

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.3097 OF 2010

AND

CROSS OBJECTION NO.89 OF 2013

AND

M.P.NO.1 OF 2011

C.M.A.No.3097 of 2010

M/s.The National Insurance Co. Ltd.,
Having Office at No.1,
Division No.10, Flat No.101-106,
S.M.C.House, Connaught Place,
New Delhi 110 001.

.. Appellant/2nd Respondent

Vs.

1.Krishnamoorthy

2.Kalyanasamy

3.Murugesan

(R2 & R3 were set exparte before the Tribunal)

4. M/s.The National Insurance Co. Ltd.,
2nd Floor, BIB Chetty, Street,
Thiruchengode, Namakkal District.
(R4 given up)

.. Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.11.2009, made in M.C.O.P. No.181 of 2006, on the file of the Additional District Judge, Fast Track Court No. IV, (Motor Accident Claims Tribunal), Coimbatore, Tiruppur.

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For Appellant : Mrs.R.Sreevidhya
For Respondents: Mr.M.Lokesh (for R1)
for M/s.Ma.P.Thangavel
R2 & R3 : Exparte
R4 : Given up

Cross Objection No.89 of 2013
Krishnamoorthy

.. Cross Objector

Vs.

1. The National Insurance Co. Ltd.,
Having Office at No.1, Division No.10, Flat No.101-106,
S.M.C. House, Connaught Place, New Delhi 110 001.
 2. Kalyanasamy
(R2 was set exparte before the Tribunal.)
 3. Murugesan
 4. M/s.The National Insurance Co. Ltd.,
2nd Floor, BIB Chetty, Street,
Thiruchengode, Namakkal District. .. Respondents
- (R3 and R4 were exonerated. Hence, notice
is dispensed with for the respondents 2 to 4.)

Prayer: This Cross Objection is filed under Order XLI Rule 22
of C.P.C against the judgment and decree dated 09.11.2009, made
in M.C.O.P. No.181 of 2006, on the file of the Additional
District Judge, Fast Track Court No. IV, (Motor Accident Claims
Tribunal), Coimbatore, Tiruppur.

For Cross Objector : Mr.M.Lokesh
for Mr.Ma.P.Thangavel
For Respondent : Mrs.R.Sreevidhya (for R1)

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COMMON JUDGMENT

This Civil Miscellaneous Appeal has been filed by the
appellant-Insurance Company against the award dated 09.11.2009,
made in M.C.O.P.No.181 of 2006, on the file of the Additional
District Judge, Fast Track Court No.IV, (Motor Accident Claims
Tribunal), Coimbatore, Tiruppur.

Cross Objection No.89 of 2013 has been filed seeking enhancement of compensation granted by the Tribunal by the award dated 09.11.2009, made in M.C.O.P.No.181 of 2006, on the file of the Additional District Judge, Fast Track Court No. IV, (Motor Accident Claims Tribunal), Coimbatore, Tiruppur.

2.The appellant is the 2nd respondent in M.C.O.P.No.181 of 2006, on the file of the Additional District Judge, Fast Track Court No.IV, (Motor Accident Claims Tribunal), Coimbatore, Tiruppur. The 1st respondent filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 15.01.2006.

3.The parties are referred to as per their rank in appeal for the sake of convenience.

4.According to the 1st respondent, on the date of accident viz., 15.01.2006, he was traveling in the Car bearing Registration No.TN-39-W-5445 driven by the 2nd respondent, owner-cum-driver. At that time, the 2nd respondent drove the Car in a rash and negligent manner and dashed against the Lorry bearing Registration No. KA-02-AC-2445, belonging to the 3rd respondent, which was parked on the centre of the road without any parking lamp or any signal and caused the accident. In the accident, the 1st respondent suffered severe injuries all over the body. The accident has occurred due to the negligent parking of Lorry belonging to the 3rd respondent and also due to rash and negligent driving by the 2nd respondent, driver-cum-owner of the Car and hence, the 1st respondent filed the claim petition, claiming compensation against the appellant, as insurer of the Car and respondents 2 to 4 as owner of the Car, owner of the Lorry and insurer of the Lorry respectively.

5.The appellant-Insurance Company, insurer of the car, filed counter statement and denied all the averments made by the 1st respondent in the claim petition. According to the appellant, the accident did not occur due to rash and negligent driving by the driver of the Car insured with them and they denied the manner of accident as alleged in the FIR. The drivers of both the vehicles did not possess valid driving license, permit and fitness certificate to ply the vehicles and hence, for the breach of policy conditions, the appellant is not liable to pay compensation to the 1st respondent. The 1st respondent has to prove his age, avocation and income, injuries suffered, treatment taken and disability suffered, by documentary evidence to claim compensation. In any event, the total compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6.The respondents 2 and 3 remained exparte before the Tribunal.

7.The 4th respondent-Insurance Company, insurer of the Lorry filed counter statement and denied all the averments made by the 1st respondent in the claim petition. According to the 4th respondent, the Lorry was parked by the driver with parking lamps and signals in the left extreme of the road. The 2th respondent, driver-cum-owner of the Car drove the same in a rash and negligent manner and dashed against the parked Lorry. Hence, the 4th respondent is not liable to pay any compensation to the 1st respondent. The FIR was also registered against the 2th respondent, driver of the Car. The 1st respondent has to prove his age, avocation and income, injuries sustained, disability suffered and treatment taken, by documentary evidence to claim compensation. In any event, the total compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

8.Before the Tribunal, the 1st respondent examined himself as P.W.1, examined his co-worker as P.W.2, Doctor as P.W.3 and marked 10 documents as Exs.A1 to A10. The 2nd respondent/driver-cum-owner of the Car examined himself as R.W.1 and marked one document as Ex.B1.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 2nd respondent, driver-cum-owner of the Car and directed the appellant as insurer of the said vehicle, to pay a sum of Rs.7,25,275/- as compensation to the 1st respondent and dismissed the claim petition as against the respondents 2 and 3.

