

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :14.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.1548 of 2011 & Cross.Obj.No.9 of 2015
and

MP.No.1 of 2011 & MP.No.1 of 2015

M/s.United India Insurance Co., Ltd.,
Motor Third Party Claim Office,
South India Co-op., Building,
III Floor, 38, Anna Salai,
Chennai.

...Appellant/2nd Respondent
(R1 in Cross.Obj.9/2015)

Versus

1.D.Ravichandran

... 1st Respondent/Claimant
/ Cross Objector

2.J.Paneerselvam

...2nd Respondent/ 1st Respondent
(in both CMA & Cross)

Prayer in CMA: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the award and decreetal dated 08.04.2010 passed in MACT.O.P.No.3020 of 2006 on the file of the Motor Accidents Claims Tribunal (V Small Causes Court), Chennai.

Prayer in Cross Objection: Cross objection is filed under Order XXXXI Rule 22 of the Civil Procedure Code 1908, against the award and decreetal dated 08.04.2010 passed in MACT.O.P.No.3020 of 2006 on the file of the Motor Accidents Claims Tribunal (V Small Causes Court), Chennai.

CMA No.1548 of 2011:

For Appellant : Mrs.R.Rathna Thara
For Respondents : Mr.R.Manoranjitham (for R1)
: Ex parte (for R2)

Cross.Obj.No.9 of 2015:

For Cross Objector : Mr.R.Manoranjitham
For Respondents : Mrs.R.Rathan Thara (for R1)
: Exparte (for R2)

JUDGMENT

The Insurance Company has filed the Civil Miscellaneous Appeal against the Judgment and Decree dated 08.04.2010 passed in MACT.O.P.No.3020 of 2006 on the file of the Motor Accidents Claims Tribunal (V Small Causes Court), Chennai. As against the very same Judgment, the claimant has filed the Cross Objection seeking enhancement.

2.The case of the first respondent/claimant is that on 21.12.1998 at 10.15 hours, while he was traveling in a Van bearing Registration No.TN-22-E-8595 at Kovai to Perunthurai NH47 near Chengempalli Nalroad Junction, to go to Sabrimalai pilgrimage, the first respondent's Lorry bearing Registration No.TDM-7654 came from the same direction in a rash and negligent manner and hit the claimant's Van, as a result the claimant sustained grievous injuries. The accident occurred due to the rash and negligent driving of the driver of the lorry owned by first respondent in the claim petition and the second respondent in the claim petition is the insurer of the lorry. According to the claimant, the first respondent in the claim petition being the owner of the vehicle and the appellant herein being the insurer of the vehicle are liable to pay the compensation to claimant. Hence, the claimant has filed a claim petition in MACT.O.P.No.3020 of 2006 before the Tribunal, for claiming a sum of Rs.2,00,000/- as compensation.

3.The appellant/Insurance company opposed the claim petition and filed a detailed counter affidavit contending that they are not liable to pay compensation and also denied the various averments made by the claimant in the claim petition, with respect to the age, occupation, avocation and income and prayed for dismissal of the claim petition.

4.Before the Tribunal, on the side of the claimant, he examined himself as PW1, besides examined two witnesses PW.2/ Dr.Saichandran and PW.3/ Dr.J.R.R.Thiagrajan and seven documents Ex's.P1 to P7 were marked. On side of the respondents neither oral or documentary evidence was adduced. After analyzing the entire evidence and records, the Tribunal held that the driver of the lorry was responsible for the accident, as such the insurance company was liable to pay the compensation. By coming to such a conclusion, the Tribunal computed the compensation under different heads and awarded a sum of Rs.96,000/- as a total compensation. However, the appellant/ Insurance company has not disputed the negligence aspect, but only contend that the claimant sustained simple injuries and he is one of the passenger in the said Van. Aggrieved over the same, the appellant/Insurance company has filed the present appeal.

5.The learned counsel appearing for the claimant/Cross Objector submits that the claimant suffered multiple fracture injury of clavical left, fracture of both bone, left forearm and fissure fracture of frontal bone besides injuries in his head for which, he had taken treatment in Government Hospital, Erode from 21.12.1998 to 26.12.1998 which could be evident from Ex.P2, discharge summary issued by Government Hospital, Erode. The Doctor examined on the side of the claimant has stated that closed reduction was done and AE slab was applied. Even though the Doctors examined on the side of the claimant, assessed the disability of the claimant at 50%, the Tribunal awarded a sum of Rs.67,500/- by reducing the percentage of disability at 45%. At the time of accident, the claimant was employed as Cleaner and earning Rs.200/- per day. The Tribunal, taking a sum of Rs.3,000/- as monthly income of the claimant and awarded a meager amount of Rs.9,000/- per month without regard to the fact that even after the accident, the claimant could not attend to his work atleast for six months. The Tribunal further awarded Rs.2,500/- towards Transportation and Rs.2,000/- towards Extra Nourishment without taking note of the nature of injuries and length of treatment. According to the counsel for the claimant, the amount awarded by the Tribunal is meager and it warrants enhancement.

