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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2325 of 2015 & M.P.No.1 of 2015
and Cross Objection No.29 of 2016

C.M.A.No.2325 of 2015:

National Insurance Company Limited,
T.P.Hub, No.751, Anna Salai,
Chennai - 600 002.

.. Appellant

Vs.

1.M.Gurumurthy

2.The Managing Director,
Pondicherry Road Transport Corporation Limited,
No.4, Iyyanar Kovil Street, Raja Nagar,
Puducherry.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.06.2015 made in M.C.O.P.No.2295 of 2013 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant	:	Mr.S.Vadivel
For R1	:	Mr.F.Terry Chella Raja for Mr.V.Velu
For R2	:	Mr.D.Arul for Mr.A.R.Nixon

Cross Objection No.29 of 2016:

M.Gurumoorthy

.. Cross objector

Vs.

1.National Insurance Company Limited,
T.P.Hub, No.751, Anna Salai,
Chennai - 600 002.

2.The Managing Director,
Pondicherry Road Transport Corporation Limited,
No.4, Iyyanar Kovil Street, Raja Nagar,
Puducherry.

.. Respondents

Prayer: This Cross Appeal is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 30.06.2015 made in



M.C.O.P.No.2295 of 2013 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

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For Cross Objector : Mr.F.Terry Chella Raja for
Mr.V.Velu
For R1 : Mr.S.Vadivel
For R2 : Mr.D.Arul for
Mr.A.R.Nixon

COMMON JUDGMENT

The Civil Miscellaneous Appeal has been filed by the Insurance Company against the award dated 30.06.2015 made in M.C.O.P.No.2295 of 2013 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.The Cross-Objection has been filed by the claimant seeking enhancement of compensation granted by the Tribunal in the award dated 30.06.2015 made in M.C.O.P.No.2295 of 2013 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

3.Both the appeal and the cross-objection arises out of the same accident and same award and hence, they are disposed of by this common judgment.

4.The parties are referred to as per their respective ranks in the claim petition, for the sake of convenience.

5.The appellant-Insurance Company is second respondent in M.C.O.P.No.2295 of 2013 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. The claimant/cross objector filed the above claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 17.02.2012.

6.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the said vehicle to pay a sum of Rs.9,10,000/- as compensation to the claimant/cross objector.

7.Against the said award dated 30.06.2015 made in M.C.O.P.No.2295 of 2013, the second respondent-Insurance Company has come out with the present appeal. Not being satisfied with the amount awarded by the Tribunal, the claimant has come out



with the Cross-Appeal seeking enhancement of compensation awarded by the Tribunal.

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8. The learned counsel appearing for the second respondent-Insurance Company contended that the claimant has taken treatment in the hospital as in-patient only for a period of 7 days from 17.02.2012 to 23.02.2012 in Government General Hospital, Chennai. The claimant has not produced any material to show that he was continuously taking treatment. The Tribunal has granted exorbitant amounts under the heads of disability, pain and suffering, extra nourishment and damage to clothes. The claimant has not filed any material to show that he incurred expenses for transportation and future medical expenses. The claimant has produced Ex.P4/medical bills to show that he spent Rs.350/- towards medical expenses. The Tribunal erroneously granted a sum of Rs.25,000/- towards medical expenses, Rs.1,00,000/- towards loss of future prospects and Rs.75,000/- towards transportation. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award passed by the Tribunal.

9. Per contra, the learned counsel appearing for the claimant/cross objector contended that the Tribunal has not properly appreciated the nature of injuries sustained by the claimant and evidence of P.W.2/Doctor. The Tribunal ought to have adopted multiplier method to arrive at compensation towards disability. The Tribunal ought to have awarded compensation separately for disability and loss of earning power. A sum of Rs.75,000/- towards transportation, Rs.40,000/- towards attendant charges, Rs.50,000/- towards loss of amenities and Rs.2,00,000/- towards pain and sufferings granted by the Tribunal are meagre and prayed for enhancement of compensation.

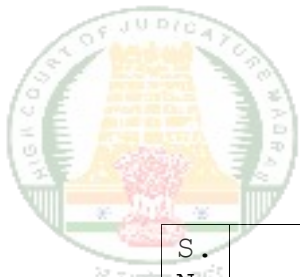
10. Heard the learned counsel appearing for the second respondent-Insurance Company as well as the learned counsel appearing for the claimant-cross objector and perused the entire materials on record.

