

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.No.2881 of 2018 & C.M.P.No.21911 of 2018
and Cross Objection No.73 of 2018

CMA.No.2881 of 2018

M/s.Reliance General Insurance Company Limited
No.570, Naigaum cross road
Next to Royal Industrial Estate
Wadala (West), Mumbai-400 034.

Branch office at:
Lakshmi Complex, 1st floor
Swarnapuri, near ANS Jewellery
Salem District. .. Appellant/2nd Respondent

Vs.

1.Suresh ... 1st Respondent/Petitioner
2.Balaji ... 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 05.03.2018 made in M.C.O.P.No.1094 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Salem.

For Appellant : M/s.M.B.Gopalan Associates
For R1 : Mr.C.Kulanthaivel

Cross Objection No.73 of 2018

Suresh .. Cross objector/1st Respondent

Vs.

1.M/s.Reliance General Insurance Company Limited
No.570, Naigaum cross road
Next to Royal Industries Estate
Wadala (West), Mumbai-400 034.

Branch office at:
Lakshmi Complex, 1st floor
Swarnapuri, near ANS Jewellery
Salem District.

... 1st Respondent/Appellant

2.Balaji

..2nd Respondent/2nd Respondent

Prayer: This Cross Appeal is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 05.03.2018 made in M.C.O.P.No.1094 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Salem.

For Cross Appellant : Mr.C.Kulanthaivel
For R1 : M/s.M.B.Gopalan Associates

C O M M O N J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the Insurance Company against the award dated 05.03.2018 made in M.C.O.P.No.1094 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Salem.

The Cross-Objection has been filed by the claimant seeking enhancement of compensation granted by the Tribunal in the award dated 05.03.2018 made in M.C.O.P.No.1094 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Salem.

2.Both the appeal and cross-objections are arising out of the same accident and same award and hence, they are disposed of by this common judgment.

3.Parties in these appeals are referred to by their respective ranks in the claim petition for the sake of convenience.

4.The appellant/Insurance Company is second respondent in M.C.O.P.No.1094 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Salem. The claimant/cross objector filed the above claim petition claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 09.03.2016.

5.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver-cum-owner of the car/first respondent and directed both the first respondent as well as the second respondent being the insurer of the said car to pay a sum of Rs.10,27,614/- as compensation to the claimant, jointly and severally.

6. Against the said award dated 05.03.2018 made in M.C.O.P.No.1094 of 2016, the second respondent/Insurance Company has come out with the present appeal challenging the liability fastened on them as well as the quantum of compensation awarded by the Tribunal. Not being satisfied with the award amount granted by the Tribunal, the claimant has come out with the Cross-Appeal seeking enhancement of compensation awarded by the Tribunal.

7. The learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal has erred in fixing negligence on the part of the driver-cum-owner of the car/first respondent. The Tribunal has failed to see that the evidence on record clearly shows that the claimant was responsible for the accident as he suddenly turned to right hand side. The Tribunal without properly appreciating the evidence of P.W.2/Doctor erred in adopting multiplier method for granting compensation. The amount awarded by the Tribunal towards disability is exaggerated. The amounts granted by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

8. Per contra, the learned counsel appearing for the claimant contended that the first respondent examined himself as P.W.1 and proved that the accident occurred only due to rash and negligent driving by the driver-cum-owner of the car/first respondent. F.I.R. was lodged against the first respondent. Apart from examining himself as P.W.1, the first respondent examined two Doctors as P.W.2/Orthopaedic Surgeon and P.W.3/Neuro Surgeon. They have deposed the nature of the injuries sustained by the claimant and certified that the claimant has suffered 33.31% and 35% respectively. The total disability assessed by both the Doctors is 68.31%. They have also deposed about the discomfort to the claimant due to the injuries sustained by him in the accident. The multiplier method adopted by the Tribunal is proper. Due to disability, the claimant could not do any work and the Tribunal ought to have awarded compensation for 100% disability. The Tribunal has failed to see that the claimant was a labour in a private concern and fixed a meagre sum of Rs.6,000/- per month as notional income of the claimant. The Tribunal has not properly calculated loss of earning capacity and the Tribunal ought to have granted compensation towards both the loss of earning capacity as well as disability. The Tribunal has failed to see that the first respondent suffered both orthopaedic and neuro problems. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

9. Heard the learned counsel appearing for the second

respondent/Insurance Company as well as the learned counsel appearing for the claimant and perused the materials available on record.

10. From the materials on record, it is seen that in respect of the accident, F.I.R. was lodged against the driver-cum-owner of the car/first respondent. The claimant examined himself as P.W.1 and deposed the manner in which the accident occurred. He is the injured person and an eye witness to the accident. The second respondent/Insurance Company in the counter statement has stated that the accident occurred only due to the fact that the claimant suddenly turned to right hand side and invited the accident. To prove this contention, the second respondent/Insurance Company did not examine any eye witness especially the first respondent/driver-cum-owner of the car, who remained exparte before the Tribunal. The Tribunal considering the evidence of P.W.1, Ex.P1/F.I.R. and in the absence of any contra evidence, held that the accident occurred only due to rash and negligent driving by the first respondent. There is no error in the said finding warranting interference by this Court.