6.Heard the learned counsel appearing for the appellant / Insurance company and the learned counsel appearing for the claimant/cross objector and perused the materials available on record.

7.On the point of quantum, the learned counsel appearing for the appellant/Insurance company would contend that the document filed by the claimant Ex.P2/Discharge summary issued by the Government Hospital, Erode and Ex.P3/Prescriptions issued from the medical doctor at Chennai would prove that the claimant had taken first aid treatment at Erode and thereafter, taken some treatment at Chennai. In any event, according to the counsel for the insurance company, the claimant had only sustained minor injuries for which the compensation awarded by the Tribunal is onerous and excessive.

8.Per contra, the learned counsel for the claimant contended that in connection with accident, several injured persons have filed claim petitions in MACT.O.P.Nos. 26 to 43 of 1999. All the claimants therein were immediately admitted in Government Hospital, Erode, and the claimant/first respondent is also one of the passengers traveled in the very same Van. In any event, the compensation awarded by the Tribunal in favour of the claimant is not befitting the nature of injuries sustained by him.

9. After going through the records, this Court is of the considered view that the claimant has also travelled in the said Van on 21.12.1998 at 10.15 hours, bearing Registration No. TN-22-E-8595 and met with the accident. In the said accident, the claimant sustained simple injuries and took first aid treatment in Erode Government Hospital. Thereafter, he went to his residence in Chennai where he had taken treatment, which could be evident from Ex.P3/Prescriptions issued by the medical doctor at Chennai. After analyzing the injuries as mentioned in Ex.P2, it clearly shows that he has suffered fracture of clavicle left, fracture of both bone left forearm and fissure fracture of frontal bone and totally he had taken treatment for 6 days as inpatient from 21.12.1998 to 26.12.1998, it was also proved by the deposition of PW2 and PW3/Doctors, who were examined on behalf of the claimant. The Doctors assessed the disability at 50% and 25% respectively. Considering the nature of the injuries, the Tribunal has fixed the disability at 45% and awarded Rs.67,000/- under the head disability at Rs.1,500/- per percentage of disability. However, this Court is of the view that having regard to the period of treatment of the claimant and the nature of injuries, the Tribunal ought to have taken the disability assessed by the Doctors at 50%. Accordingly, if the disability of the claimant is taken as 50%, based upon the injuries and the deposition of two doctors, a sum of Rs.75,000/- shall be awarded towards disability to the claimant, which will be the fair and reasonable compensation.

10. As regards the quantum towards loss of income, this Court is of the considered view that the claimant was aged 34 years and working as cleaner. Without any proof of avocation and income, he claimed to have earned Rs.200/- per day. Due to the injuries sustained, the claimant could not have attended to his employment for a period of six months. While so, the Tribunal ought to have taken the notional monthly income of the claimant at Rs.4,500/- instead of Rs.3,000/- and awarded compensation under the head "loss of earning" for a period of six months instead of three months. Accordingly, a sum of Rs.27,500/- is hereby awarded under the head loss of earning to the claimant.

11. The Tribunal, without taking note of the period of hospitalization, awarded only Rs.2,500/- towards Transport charges which is enhanced to Rs.5,000/-. For Extra nourishment, a sum of Rs.2,000/- awarded and it is also enhanced to Rs.5,000/-. Considering the nature of injuries, the claimant could not have attended to his work without the assistance of others and therefore additionally, Attendant Charges is hereby awarded at Rs.12,000/-. Thus, the award amount passed by the Tribunal is modified and enhanced as follows:-

Description	Amount awarded by the Tribunal	Amount awarded by this Court
Loss of Earning	Rs.9,000/-	Rs.27,000/-
Extra nourishment	Rs.2,000/-	Rs.5,000/-
Pain and Suffering	Rs.15,000/-	Rs.15,000/-
Disability	Rs.67,500/-	Rs.75,000/-
Transportation charges	Rs.2,500/-	Rs.5,000/-
Attendant Charges	-	Rs.12,000/-
Total	Rs.96,000/-	Rs.1,39,000/-

12. In the result, the Civil Miscellaneous petition filed by the appellant/Insurance company is dismissed and the Cross objection filed by the claimant is partly allowed and the compensation amount of Rs.96,000/- awarded by the Tribunal is hereby enhanced to Rs.1,39,000/-, with interest at the rate of 7.5% per annum, from the date of petition till the date of realisation. The appellant/Insurance company is directed to deposit the enhanced award amount along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the first respondent/Cross objector/claimant is permitted to withdraw the amount along with interest and costs, after adjusting the amount if any, already withdrawn. The claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. No costs. Consequently, the connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar

//True Copy//

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Sub Assistant Registrar

To

1. The Motor Vehicles Accident Claims Tribunal
(V Judge, Court of Small Causes), Chennai.

+1cc to Mrs.R.Rathna Thara, Advocate, SR.No.13569

CMA No.1548 of 2011
and
MP.No.1 of 2011

Kak (16/07/2019)