

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.09.2018

Delivered on : 02.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.317 of 2015
and Cross Objection No.45 of 2016
and M.P.No.1 of 2015

C.M.A.No.317 of 2015:

The Manager,
ICICI Lombard General Insurance Company Ltd.,
Chennai - 600 003. Appellant/2nd Respondent

Vs

1.Baskaran 1st Respondent/Plaintiff

2.Ramesh 2nd Respondent/1st Respondent

Cross Appeal No.45 of 2016:

Baskaran Cross Objector/1st Respondent

Vs

1.The Manager,
ICICI Lombard General Insurance Company Ltd.,
Chennai - 600 003. 1st Respondent/Appellant

2.Ramesh 2nd Respondent/2nd Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 29.10.2013 in M.C.O.P.No.590 of 2010 on the file of the Motor Accident Claims Tribunal (III Additional District Judge), Tiruvellore at Poonamallee.

Cross Objection filed under Order 41, Rule 22 of Code of Civil Procedure, 1908 seeking to enhance award dated 29.10.2013 in M.C.O.P.No.590 of 2010 on the file of the Motor Accident Claims Tribunal (III Additional District Judge), Tiruvellore at Poonamallee.

For Appellant : Ms.R.Sreevidhya
in CMA and
R1 in Cross Obj.

For Respondent No.1 : Mr.MA.P.Thangavel
in CMA and Cross
Objector in Cross Obj.

COMMON JUDGMENT

Being aggrieved by the award passed in M.C.O.P.No.590 of 2010 dated 29.10.2013 on the file of the Motor Accident Claims Tribunal (III Additional District Judge), Trivellore at Poonamallee, the appellant insurance company has filed the appeal. In the appeal, the claimant has filed Cross Objection seeking to enhance the compensation.

2. For convenience, the parties are referred to as per their array in the appeal.

3. Brief facts in a nutshell are that the first respondent-claimant sustained grievous injuries in a motor vehicle accident occurred on 11.11.2009, for which he made a claim before the Motor Accident Claims Tribunal (hereinafter referred to as "Tribunal") in M.C.O.P.No.590 of 2010 claiming a sum of Rs.18,00,000/- as compensation. The Tribunal, after finding that the accident was caused due to the negligence of the driver of the second respondent Tata Sumo car, by order dated 29.10.2013, quantified compensation and passed an award for Rs.7,20,500/-. Aggrieved by the same, the appellant insurance company has filed C.M.A.No.317 of 2015. Being dissatisfied with the quantum, the first respondent-claimant filed Cross Objection No.45 of 2016.

4. I heard Ms.R.Sreevidhya, learned counsel for the appellant insurance company and Mr.MA.P.Thangavel, learned counsel for the first respondent-claimant and also perused the materials available on record.

5. Though the appellant resisted the claim petition before the Tribunal contending that the driver of the offending vehicle had no valid driving licence at the time accident, no document was produced to establish the same. In its order, the Tribunal held that as per Ex.P4, the driver of the offending vehicle was having licence upto 10.8.2012. The Tribunal further held that though in Ex.P4 it is stated that the licence expired on 6.4.2009, the appellant has failed to prove that from 6.4.2009 to 11.11.2009, the date of accident, the driver of the offending

vehicle viz., Ponnappan had no valid driving licence. Further, from Ex.P4, it is clear that the driver Ponnappan was having licence from 6.9.2009 to 10.8.2012. Thus, the Tribunal held that the appellant insurance company, who is the insurer of the offending vehicle at the time of accident is liable to pay compensation. Since the said finding of the Tribunal is well considered, this Court does not want to interfere with the same.

6. The point now arises for consideration is whether the compensation of Rs.7,20,500/- awarded by the Tribunal for the injuries sustained by the first respondent-claimant in the accident is reasonable.

7. The learned counsel for the appellant contended that the Tribunal erred in appreciating the disproportionate award under the head loss of earning power and the Tribunal also failed to note that no document has been filed to show that the first respondent was terminated from employment due to injuries. She would further contend that the total compensation awarded by the Tribunal is exorbitant and the same is liable to be reduced considerably.