11. As far as quantum of compensation is concerned, the evidence of P.W.3 is with regard to disability suffered by the claimant in view of head injury. From the materials available on record, it is seen that both the Doctors have deposed that the claimant suffered total disability at 68.31% with regard to orthopaedic and neuro problems. Both put together can be taken as disability for whole body as Doctors certified that the first respondent could not do the work as he was doing earlier. In view of the same, multiplier method adopted by the Tribunal is proper. But the Tribunal has failed to take into account the percentage of disability with regard to neuro problem as deposed by P.W.3. P.W.3 has taken CT scan and after examining the claimant, has certified that claimant is suffering 35% neuro disability and issued Ex.P13. P.W.3 has also deposed to the effect before the Tribunal. Therefore, the claimant is entitled to compensation for 68.31% disability by applying multiplier method. The compensation awarded by the Tribunal towards disability is modified as follows:

$(Rs.6000 \times 12 \times 17 \times 68.31\%/100) = Rs.8,36,114/-$

The claimant is not entitled to further compensation separately towards disability. From the materials available on record, the claimant was in the hospital for 39 days and underwent surgeries. In view of the same, the amounts awarded by the Tribunal towards transportation & attendant charges and pain & suffering are hereby enhanced from Rs.10,000/- to Rs.20,000/- and from Rs.30,000/- to Rs.50,000/- respectively. The amounts granted by the Tribunal under all other heads are confirmed. Thus, the compensation 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	4,07,714	8,36,114	enhanced
2.	Transportation and attendant charges	10,000	20,000	enhanced
3.	Medical expenses	5,14,900	5,14,900	confirmed
4.	Extra nourishment	25,000	25,000	confirmed
5.	Loss of marital prospects	40,000	40,000	confirmed
6.	Pain and suffering	30,000	50,000	enhanced
	Total	10,27,614	14,86,014	Enhanced Rs.4,58,400/-

12.The compensation awarded by the Tribunal at Rs.10,27,614/- is hereby enhanced to Rs.14,86,014/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The claimant shall pay the necessary Court fee if any, on the enhanced compensation. Both the first respondent as well as second respondent/Insurance Company are directed to deposit the enhanced award amount along with interest and costs now determined by this Court jointly and severally, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

13.In the result, the Civil Miscellaneous Appeal is dismissed and the Cross Objection is allowed in part. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1.Special Sub Court No.I,
MACT, Salem.

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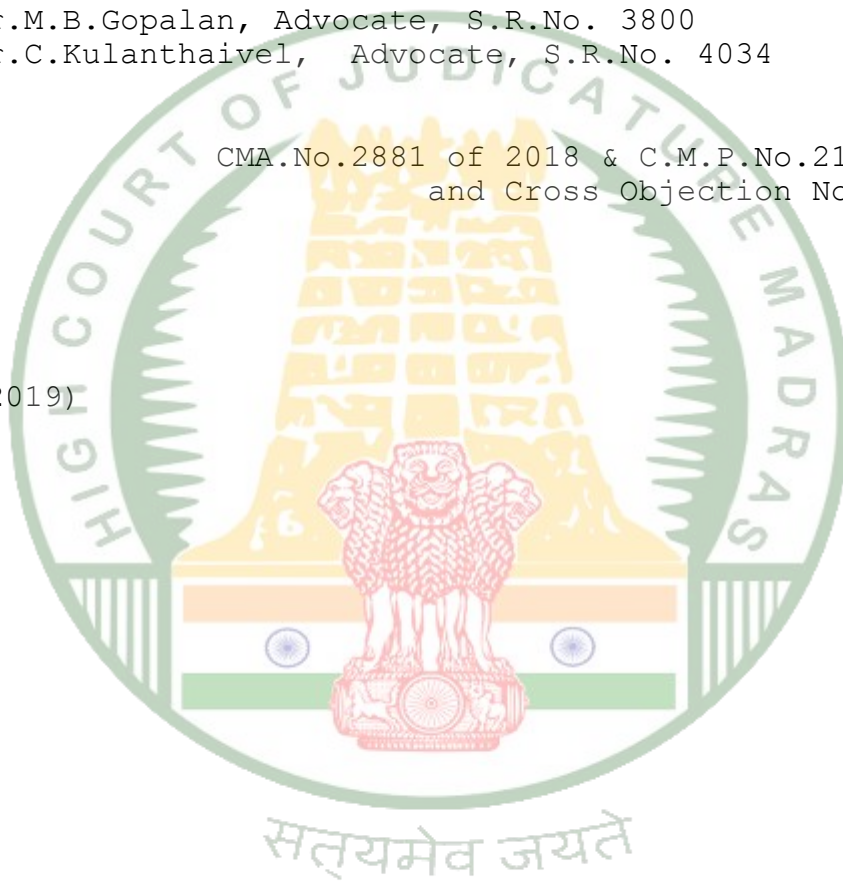
The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.M.B.Gopalan, Advocate, S.R.No. 3800

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No. 4034

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VBA(CO)
GN(11/04/2019)



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