amount may be increased under these heads by this Court.

15. Heard both sides and perused the materials available on record.

16. On hearing the argument of both sides and also the documents filed by the claimant before the Tribunal, it is observed that the injuries sustained by the claimant are all are fracture injuries and it is also more than 10 numbers. The document, viz., the disability certificate - Ex.A.20 also reveals the percentage of disability as 45%. But, it is observed that the Tribunal has taken only 30% disability. When considering the period of treatment and surgery underwent by the claimant, the medical expenses was properly considered by the Tribunal. But, the other aspects has to be appropriately considered.

17. While perusing the evidence of the claimant, it is seen that for the fracture injuries sustained by the claimant, a plate was fixed and physiotherapy treatment was also given to him. Hence on 23.09.2003, a surgery was done to him and for taking further treatment he was admitted in the hospital for the periods from 25.11.2003 to 03.12.2003 and from 28.01.2004 to 18.02.2004 and on 23.03.2004. It is also seen that the claimant was again under gone surgery on 30.01.2044 for the said injury. The further evidence placed by the claimant is that he has to under go further treatment in future for removal of the said fixtures, for which he has to incur Rs.1,50,000/-.

18. Considering the said evidence and the multiple fractures sustained by the claimant, this Court is inclined to award some amount to the claimant for his future treatment. Accordingly, a sum of Rs.1,00,000/- is awarded under the head of 'Future Medical Expenses'.

19.When the claimant argued on the point of disfigurement, loss of expectancy of life and also disputing the sum awarded under the heads of mental agony, pain and suffering and extra nourishment as very much on the lower side, while considering the period of treatment and the ailment, the pain and suffering met by the claimant during the time of surgery and during the continuous period of recovery that has to be properly considered by this Court. The only issue raised on the side of the appellant Insurance Corporation is that while calculating the income of the claimant, the lump sum amount has to be applied instead of the multiplier method. Apart from these aspects, the Insurance company has not raised any strong objections.

20.On perusal of the entire records, it is very much clear that the sum awarded under certain heads relating to pain and suffering, transportation charges and extra nourishment have to be modified and hence, in view of the arguments and the documents filed on the side of the claimant in the Cross Objection and on considering the submissions made by the learned counsel for the appellant/insurance company with regard to fixing of lumpsum amount and also the multiple injuries sustained and surgeries undergone by the claimant and also the future medical expenses to be incurred by the claimant, the sum awarded by the tribunal under the heads are modified by this Court as follows;

Sl.No	Head	Amount modified
1	Loss of Income (in lumpsum)	4,50,000
2	Pain & Suffering	50,000
3.	Mental agony	30,000
4.	Transport Charges	15,000
5.	Extra nourishment	15,000
5	Loss of Income for the period of 6 months	54,000
6	Medical Expenses	6,38,210
7.	Future Medical Expenses	1,00,000
		13,52,210/-

21. In view of the above, both the Civil Miscellaneous Appeal and the Cross Objection are disposed of . No costs.

22. Accordingly, the appellant/Insurance Company is directed to deposit the entire award amount as per the modified award passed by this Court, with interest and costs, before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount to the claimant's bank account thro' RTGS within one week thereon. The rate of interest shall carry the same as awarded by the tribunal.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

jbm/ak

To

The Motor Accidents Claims Tribunal
(Principal Subordinate Judge),
Coimbatore.

+2cc to Mr.J.Mahlingam, Advocate, S.R.No. 64870
+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No. 64910

C.M.A.No.689 of 2007 and
Cross Objection No.32 of 2012

SSD(CO)
GN(04/02/2019)