8. Per contra, the learned counsel for the first respondent submitted that due to injuries sustained in the accident, the total loss of earning power of the first respondent was affected. Being a skilled worker, injuries sustained by the first respondent will affect the entire avocation and life and in fact, the Tribunal ought to have taken 100% disability and awarded more amount. The learned counsel further submitted that without any valid reason, the Tribunal reduced the disability assessed by P.W.2-Doctor from 65% to 40%

9. The learned counsel then submitted that the Tribunal failed to give addition towards future prospects and prayed for 40% addition by taking the monthly income at Rs.10,000/-. With the above arguments, the learned counsel prayed for enhancement of compensation.

10. In his evidence, the first respondent-claimant (P.W.1) deposed that in the accident he had sustained head injuries, multiple corusion in right frontal medi partitioned brain edena and left leg fractures. Immediately after the accident, he was admitted in SRM Hospital where from he was taken to Government Hospital, Chennai and admitted as inpatient. Thereafter, he had taken treatment at Nimbs Hospital, Pondicherry. Altogether, he had taken treatment nearly four months.

11. P.W.2-Dr.V.R.Subramaniam, examined the first respondent and assessed the disability as 65%. While assessing the disability, P.W.2 opined in relation to the nature injury

sustained by the first respondent as under:

"Compound fracture and comminuted both bones (tibia and fibula) RT Clavicle.
Head injury multiple brain contusion.
Right frontal, right parietal diffuse.
Brain Edema"

12. In his chief examination by way of proof-affidavit, P.W.2 stated that three surgeries were performed i.e., external fixation right leg; tracheotomy and split skin grafting. P.W.2 further stated that right leg - deformity present and disfiguring scar walk with severe limp; movement of right knee decreased by 35%; right ankle decreased by 25%; muscle power right knee and right ankle decreased by 20% by each; severe difficulty in squatting and sitting cross legged and moderate difficulty in climbing stairs and walking on slopes pain and swelling right leg. The x-ray report shows evidence of malunion right tibia and right fibula. As far as head injury is concerned, P.W.2 stated that cognitive deficit (responsiveness, alertness, rest performativity) moderately affected. Due to head injury, the first respondent often getting head ache, facial pain and neck stiffness difficulty in performing continuous work. Stating so, P.W.2 assessed the disability by using formula as 65% and issued Ex.P10-disability certificate.

13. The Tribunal has taken the disability as 40% by stating that the disability assessed by P.W.2 as 65% was not on the whole body and 65% disability meant only for injuries sustained by the first respondent.

14. The Court must be mindful of the fact that the first respondent suffered disability and by virtue of the same he had some difficulty in doing his conductor work. 65% disability assessed by P.W.2 was not meant for the whole body and the same is in relation to injuries sustained by the first respondent. Nothing has been produced by the first respondent to prove that he was seriously disabled. Though the learned counsel for the first respondent contended that the first respondent sustained 100% disability, to prove the same, he has not produced any materials. Therefore, in the facts and circumstances of the case and also considering the nature of injuries, the Tribunal was right in taking the disability as 40% for determining the compensation.

15. As far as monthly income of the first respondent is concerned, admittedly, at the time of accident, he was working as conductor (probationer) and was earning Rs.8,000/-. Exs.P5 and P6 would clearly prove that the first respondent was working as conductor (probationer) at the time of accident and was earning Rs.8,000/- per month and thus, the Tribunal was right in

fixing the monthly income of the injured as Rs.8,000/-.

16. By relying upon the decision in Jagdish v. Mohan and others, reported in 2018 (1) TN MAC 577 (SC), supra, the learned counsel for the first respondent submitted that even the claimant is self-employed, he is entitled for 40% addition towards future prospects and the Tribunal has failed to give addition towards future prospects.

