

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3405 of 2010
and
Cross Objection No.116 of 2013
and
M.P.Nos.1, 1 of 2010 and 2013

C.M.A.No.3405 of 2010:

The New India Assurance Company Limited,
No.45, 2nd Line Beach, Moore Street,
Chennai - 600 001. .. Appellant/2nd Respondent
Vs.

1.D.Govindasamy

2.S.Gajalakshmi .. Respondents/ Petitioner s&1st Respondent

(R2 remained exparte before Tribunal.
Hence, summons to R2 dispensed with)

(Notice to R2 dispensed with as per the
order of this Court dated 08.11.2013 made in
M.P.No.1 of 2013 in C.M.A.No.3405 of 2010)

Prayer: This Civil Miscellaneous Appeal is filed under Section
173 of the Motor Vehicles Act, 1988, against the Judgment and
Decree dated 26.03.2010 made in M.C.O.P.No.2703 of 2005 on the
file of the Motor Accident Claims Tribunal, II Small Causes
Court, Chennai.

For Appellant : Ms.A.Salomi

for Mr.C.Ramesh Babu

For R1 : Ms.Ramya V.Rao

for M/s.Senthil Swamy Associates

Cross Objection No.116 of 2013:

D.Govindasamy

.. Cross Appellant/ Petitioner

Vs.

1.S.Gajalakshmi

(NDW Vide order dated 08.11.2013 made in MP.1/13)

2.The New India Assurance Company Limited,

No.45, 2nd Line Beach, Moore Street,

Chennai - 600 001.

.. Respondents/ Respondents

Prayer: This Cross Appeal is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 26.03.2010 made in M.C.O.P.No.2703 of 2005 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai to enhance the award amount.

For Cross Objector : Ms.Ramya V.Rao

for M/s.Senthil Swamy Associates

For R2

: Ms.A.Salomi

for Mr.C.Ramesh Babu

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

This Civil Miscellaneous Appeal has been filed against the award dated 26.03.2010 made in M.C.O.P.No.2703 of 2005 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.The Cross-Objection has been filed by the claimant in M.C.O.P.No.2703 of 2005 seeking enhancement of compensation granted by the Tribunal in the award dated 26.03.2010 made in M.C.O.P.No.2703 of 2005 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

3.Both the appeal and the cross objection arise out of the same accident and common award. Hence, they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petition for the sake of convenience.

4.The appellant-Insurance Company is the 2nd respondent in M.C.O.P.No.2703 of 2005 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. The claimant filed the above said claim petition, claiming a sum of Rs.15,00,000/- (amended as per order dated 27.11.2009 made in M.P.No.3895 of 2009) as compensation for the injuries sustained by him in the accident that took place on 15.09.2004.

5.According to the claimant, on 15.09.2004 at about 20.00 hours, while he was riding his bicycle at Left side of Old Mahabalipuram Road, near Santha Paint Company, Perungudi proceeding from Thiruvannamiyur - Thuraiyakkam direction, the

rider of the motorcycle belonging to the 1st respondent came in a rash and negligent manner and dashed against the claimant and caused the accident. Due to the said impact, the claimant was thrown away and sustained grievous injuries all over his body. The claimant was aged 42 years at the time of accident, was a Stone Cutter and was earning a sum of Rs.8,000/- per month. Due to the injuries sustained by him in the accident, he has taken treatment at Sri Lakshmi 24 Hours Hospital, Chennai and at Government Hospital, Royapettah as in-patient for several days. Therefore, he filed the above said claim petition claiming a sum of Rs.15,00,000/- as compensation against the respondents, being the owner and insurer of the motorcycle respectively.

6.The 1st respondent being the owner of the motorcycle remained exparte before the Tribunal.

7.The 2nd respondent-Insurance Company, insurer of the motorcycle filed counter statement and denied all the averments made by the claimant. According to the 2nd respondent, the accident has not occurred as alleged by the claimant. The accident occurred only due to negligence on the part of the claimant. The rider of the motorcycle belonging to the 1st respondent was not possessing valid driving license at the time of accident and the 1st respondent's motorcycle was not insured with the 2nd respondent-Insurance Company. The claimant has to prove his age, avocation and income by producing valid documents. In any event, the quantum of compensation claimed by the claimant is highly excessive and prayed for dismissal of the claim petition.

8.Before the Tribunal, the claimant examined himself as P.W.1 and Dr.Saravanabhavanandam was examined as P.W.2 and 9 documents were marked as Exs.P1 to P9. On behalf of the 2nd respondent-Insurance Company, no oral and documentary evidence was let in.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the motorcycle to pay a sum of Rs.8,50,000/- as compensation to the claimant.

10.Against the said award dated 26.03.2010 made in M.C.O.P.No.2703 of 2005, the 2nd respondent-Insurance Company has come out with the present appeal and not being satisfied with the amounts awarded by the Tribunal, the claimant has come out with the present cross objection for enhancement of compensation.