11. From the materials available on record, it is seen that the claimant in the accident has sustained injury in the head and his frontal bone was broken and tender bone was also broken and that blood clotting has occurred in the brain and he also sustained injuries in the face and all over the body. Claimant as P.W.1 and P.W.2/Doctor deposed about nature of injuries sustained by the claimant. P.W.2/Doctor assessed that the claimant suffered 55% disability. The Tribunal considering the materials on record and evidence of P.W.2/Doctor, reduced the percentage of disability suffered by the claimant to 50% and



awarded compensation. The reason given by the Tribunal for reducing 5% disability is not proper. The claimant is entitled to compensation for 55% disability. The claimant has not proved that he suffered functional disability and he is totally disabled and lost his earning capacity and could not do any work as he was doing earlier. In such circumstances, the claimant is not entitled to compensation by applying multiplier method. The claimant is entitled to compensation for 55% disability at the rate of Rs.3,000/- per percentage. The compensation awarded by the Tribunal towards disability is modified to Rs.1,65,000/- [Rs.3,000/- X 55]. The claimant has taken treatment in the hospital as in-patient only for 7 days from 17.02.2012 to 23.02.2012 in Government General Hospital, Chennai. The Tribunal has awarded excessive amounts under various heads without any basis and without properly appreciating the nature of injuries and avocation of the claimant. The claimant has produced medical bills for Rs.350/- which was marked as Ex.P4. The Tribunal has awarded excessive amount of Rs.25,000/- towards medical expenses, on the ground that even though the claimant has taken treatment in Government Hospital, he would have spent some incidental expenses. The same is hence reduced to Rs.10,000/-. Though the claimant has not let in any evidence to prove that he requires future medical expenses, the Tribunal awarded a sum of Rs.50,000/- towards future medical expenses and a sum of Rs.1,00,000/- towards future prospects, without any basis. Both the amounts are liable to be set aside and are hereby set aside. The sum of Rs.2,00,000/- granted towards pain and suffering is hereby reduced to Rs.50,000/-, Rs.1,00,000/- granted towards extra nourishment is reduced to Rs.20,000/-, Rs.75,000/- granted towards transportation is reduced to Rs.5,000/-, Rs.3,000/- granted towards damage to clothes is reduced to Rs.1,000/-, Rs.40,000/- granted towards attendant charges is reduced to Rs.10,000/- and Rs.50,000/- granted towards loss of amenities is reduced to Rs.30,000/-. The Tribunal has granted a sum of Rs.39,000/- towards loss of earning power, which is liable to be set aside and the same is hereby set aside. A sum of Rs.78,000/- granted by the Tribunal towards loss of income is hereby confirmed. The amount awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	1,50,000/-	1,65,000/-	enhanced
2.	Pain and suffering	2,00,000/-	50,000/-	reduced
3.	Extra nourishment	1,00,000/-	20,000/-	reduced



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
4.	Transportation	75,000/-	5,000/-	reduced
5.	Damage to clothes	3,000/-	1,000/-	reduced
6.	Attendant charges	40,000/-	10,000/-	reduced
7.	Medical expenses	25,000/-	10,000/-	reduced
8.	Future medical expenses	50,000/-	-	set aside
9.	Loss of income	78,000/-	78,000/-	confirmed
10.	Loss of earning power	39,000/-	-	set aside
11.	Loss of future prospects	1,00,000/-	-	set aside
12.	Loss of amenities	50,000/-	30,000/-	reduced
	Total	Rs.9,10,000/-	Rs.3,69,000/-	reduced by Rs.5,41,000/-

12.The compensation awarded by the Tribunal at Rs.9,10,000/- is hereby modified to Rs.3,69,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent-Insurance Company is directed to deposit the modified award amount now determined by this Court, together with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.2295 of 2013 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. On such deposit, the claimant is permitted to withdraw the award amount, along with interest and costs, less the amount if any, already withdrawn.

13.The learned counsel appearing for the second respondent-Insurance Company has submitted that the second respondent-Insurance Company has already deposited a sum of Rs.5,00,000/- together with interest to the credit of M.C.O.P.No.2295 of 2013 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. The learned counsel appearing for the claimant/cross objector submitted that the claimant/cross objector has withdrawn the entire amount deposited by the Insurance Company. The second respondent-Insurance Company is



permitted to withdraw the excess amount, if any, lying in the deposit to the credit of M.C.O.P.No.2295 of 2013 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

14.In the result, both the Civil Miscellaneous Appeal as well as the Cross Objection are allowed in part. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The IV Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1 cc to M/s.S.Vadivel,Advocate Sr.No. 40454
+1 cc to M/s.V.Velu,Advocate Sr.No. 40477
+1 cc to M/s.A.R.Nixon, Advocate Sr.No. 41785

AKM/22.01.2020/6P- 6C /

C.M.A.No.2325 of 2015 & M.P.No.1 of 2015
and Cross Objection No.29 of 2016