17. In Jagdish v. Mohan and others, supra, the Hon'ble Supreme Court held:

"7.The Appellant has sought an enhancement of Compensation under the following heads:

- (i)The Tribunal ought to have, but did not award any amount towards Loss of Future Prospects. The Appellant submits that in view of the recent Judgment of the Constitution Bench in National Insurance Co. Ltd. v. Pranay Sethi, 2017 (2) TN MAC 609 (SC) : 2017 (13) SCALE 12, he would be entitled to be compensated for Loss of Future Prospects even though he is self-employed.
- (ii)According to the Appellant, the nature of injuries suffered, resulting in a total Loss of Functionality of both the hands, would require Compensation to be computed on the basis of a disability of 100 per cent and not 90 per cent; and
- (iii)The income as claimed of Rs.6,000 per month should be the basis of Computation and not Rs.4,050 as allowed by the Tribunal and confirmed by the High Court."

18. In the case on hand, at the time of accident, the first respondent was a probationer. Since the first respondent was in Government service, after completing his probation period, he would have been brought into regular time scale of pay. Therefore, following the decision of the Hon'ble Supreme Court in Jagdish v. Mohan and others, supra, since the first respondent being a skilled conductor, it would be appropriate to give 40% addition for the salary. If we give 40% addition, the monthly income of the injured would come to Rs.11,200/-.

19. While determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily, it would be appropriate to adopt multiplier method for loss of earning capacity on account of disability. At the time of accident, the first respondent was aged 38 years. For the age group 35 - 40, the multiplier to be applied is "15". However, the Tribunal while calculating the compensation adopted

multiplier "16", which is erroneous.

20. Taking the monthly income of the first respondent after giving 40% addition at Rs.11,200/- and adopting multiplier "15" for 40% disability, the loss of earning power is calculated at Rs.8,06,400/- (Rs.8000 + 40% (future prospects) x 12 x 15 / 100).

21. The Tribunal awarded Rs.32,000/- for loss of income for treatment period for four months. The aforesaid amount of Rs.32,000/- calculated by the Tribunal for four months is without adding future prospects. Adding 40% future prospects, this Court calculated the monthly income of the injured at Rs.11,200/-. Therefore, the first respondent is entitled for Rs.44,800/- for loss of income for four months treatment period.

22. The Tribunal awarded Rs.10,000/- towards medical expenses. The learned counsel by relying upon Ex.P7-medical bills submitted that totally, the first respondent incurred a sum of Rs.18,000/- and the Tribunal erred in awarding Rs.10,000/- for medical expenses. The said contention of the learned counsel for the first respondent is without any material. Therefore, Rs.10,000/- awarded by the Tribunal for medical expenses is maintained.

23. The Tribunal awarded Rs.25,000/- towards pain and suffering and extra-nourishment. In fact, in the accident the first respondent sustained compound fracture and comminuted both bones (tibia and fibula) right Calvicle and also head injury. Considering the nature of injuries sustained by the first respondent in the accident, he would have suffered pain and suffering during the period of treatment. Further, he would have suffered mental and physical shock at the time of accident. The pain and suffering are hardships, which is intolerable and cannot be expressed in terms of words and money cannot compensate the same. Therefore, this Court feels that it would be appropriate to award a sum of Rs.75,000/- towards pain and suffering and Rs.25,000/- awarded by the Tribunal is maintained towards extra-nourishment.

24. By relying upon Ex.P9, the Tribunal awarded Rs.39,150/- towards transport charges and the same is maintained.

25. The Tribunal has not awarded any amount towards attender charges. Taking note of the injuries sustained by the first respondent and also the treatment undergone by him in various hospitals, he would have been taken care of by the attender during the period of treatments. Therefore, it would be appropriate to award a sum of Rs.15,000/- for attender charges.

