

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reservation	08.11.2019
Date of Judgment	04.02.2020

CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A No.552 of 2009

and

CMP No.1 of 2019

and

Cross Objection No.139 of 2011

C.M.A No.552 of 2009

United India Insurance Company Ltd.,
No.77, A, A Street,
Salem-1.

: Appellant/R2

Vs.

1.Mr.John Peter

: R1/Petitioner

2.Mr.Arokiyaraj Xavier

: R2/Respondent No.1

Prayer : Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the award and decree dated 22.04.2008 passed in MCOP No.807 of 2005 on the file of the Motor Accidents Claims Tribunal (Principal Sub Court), Salem.

For Appellant : M/s.I.Malar.

For 1st Respondent : No appearance

For 2nd Respondent : Ex-parte

Cross Objection No.139 of 2011

1.Mr.John Peter

: Cross Objector/Claimant

Vs.

1.Mr.Arokiyaraj Xavier

: 1st Respondent /1st Respondent

2.United India Insurance Company Ltd.,
No.77, A, A Street,
Salem-1.

: 2nd Respondent /2nd Respondent

Prayer: Cross Appeal filed under Order-XLI, Rule 22 r/w Section 96(1) & (2) of C.P.C, against the award and decree dated 22.04.2008 passed in MCOP No.807 of 2005 on the file of the Motor Accidents Claims Tribunal (Principal Sub Court), Salem.

For Cross Objector : No appearance
For 1st Respondent : Ex-parte
For 2nd Respondent : M/s.I.Malar

COMMON JUDGMENT

Feeling aggrieved over the award of the Motor Accident Claims Tribunal (Principal Sub Judge), Salem, passed in MCOP No.807 of 2009, dated 22.04.2008, the Insurance Company has filed this appeal, whereas Cross Objection No.139 of 2011 has been filed by the claimant for enhancement of compensation.

2.The facts of the case are that on 29.04.2005 at Madurai to Mandapam NH Road, near Anna Nagar Bus Stop, Shirupasethi, the claimant was travelling in a Mahendra Max Jeep TN-30-D-3102 along with one Natarajan, Murugan, which was driven by its driver in a rash and negligent manner, without observing the road traffic rules and capsized the said vehicle and caused the accident. In that process, all of them sustained severe grievous injuries all over the body. After the accident, the claimant herein was taking treatment at Meenakshi Mission Hospital, Madurai as in-patient for more than 50 days. The Thiruppaseth Police, has registered a case in Crime No.111 of 2005 against the driver of the vehicle. The claimant herein has filed a petition seeking Rs.24,00,000/- as compensation.

3.The Appellant Insurance Company resisted the claim disputing the manner of the accident and their liability to pay the compensation.

4.Before the Tribunal, the claimant in order to substantiate his case, examined 5 witnesses and marked Exs.P1 to P16. On the side of the respondents, no witness was examined and no document was marked.

5.Upon consideration of the oral and documentary evidence, the Tribunal came to the conclusion that the accident has taken place only due to the rash and negligent driving of the driver of the Van and awarded compensation of Rs.12,06,260/- along with interest @ 7.5% p.a.

6.Heard the learned counsel appearing for the Insurance Company and perused the materials available on record. In spite of giving opportunity to argue the case, there was no representation on the side of the cross objector/claimant.

7.The learned counsel appearing for the appellant Insurance Company/R2 submitted that to show the occupation and income, no document was produced on the side of the claimant and even though, the Doctor assessed the disability as 80%,

but the tribunal awarded Rs,6,48,000/- under the head of loss of income, which is higher on the side and prays that the civil miscellaneous appeal has to be allowed, by setting the award of the tribunal.

8.Per contra, it is case of the cross objector/claimant that the loss of income awarded by the tribunal is meagre and further, without any reason, the tribunal assessed the disability of the claimant as 80%, whereas the Doctor assessed the disability as 85% and considering the injuries sustained by the claimant, the loss of earning power of the claimant is to be assessed as 100% and the claimant before the accident worked as 'Plumber' and earned Rs.7,000/- per month, but the tribunal fixed the monthly income of the claimant as Rs.4,500/- per month, which is not correct and no amount was awarded towards future medical expenses and the tribunal awarded the amount under various heads are not reasonable and prays that the cross objection has to be allowed, by enhancing the award of the tribunal.

