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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.454 of 2010

and

Cross Objection No.84 of 2010

and

M.P.No.1 of 2010

C.M.A.No.454 of 2010:

The Oriental Insurance Company Limited,
New No.216, (Old No.115),
II Floor, Broadway,
Chennai - 600 108.

.. Appellant/2nd Respondent

Vs.

1.Palanisamy
(Represented by his next
friend, K.Bakkaiyam, wife of
Palanisamy)

2.G.Narayanan .. Respondents/Petitioner/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.08.2008 made in M.C.O.P.No.213 of 2006 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari, Salem District.

For Appellant : Mr.S.Arunkumar
For R1 : Mr.C.Kulanthaivel

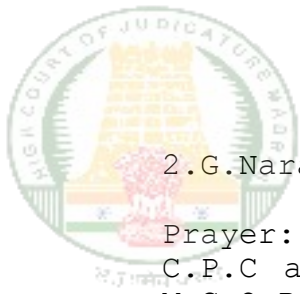
Cross Objection No.84 of 2010:

Palanisamy .. Cross Objector

(Represented by his next
friend, K.Bakkaiyam, wife of
Palanisamy)

Vs.

1.The Oriental Insurance Company Limited,
New No.216, (Old No.115),
II Floor, Broadway,
Chennai - 600 108.



2.G.Narayanan

.. Respondents/Respondents

Prayer: This Cross Appeal is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 27.08.2008 made in M.C.O.P.No.213 of 2006 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari, Salem District.

For Cross Objector : Mr.C.Kulanthaivel

For R1 : Mr.S.Arunkumar

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

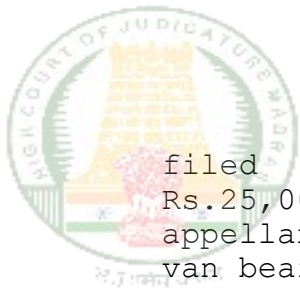
The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 27.08.2008 made in M.C.O.P.No.213 of 2006 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari, Salem District.

3.The Cross-Objection has been filed by the claimant in M.C.O.P.No.213 of 2006 seeking enhancement of compensation granted by the Tribunal in the award dated 27.08.2008 made in M.C.O.P.No.213 of 2006 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari, Salem District.

4.The appellant-Insurance Company is the 2nd respondent in M.C.O.P.No.213 of 2006 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari, Salem District. The 1st respondent filed the above said 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 02.08.2005.

5.According to the 1st respondent, on 02.08.2005 at about 05.00 A.M., while he was travelling in a Maruthi Omni car bearing Registration No.TN 57 B 2999 on Villupuram - Ulundurpet National Highway, near Nagar Railway Gate the driver of the Omni car parked the car on the left side of the road since the railway gate was closed. At that time, the driver of the Tata 709 van bearing Registration No.TN 09 H 5626 who was driving the van behind the Omni car, came in a rash and negligent manner without observing the road and railway signals, hit against the stationary Omni car on its backside and caused the accident. In the accident, the 1st respondent sustained head injury with Diffuse Axonal injury, fracture on Right 2nd, 3rd and 4th Rib, fracture on Left 1st Rib. Immediately after the accident, he was taken to Government Hospital, Ulundurpet for first aid treatment and thereafter he was referred to Sri Gogulam Hospital, Salem for further treatment. Therefore, the wife of the 1st respondent



filed the above said claim petition claiming a sum of Rs.25,00,000/- as compensation against the 2nd respondent and appellant-Insurance Company, being the owner and insurer of the van bearing Registration No.TN 09 H 5626 respectively.

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6.The 2nd respondent - owner of the Tata van bearing Registration No.TN 09 H 5626 remained exparte before the Tribunal.

7.The appellant-Insurance Company, insurer of the Tata van bearing Registration No.TN 09 H 5626 filed counter statement and denied all the averments made by the wife of the 1st respondent. The 1st respondent has to prove that the accident has occurred only due to rash and negligent driving by the driver of the Tata van bearing Registration No.TN 09 H 5626 belonging to the 2nd respondent by way of acceptable documentary evidence. Two vehicles involved in the accident and mere filing of F.I.R. against the driver of Tata van bearing Registration No.TN 09 H 5626 is not enough to prove the negligence on the part of the driver of Tata van bearing Registration No.TN 09 H 5626. Since two vehicles are involved in the accident, the owner and insurer of the Omni car bearing Registration No.TN 57 B 2999 have to be impleaded as necessary parties in the present claim petition. The appellant denied the manner of accident. The wife of the 1st respondent has to prove the 1st respondent's age, avocation, income, nature of injuries, medical expenses and disability suffered by the 1st respondent by producing valid documents. The appellant also denied the period of treatment taken by the 1st respondent at different hospitals in different spells. In any event, the quantum of compensation claimed by the wife of the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

8.Before the Tribunal, the wife of the 1st respondent examined herself as P.W.4, Dr.P.Sundara Rajan was examined as P.W.8, Dr.Rajendran was examined as P.W.7 and five others were examined as P.W.1 to P.W.3 & P.W.5 and P.W.6 and marked 59 documents as Exs.P1 to P59. The appellant-Insurance Company did not let in any oral and documentary evidence.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent driving by the driver of the Tata van bearing Registration No.TN 09 H 5626 belonging to the 2nd respondent and directed the 2nd respondent and appellant-Insurance Company to jointly or severally pay a sum of Rs.16,97,561/- as compensation to the 1st respondent.

