

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A. No.1285 of 2014 & M.P. No.1 of 2014
and
Cross Objection No. 52 of 2018

C.M.A.No. 1285 of 2014:

The Oriental Insurance Company Limited,
No.115/116, Prakasam Street,
Broadway, Chennai - 1. ... Appellant/Respondent 2

-Vs-

1. M.Sivalingam @ Kamaraj ... Respondent/Petitioner
2. The Farwood Industries Ltd.,
No.2/546, East Coast Road,
Neelankarai, Chennai - 41. ... Respondent/Respondent

Cross-Objection No.52 of 2018:

M.Sivalingam @ Kamaraj ... Cross-Objector/1st Respondent/
Defendant

vs.

1. The Oriental Insurance Company Limited,
No.115/116, Prakasam Street,
Broadway, Chennai - 1. ... Respondent/Appellant/2nd Respondent
2. The Farwood Industries Ltd.,
No.2/546, East Coast Road,
Neelankarai, Chennai - 41. ... 2nd Respondents /Judgment Debtor /
1st Respondent

C.M.A.No. 1669 of 2010:

Civil Miscellaneous Appeal filed U/s. 173 of Motor Vehicles Act, 1988, praying to set aside the decree and judgment dated 26th day of November, 2013, made in M.C.O.P.No.5442 of 2011, on the file of the Motor Accident Claims Tribunal (III Court of Small Causes) of Madras.

For Appellant :: Mr. S.Manohar
For Respondents :: Mr. R.Veeramani for R1
 R2 :: No appearance

Cross-Objector No.52 of 2018:-

Cross-Objection filed under Order 41 Rule 22 C.P.C. praying to call for the records pertaining to impugned judgment and decree of the court below in MCOP No.5442 of 2011, dated 26.11.2013 on the file of the III Motor Accidents Claims Tribunal at Chennai and set aside the same as illegal, arbitrary, against the material evidence on records and settled principles of law, insofar as awarding a sum of Rs.10,41,800/- with interest thereon, as against the claim of Rs.20,00,000/- and thereby enhance the compensation.

For Cross-Objector :: Mr.R.Veeramani
For R1 :: Mr. S.Manohar

For R2 :: No Appearance

COMMON JUDGMENT

The Insurance Company has come forward with this Civil Miscellaneous Appeal against the award dated 26.11.2013 made in M.C.O.P.No. 5442 of 2011 on the file of the learned III Judge, Court of Small Causes, Motor Accidents Claim Tribunal, Madras. The claimant and the owner of the vehicle are the respondents. The claimant has filed Cross Objection No.52 of 2018, seeking enhancement of compensation. The Transport Corporation and the owner are the respondents.

2. The appeal is filed by the Insurance Company challenging the quantum of compensation. The injured claimant filed a petition claiming a compensation of Rs.20,00,000/- for the injuries suffered by him in the road accident occurred on 09.11.2011 at about 6.00 a.m. According to the claimant, while he was riding a bicycle, proceeding on old mahabalipuram Road near Mosque, Padur to Kelambakkam, at the time, the mini lorry bearing Registration No.TN-07-R-9340 was driven by its driver in a rash and negligent manner and dashed against the petitioner and ran over him. Thereby he sustained grievous injuries.

3. In support of the claim petition, the claimant examined himself as P.W.1, Mr.Kanniyappan and Mr.Selvaraj were examined as P.Ws.2 and 3 are working in the same company with the claimant and one Doctor/Mathiazhagan who treated him was examined as P.W.4 and Exhibits P.1 to P.18 were marked. On behalf of the Insurance Company, neither any witness was

examined nor any document was marked before the Tribunal.

4. The Tribunal, after taking note of the oral evidence of P.W.1 and P.W.4 and Exhibits P.1-Copy of F.I.R., P.2-Copy of Rough Sketch and P.3-Copy of Charge sheet held that due to the rash and negligent driving by the driver of the first respondent's vehicle, the accident occurred and consequently, fixed the liability on the appellant/Insurance Company.

5. Ex.P.5 is the Discharge Summary which shows that he had taken treatment as inpatient at Stanely Medical College Hospital from 09.11.2011 to 31.11.2012. He had suffered segmental fracture of both bones at right leg and Reumen amputation was done. Ex.P7 Medical Certificate shows that above knee amputation was done and treated for the consequential complications and non healing ulcers. Ex.P.18 Disability Certificate issued by P.W.4/Dr.Mathiazhagan also speaks about the same.

6. The tribunal granted the following amounts as compensation in various heads:

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of Income	Rs. 72,000/-
2	Transport to Hospital	Rs. 10,000/-
3	Extra Nourishment	Rs. 20,000/-
4	Damage to clothing	Rs. 1,000/-
5	Medical Expenses	Rs. 1,00,000/-
6	Attender Charges	Rs. 15,000/-
7	Loss of Amenities of life	Rs. 25,000/-
8	Pain and Sufferings	Rs. 50,000/-
9	Permanent Disability	Rs. 7,48,000/-
10	Total	Rs. 10,41,800/-

7. Insofar as the issue regarding negligence is concerned, the learned counsel for the Insurance Company has no serious objection, hence, the same is confirmed.

8. The learned counsel for the injured claimant submitted that the doctor has assessed the disability of the injured claimant at 65%, however, the Tribunal has taken 60% and adopted a multiplier of 13. He further submitted that, at the time of accident the petitioner was a fisherman and fish vendor and earning a sum of Rs.15,000/- per month. The petitioner income was fixed by the Tribunal at Rs.8,000/- was very low and towards "Future prospects" no amounts have been awarded by the Tribunal and sought for enhancement of compensation.