11.The learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal erred in holding that the accident has occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent. The Tribunal erred in accepting the alleged injuries and 50% disability and adopted multiplier method for awarding compensation towards loss of earning capacity. The Tribunal failed to consider that the claimant did not suffer any fracture and after treatment and discharge, there was no complication and no further treatment was taken by the claimant. The claimant did not prove his avocation and income and there is no loss of earning capacity. The monthly income fixed by the Tribunal at Rs.4,500/- is excessive and the amounts awarded by the Tribunal for permanent disability and loss of earning power are also excessive. The Tribunal erroneously awarded excessive amounts under different heads and prayed for setting aside the award passed by the Tribunal.

12.Per contra, the learned counsel appearing for the claimant contended that the claimant has proved that the accident has occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent. The claimant sustained grievous injuries and the Tribunal ought to have awarded just and fair compensation for the treatment taken by him for the damages caused to his urinary system on various spells at Government Hospital, Royapettah. The Tribunal ought to have awarded compensation for loss of income from the date of accident till the conclusion of the trial. P.W.2/Doctor assessed the percentage of disability of the claimant only at 50%, whereas the claimant has suffered 100% loss of earning power. This Court by the order dated 18.12.2013 directed the claimant to appear before the Medical Board on 06.01.2014 and again by the order dated 09.01.2014 directed the claimant to appear before the Dean, Government Rajiv Gandhi General Hospital, Chennai on 21.01.2014 and the claimant appeared before the Dean, Government Rajiv Gandhi General Hospital, Chennai 21.02.2014 and the Medical Board of Government Rajiv Gandhi General Hospital, Chennai examined the claimant and gave a report dated 25.02.2014, stating that the claimant was referred to urinology diagnosis for assessment of his health status and his disability, health status were done. Average reported as anastomotic stricture bulbo membranous urethra and he needs periodical dialysis. The Tribunal in the circumstances, ought to have awarded compensation for 100% loss of earning capacity. The claimant proved that he suffered functional disability and the amounts awarded by the Tribunal under different heads are meagre and prayed for dismissal of the appeal filed by the 2nd respondent-Insurance Company and for enhancement of compensation.

13. Heard the learned counsel appearing for the 2nd respondent-Insurance Company as well as the learned counsel appearing for the claimant and perused the entire materials on record.

14. It is the contention of the claimant that accident has occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent. To prove the same, he examined himself as P.W.1 and marked F.I.R., which was registered against the rider of the motorcycle belonging to the 1st respondent. The 2nd respondent-Insurance Company did not let in any contra evidence to disprove the evidence of P.W.1 and Ex.P1/F.I.R. The Tribunal considering the evidence of P.W.1, Ex.P1/F.I.R. and no contra evidence on the part of the 2nd respondent-Insurance Company, held that the accident has occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

15. As far as quantum of compensation is concerned, the claimant has examined P.W.2/Doctor and marked medical records and proved that he suffered grievous injuries and has taken treatment as in-patient as well as out-patient. P.W.2/Doctor examined the claimant and assessed that he suffered 50% partial permanent disability. The Tribunal considering the nature of injuries and disability, accepted the claim of the claimant and applied multiplier method for awarding compensation for loss of earning power. The claimant has not proved that he is totally immobilized and lost his entire earning capacity. The learned counsel appearing for the claimant contended that the Tribunal ought to have awarded compensation for 100% loss of earning capacity is without merits. The award of the Tribunal awarding compensation for 50% disability by adopting multiplier method is valid.

16. The claimant claimed that he was a Stone Cutter and was earning a sum of Rs.8,000/- per month. But he has not filed any document to prove his said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal has fixed a sum of Rs.4,500/- per month as notional income of the claimant. The accident occurred in the year 2004 and the monthly income fixed by the Tribunal is neither excessive nor meagre. Both the counsel appearing for the 2nd respondent-Insurance Company as well as for the claimant are questioning the compensation awarded by the Tribunal to the claimant under different heads. According to the learned counsel appearing for the 2nd respondent-Insurance Company, the amounts awarded by the Tribunal to the claimant under different heads