10.Against the said award dated 27.08.2008 made in M.C.O.P.No.213 of 2006, the appellant-Insurance Company has come



out with the present appeal and not being satisfied with the amounts awarded by the Tribunal, the 1st respondent has come out with the present cross objection for enhancement of compensation.

11. The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in permitting the wife of the 1st respondent to represent him, when such necessity does not exist. The Tribunal without properly appreciating the evidence of P.W.8/Doctor, awarded excessive amount of Rs.16,97,561/- as compensation to the 1st respondent. The Tribunal failed to see that P.W.8/Doctor assessed the disability in the year 2008 based on the scan report taken in the year 2005. The Tribunal erroneously accepted the exaggerated assessment of disability as 75% physical disability and 15% towards pain and sufferings and awarded a sum of Rs.10,92,600/- towards loss of income inspite of the fact that 1st respondent failed to prove the income and loss. The Tribunal erred in fixing a sum of Rs.7,000/- as monthly income when the alleged vehicles are not in the name of the 1st respondent or in the name of the family members. Even then, the business is continued by the family members. In the absence of income tax returns, account book and Bank statement of the partners, the Tribunal ought not to have considered the alleged transport and partnership business. P.W.4 admitted that they are receiving agricultural income without any deduction. The amount of Rs.81,000/- awarded towards physiotherapy treatment, Rs.36,000/- towards nursing assistant and Rs.84,000/- towards loss of income during treatment period are without any basis. The Tribunal erred in awarding a sum of Rs.1,00,000/- towards pain and sufferings, Rs.30,000/- extra nourishment and Rs.2,64,561/- towards medical expenses which are excessive and are contrary to the judgments of the Hon'ble Apex Court reported in AIR 1995 SC 755, [R.D.Hattangadi Vs. Pest Control (India) Private Limited] and 2003 ACJ SC 12, [Nagappa Vs. Gurudayal Singh and others] The Tribunal erred in adopting multiplier method envisaged under Section 163 (A) when the claim petition was filed under Section 166 of the Motor Vehicles Act and prayed for setting aside the award passed by the Tribunal.

12. Per contra, the learned counsel appearing for the 1st respondent/cross objector contended that the Tribunal without properly appreciating the nature of work, business and loss of future income, fixed meagre sum of Rs.7,000/- per month as monthly income of the appellant. The Tribunal failed to award any amount towards future medical expenses considering the evidence of P.W.8/Doctor and materials placed before the Tribunal. The 1st respondent requires continuous treatment and attender throughout his life. Even now, his mobility is in wheelchair and he is attending his day to day work with the help of family members. The Tribunal without considering the same,



awarded meagre amounts as compensation. The Tribunal failed to grant any amount towards future prospects and failed to consider the mental agony and pain and sufferings caused to the family members. The amounts awarded by the Tribunal towards attendant charges and loss of amenities are meagre and prayed for dismissal of C.M.A.No.454 of 2010 filed by the appellant-Insurance Company and for enhancement of compensation.

13.Heard the learned counsel appearing for the appellant-Insurance Company as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

14.The issue in the present appeal and the cross objection is with regard to quantum of compensation awarded by the Tribunal. In the appeal, the Insurance Company is claiming that the compensation awarded by the Tribunal is excessive, while so, the 1st respondent/cross objector has claiming that the compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation.

15.The 1st respondent in the claim petition has claimed that he is a Transport Operator, Agriculturist and self employed and was earning a sum of Rs.27,500/- per month. Due to the injuries sustained in the accident that occurred on 02.08.2005, he could not continue his business. The wife of the 1st respondent was examined as P.W.4 on behalf of the 1st respondent. According to the wife of the 1st respondent, her husband was partner in transport business and by using JCB and lorry, he was earning a sum of Rs.18,000/- per month. In addition to that, he is owning agricultural land and was getting income. To substantiate this contention, P.W.4 marked partnership deed as Ex.P39, RC Book of two vehicles as Ex.P40. In addition to that, she filed Ex.P41, P42 - patta and chitta. Apart from this, the 1st respondent has not produced any document to show the income like income tax returns or partnership deed showing the income he received. In the absence of acceptable evidence, the Tribunal fixed a sum of Rs.7,000/- per month as notional income of the 1st respondent. The accident occurred on 02.08.2005. For the year 2004 - 2005, a person earning more than Rs.50,000/- is liable to pay the income tax. In the absence of any income tax returns filed by the 1st respondent and that the accident is of the year 2005, the notional income fixed by the Tribunal is excessive and the same is reduced to Rs.4,500/- per month.