26. The Tribunal has not awarded any amount towards loss of amenities as well as loss of expectation of life. Considering the nature of injuries, this Court finds that it would be appropriate to award a sum of Rs.25,000/- towards loss of amenities and another Rs.25,000/- towards loss of expectation of life. Thus, the total compensation of Rs.7,20,500/- awarded by the Tribunal is enhanced to Rs.10,65,350/- as under:

Heads	Rs.
Loss of earning power	8,06,400.00
Medical expenses	10,000.00
Loss of earning for 4 months	44,800.00
Transport charges	39,150.00
Pain and suffering	75,000.00
Extra-nourishment	25,000.00
Loss of expectation of life	25,000.00
Attender charges	15,000.00
Loss of amenities	25,000.00
Total	10,65,350.00

27. The Tribunal awarded interest at the rate of 7.5% per annum. By relying upon the decisions of the Hon'ble Apex Court, particularly, the decision in Jagdish v. Mohan and others, supra, the learned counsel for the first respondent submitted that in the said case, the Apex Court awarded interest at the rate of 9% per annum and in the present 9% interest may be awarded. In Jagdish v. Mohan and others, the accident occurred during 2011. But in the present case, the accident was of the year 2009. Therefore, the Tribunal was right in ordering interest at the rate of 7.5% per annum and the same is affirmed.

28. In the result, the Civil Miscellaneous Appeal filed by the appellant is dismissed and the Cross Appeal filed by the first respondent is partly allowed. The compensation of Rs.7,20,500/- awarded by the Tribunal is enhanced to Rs.10,65,350/-. The second respondent is directed to deposit the enhanced compensation of Rs.10,65,350/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the amount on filing proper application before the Tribunal. The amount

shall be paid over to the first respondent upon proper identification. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

vs

To

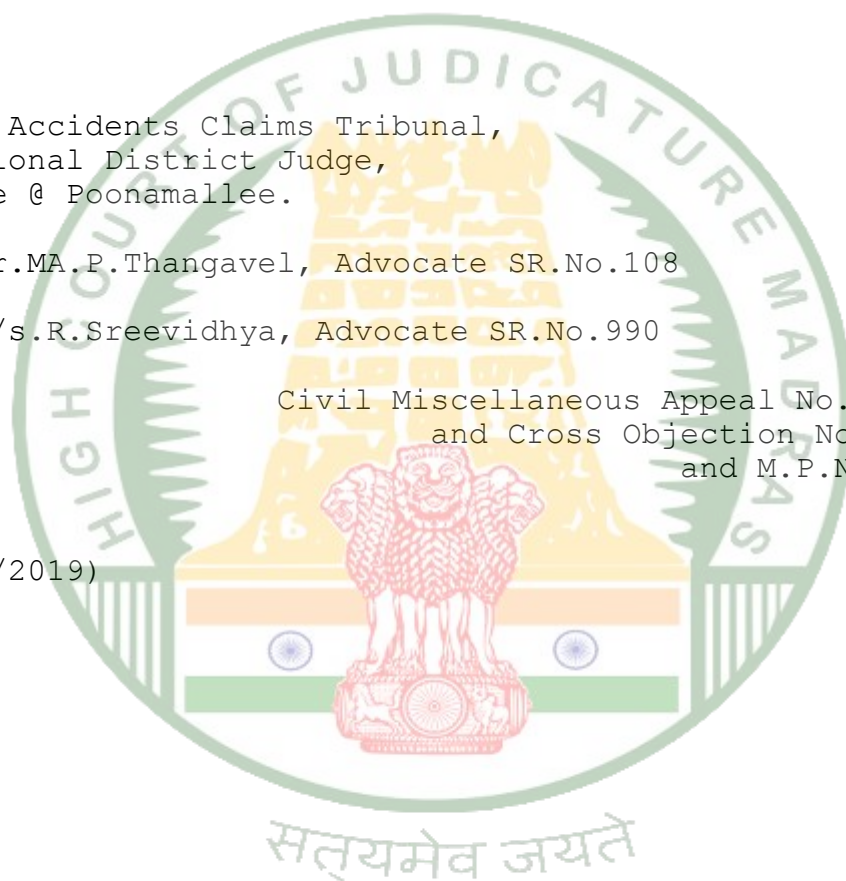
The Motor Accidents Claims Tribunal,
III Additional District Judge,
Trivellore @ Poonamallee.

+1cc to Mr.MA.P.Thangavel, Advocate SR.No.108

+1cc to M/s.R.Sreevidhya, Advocate SR.No.990

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