9.In this case, the claimant was examined as PW1. PW1 deposed that at the time of accident, he was working as Plumber and earned Rs.7,000/- per month. To prove that, he was doing Plumbing work and earned Rs.7,000/-, no document was filed on the side of the claimant/cross objector. It was admitted by PW1 during his cross examination that there was no possible to get work daily in the plumbing profession. Without filing any document to prove the income, the tribunal has fixed the monthly income of the claimant as Rs.4,500/- per month, which according to this court is reasonable. Hence, the evidence of PW1 stating that through his plumbing profession, he earned Rs.7,000/- per month is not at all acceptable.

10.It is the contention of the cross objector/claimant is that the Doctor assessed his disability as 85%, but the tribunal without any cause, assessed the disability as 80% is not correct and due to the injuries sustained by him, it is not possible for him to continue his work and hence, his loss of earning power is to be assessed as 100% and prays that the compensation awarded by the tribunal may be enhanced.

11.On perusal of the award in para 11, it was stated that the tribunal accepted the disability determined by the Doctor as 70% for the amputation of the part of the left hand. But the tribunal refused to accept the disability of 15% for non-movement of the left hand finger, since it was higher on side. Hence, the tribunal has correctly fixed the disability as 80%, which is reasonable. Further, the award of the tribunal under various other heads given to the claimant are reasonable. Hence, this court is of the considered view that the award of the tribunal does not require any interference by this court and accordingly, the award of the tribunal is confirmed.

12.In fine, both civil miscellaneous appeal as well as the cross objection are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sms/er

To

1.The Motor Accident Claims Tribunal,
(Principal Sub Court),
Salem.

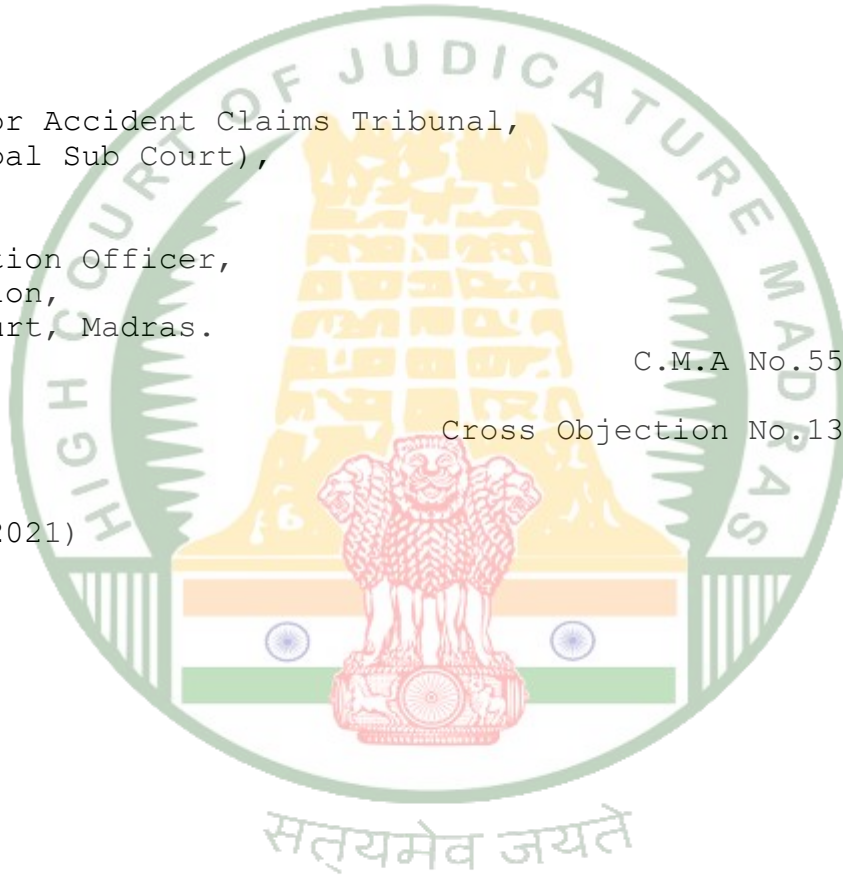
2.The Section Officer,
VR Section,
High Court, Madras.

C.M.A No.552 of 2009

and

Cross Objection No.139 of 2011

SR(CO)
GN(03/02/2021)



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