16.From the materials on record, it is seen that the 1st respondent has suffered multiple and grievous injuries including the injuries in the head. The 1st respondent was given first aid treatment in Government Hospital, Ulundurpet and subsequently he has taken treatment in Sri Gogulam Hospital, Salem from 02.08.2005 to 05.08.2005 as in-patient and from 05.08.2005 to



30.08.2005 as in-patient in Manipal Hospital, Bangalore and subsequently from 30.08.2005 to 15.12.2005 in A.G.Neuro Hospital Private Limited, Salem. According to P.W.4, her husband/1st respondent was in Coma stage from the date of accident and he requires constantly an attender. Apart from treatment in hospitals, the 1st respondent was treated in his house with the help of Nurse to give medicines and to give injection. The 1st respondent was also given physiotherapy treatment. Again the 1st respondent was admitted in A.G.Neuro Hospital Private Limited, Salem and taken treatment. Dr.P.Sundara Rajan, who treated the 1st respondent in A.G.Neuro Hospital Private Limited, Salem was examined as P.W.8. He deposed that due to the injuries in the head, the 1st respondent is in Coma stage and after treatment 100% disability was reduced to 90% disability. The appellant did not let in any evidence to disprove the disability. The Tribunal considering the materials placed before it, has awarded compensation by applying multiplier method.

17.Pending appeal, this Court by the order dated 25.02.2020 directed the 1st respondent to appear before the Medical Board constituted by the Dean, Government Mohan Kumaramangalam Medical College Hospital, Salem. As per the order of this Court dated 25.02.2020, the 1st respondent appeared before the Medical Board on 19.03.2020. The Medical Board, Government Mohan Kumaramangalam Medical College Hospital, Salem examined the 1st respondent and issued disability certificate dated 04.08.2020 showing that 1st respondent suffered 75% disability. The Medical Board has sent a report to this Court and the same is marked as Ex.C1. In view of the Medical Board certifying disability of 1st respondent as 75%, the compensation awarded by the Tribunal for 90% of disability is modified and compensation is granted to 75% of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.5,26,500/- (Rs.4,500/- X 12 X 13 X 75/100).

18.P.W.4, wife of the 1st respondent has deposed that 1st respondent is paralysed and his mobility is totally affected. In the report of the Medical Board it is seen that the mobility of the 1st respondent is only in the wheelchair. In view of the above materials, multiplier method adopted by the Tribunal is confirmed. The Tribunal has awarded a sum of Rs.84,000/- towards loss of income for 12 months at the rate of Rs.7,000/- per month. The same is modified to Rs.54,000/- (Rs.4,500/- X 12 months). The Tribunal has not awarded any amount towards future medical expenses. Considering the percentage of disability, nature of treatment taken by the 1st respondent and the certificate issued by the Medical Board, the 1st respondent is entitled to a sum of Rs.40,000/- towards future medical expenses. Considering the nature of injuries and period of treatment taken by the 1st respondent, 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.	Disability	10,92,000/-	5,26,500/-	Reduced
2.	Pain and sufferings	1,00,000/-	1,00,000/-	Confirmed
3.	Loss of income	84,000/-	54,000/-	Reduced
4.	Extra nourishment	30,000/-	30,000/-	Confirmed
5.	Transportation	10,000/-	10,000/-	Confirmed
6.	Physiotherapy expenses	81,000/-	81,000/-	Confirmed
7.	Nursing expenses	36,000/-	36,000/-	Confirmed
8.	Medical expenses	2,64,561/-	2,64,561/-	Confirmed
9.	Future medical expenses	-	40,000/-	Granted
	Total	Rs.16,97,561/-	Rs.11,42,061/- -	Reduced by Rs.5,55,500/-

19. The compensation awarded by the Tribunal at Rs.16,97,561/- is hereby reduced to Rs.11,42,061/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company and the 2nd respondent are jointly and severally directed to deposit the modified award amount now determined by this Court, along with interest and costs, less the amount if any already deposited, 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.213 of 2006 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari, Salem District. On such deposit, the 1st respondent is permitted to withdraw the modified award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. It is made clear that if any amount is deposited by the 2nd respondent & the appellant-Insurance Company and the same has been withdrawn by the 1st respondent, the 2nd respondent & the appellant-Insurance Company are not entitled to recover the same. The respondents 1 and 2 are permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.213 of 2006, if the entire amount has already been deposited by them.



20. In the result, both the Civil Miscellaneous Appeal filed by the appellant-Insurance Company and the Cross Objection filed by the 1st respondent are allowed in part. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-V)

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Sub Assistant Registrar

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To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Sankari,
Salem District.

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

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No.38523

+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 38474

C.M.A.No.454 of 2010 and
Cross Objection No.84 of 2010

VBA (CO)
GN(25/08/2021)