10.Challenging the quantum of compensation granted by the Tribunal in the award dated 09.11.2009, made in M.C.O.P. No.181 of 2006, the appellant-Insurance Company has come out with the present appeal.

11.Not being satisfied with the amounts awarded by the Tribunal, the 1st respondent has filed Cross-Objection, seeking enhancement of compensation.

12.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal has awarded excessive amounts as compensation. The disability assessed by the Doctor is not in accordance with Schedule I of the Workmen Compensation Act. The 1st respondent is not entitled to compensation by adopting multiplier method. The Tribunal failed to see that P.W.3-Doctor is not a Specialist in Neuro or Audio problems. The

Tribunal erred in holding that the appellant suffered 35% functional disability and 40% loss of earning power, without any basis. The amounts awarded by the Tribunal for loss of earning power, permanent disability and pain and suffering are excessive and prayed for reducing the award amounts.

13.The learned counsel appearing for the 1st respondent contended that the 1st respondent was working as a Power Loom Coolie and was earning a sum of Rs.7,000/- per month. The Tribunal erroneously fixed meagre amount of Rs.3,000/- per month as notional income of the 1st respondent. To prove the income, the 1st respondent examined P.W.2, his co-worker. P.W.2 deposed that he was earning a sum of Rs.5,000/- per month and the 1st respondent used to get Rs.150 - 200/- per day. Due to the injuries and disability, the 1st respondent could not continue his avocation and lost his earning capacity. The Tribunal ought to have fixed 100% loss of earning power and awarded compensation. The amounts awarded by the Tribunal under different heads are meagre. The respondents have also filed Cross Objection and prayed for dismissal of the appeal filed by the Insurance Company and for allowing the Cross Objection filed by the 1st respondent for enhancement of the compensation.

14.Heard the learned counsel appearing for the appellant as well as the 1st respondent and perused the materials available on record.

15.From the materials on record, it is seen that it is the contention of the 1st respondent that due to the accident, he suffered fractures in the Skull and hemorrhage in the brain and lost vision in the left eye and multiple abrasions all over the body. Surgery was conducted and part of the skull was removed. Due to the injuries, he could not go to work for 5 months. To prove the same, the 1st respondent examined P.W.3-Doctor, an Ortho Specialist. P.W.3-Doctor, considering the nature of injuries and medical records, assessed that the 1st respondent suffered 80% disability. The Tribunal considering the materials on record as well as the evidence of P.W.3-Doctor, fixed 40% loss of earning power and 35% functional disability for loss of hearing. The Tribunal applied multiplier method for awarding compensation towards loss of earning power.

16.According to the 1st respondent, he was working as a Power Loom Coolie and was earning a sum of Rs.7,000/- per month. In the absence of material evidence with regard to avocation and income, the Tribunal fixed Rs.3,000/- as notional income and applied multiplier '16' to grant a sum of Rs.2,30,400/- towards loss of earning power. In addition to that, the Tribunal applied percentage method to grant a sum of Rs.70,000/- towards 35%

functional disability for loss of hearing. Considering the entire materials on record with regard to nature of injuries, disability and evidence of P.W.3 - Doctor, the compensation awarded by the Tribunal is just and proper and hence, the same is not interfered with. The 1st respondent has taken treatment as inpatient at KG Hospital, Coimbatore in three different spells, from 15.01.2006 to 30.01.2006, 01.03.2006 to 11.03.2006 and 20.03.2006 to 29.03.2006 for a total period of 36 days. The Tribunal has not awarded any amount towards attendant charges. Considering the period of treatment taken, a sum of Rs.15,000/- is awarded towards attendant charges. The amount awarded by the Tribunal towards extra nourishment is meagre and hence, the same is enhanced to Rs.15,000/-. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby 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.	Loss of functional disability	70,000/-	70,000/-	Confirmed
2.	Loss of earning power	2,30,400/-	2,30,400/-	Confirmed
3.	Pain and suffering	25,000/-	25,000/-	Confirmed
4.	Extra nourishment	3,000/-	15,000/-	Enhanced
5.	Transportation	2,500/-	2,500/-	Confirmed
6.	Loss of income	10,000/-	10,000/-	Confirmed
7.	Medical expenses	3,84,375/-	3,84,375/-	Confirmed
8.	Attendant charges	-	15,000/-	Granted
	Total	7,25,275/-	7,52,275/-	Enhanced by Rs.27,000/-

17. In the result, the appeal is dismissed and the Cross-Objection is partly allowed. The amount awarded by the Tribunal at Rs.7,25,275/- is enhanced to Rs.7,52,275/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The Cross-Objection is dismissed as against the respondents 3 and 4. The appellant-Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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.181 of 2006. On such deposit, the 1st respondent is permitted to withdraw the enhanced award amount along with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Additional District Judge,
Fast Track Court No. IV,
(Motor Accident Claims Tribunal),
Coimbatore, Tiruppur.
2. The Section Officer,
V.R Section, High Court,
Madras.

+1cc to Mrs.R.Sreevidhya, Advocate, S.R.No.36817

+1cc to M/s.Ma.P.Thangavel, Advocate, S.R.No.36661

C.M.A.No.3097 of 2010
and Cross Objection No.89 of 2013
and M.P.No.1 of 2011

RLD (CO)
CS/06/05/2021

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