are excessive, while the contention of the learned counsel appearing for the claimant is that the amounts awarded by the Tribunal to the claimant under different heads are meagre. From the award passed by the Tribunal, it is seen that the Tribunal has awarded a sum of Rs.1,00,000/- to the claimant towards mental agony and further a sum of Rs.1,00,000/- towards mental agony to his wife and children. The claimant is not entitled to these two amounts. The amounts awarded by the Tribunal towards mental agony to the claimant and mental agony to the wife and children are liable to be set aside and they are hereby set aside. The claimant has taken treatment as in-patient at Sri Lakshmi 24 Hours Hospital, Chennai from 19.05.2004 to 24.05.2004 and at Government Hospital, Royapettah from 12.07.2004 to 27.07.2004 and from 16.08.2004 to 20.08.2004. But, the Tribunal has awarded a meagre sum of Rs.5,000/- towards attendant charges. The claimant is entitled to a sum of Rs.13,500/- (Rs.500/- X 27 days) towards attendant charges at the rate of Rs.500/- per day for 27 days. Considering the nature of injuries and period of treatment taken by the claimant, the amounts awarded by the Tribunal towards extra nourishment is meagre and the same is enhanced to Rs.15,000/-. Considering the medical report filed by the claimant, the amount awarded by the Tribunal towards medical expenses is meagre and the same is enhanced to Rs.30,000/-. From the medical report given by the Medical Board of Government Rajiv Gandhi General Hospital, Chennai, it is seen that the claimant has to do periodical dialysis and therefore, a meagre sum of Rs.10,000/- awarded by the Tribunal towards future medical expenses is enhanced to Rs.30,000/-. The amounts awarded by the Tribunal towards transportation, loss of expectations of life, loss of amenities and enjoyment of life, physical discomfort, pain and sufferings and permanent disability and loss of earning power 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.	Transportation	10,000/-	10,000/-	Confirmed
2.	Extra nourishment	10,000/-	15,000/-	Enhanced
3.	Medical expenses	5,000/-	30,000/-	Enhanced
4.	Attendant charges	5,000/-	13,500/-	Enhanced
5.	Loss of expectations of life	50,000/-	50,000/-	Confirmed
6.	Loss of amenities and enjoyment of life	75,000/-	75,000/-	Confirmed

7.	Physical discomfort	50,000/-	50,000/-	Confirmed
8.	Mental agony to claimant	1,00,000/-	-	Set aside
9.	Mental agony to wife and children	1,00,000/-	-	Set aside
10.	Future medical expenses	10,000/-	30,000/-	Enhanced
11.	Pain and sufferings	30,000/-	30,000/-	Confirmed
12.	Permanent disability and loss of earning power	4,05,000/-	4,05,000/-	Confirmed
	Total	Rs.8,50,000/-	Rs.7,08,500/-	Reduced by Rs.1,41,500/-

17.The compensation awarded by the Tribunal at Rs.8,50,000/- is hereby reduced to Rs.7,08,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the modified award amount now determined by this Court, along 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.2703 of 2005 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. On such deposit, the claimant is permitted to withdraw the modified award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The 2nd respondent-Insurance Company is permitted to withdraw the excess amount if any lying in the credit of M.C.O.P.No.2703 of 2005 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai, if the entire award amount has been already deposited by the 2nd respondent-Insurance Company.

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

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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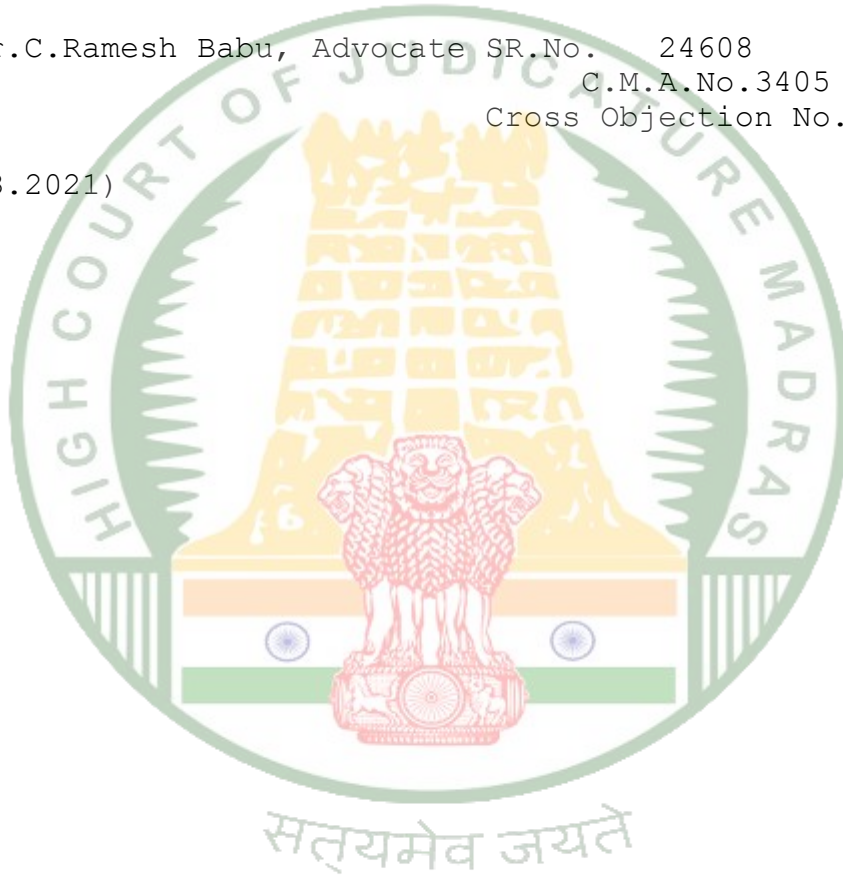
1.The II Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

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

+lcc to Mr.C.Ramesh Babu, Advocate SR.No. 24608

C.M.A.No.3405 of 2010 and
Cross Objection No.116 of 2013

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