9. On the other hand, the learned counsel appearing for the appellant/Insurance Company contended that according to the petitioner, at the time of accident his age was 48 years. But there is no proof to show the age of the petitioner. Ex.P.5-Discharge summary and the medical records shows that the age of the petitioner/claimant is mentioned as 50. He vehemently opposed that the compensation awarded for the injury sustained by the claimant, and prayed for reduction of compensation on all heads.

10. This Court gone through the award passed by the Tribunal and also noted the injury suffered by the claimant in the accident. This Court also gone through the compensation award under different heads. Considering the nature of injuries the Tribunal has rightly applied the multiplier method to determine the loss of income towards permanent disability. However, the Tribunal has failed to add any amount towards future prospects as held by the Hon'ble Apex Court reported in 2017-13 SCALE 12 (National Insurance Company Limited Vs. Pranay Sethi). In the present case, the Tribunal has rightly fixed the age as 50 and applied the multiplier method for the age of 50. This Court is inclined to add 25 % along with the income of Rs.8,000/- fixed by the tribunal by adding Rs.2000/- along with Rs.8,000/- The monthly income of the injured is hereby refixed from Rs.8,000/- to 10,000/-. Therefore, the loss of income towards their permanent disability is Rs.9,36,000/- ($10,000 \times 12 \times 13 \times 60 = 9,36,0000$). In the present case, the Tribunal has taken the permanent disability as 60% and this Court also has taken 60% as the permanent disability.

11. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of Income	Rs.72,000/-	Rs.72,000/-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
2	Transport to Hospital	Rs.10,000/-	Rs.10,000/-
3	Extra Nourishment	Rs.20,000/-	Rs.20,000/-
4	Damage to clothing	Rs.1,000/-	Rs.1,000/-
5	Medical expenses	Rs.1,00,000/-	Rs.1,00,000/-
6	Attender Charges	Rs.15,000/-	Rs.15,000/-
7	Loss of amenities of life	Rs. 25,000/-	Rs.25,000/-
8	Pain and Sufferings	Rs.50,000/-	Rs.50,000/-
9	Permanent disability	Rs.7,48,800/-	Rs.9,36,000/-
	Total	Rs.10,41,800/-	Rs.12,29,000/-

12. The Insurance Company is directed to deposit the entire amount awarded by this Court along with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through NEFT or RTGS within a period of two weeks thereon. The claimant is directed to pay the requisite court fee, if any, within a period of one week from the date of receipt of a copy of this order.

13. In the result, the Civil Miscellaneous Appeal is dismissed and the cross objection is partly allowed and the award passed by the Tribunal to the tune of Rs.10,41,800/-/- is enhanced to Rs.12,29,000/-. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Dh

To

1.The Motor Accidents Claim Tribunal
(III Court of Small Causes), Chennai.

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

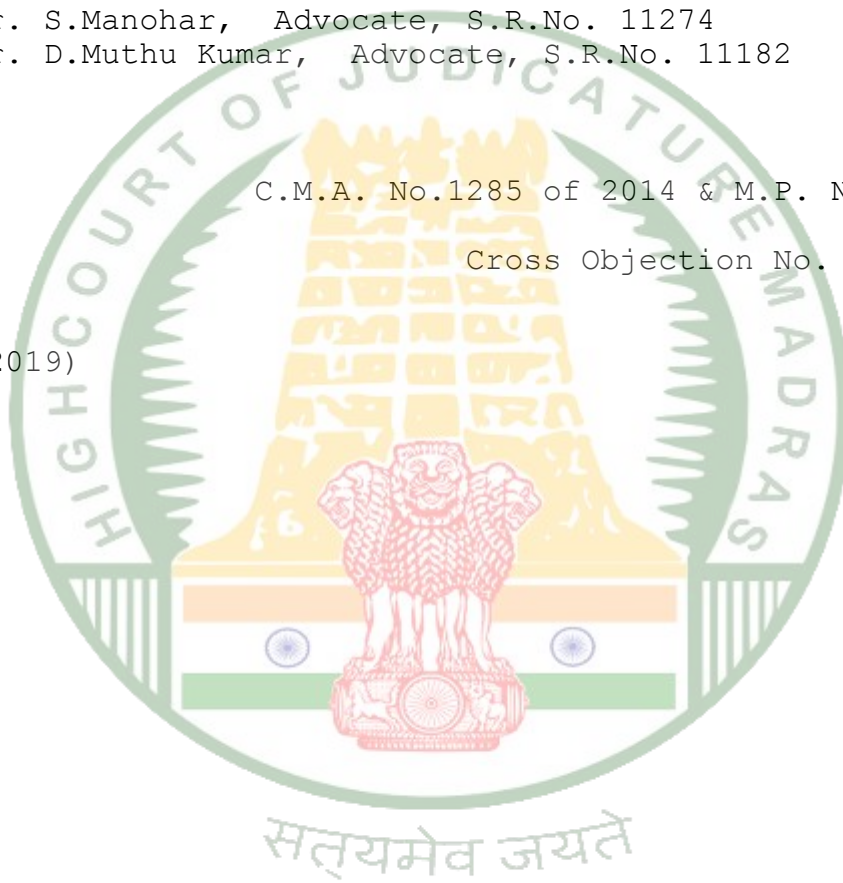
+1cc to Mr. R.Veeramani, Advocate, S.R.No. 11535

+1cc to Mr. S.Manohar, Advocate, S.R.No. 11274

+1cc to Mr. D.Muthu Kumar, Advocate, S.R.No. 11182

C.M.A. No.1285 of 2014 & M.P. No.1 of 2014
and
Cross Objection No. 52 of 2018

PP (CO)
GN(22/08/2019)



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