

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1976 of 2013 &  
Cross Objection No.1 of 2015 &  
MP.No.1 of 2013

CMA.No.1976 of 2013

National Insurance Company Limited,  
No.7, Umberson Street,  
Chennai - 600 108. ... Appellant/2<sup>nd</sup> Respondent

vs.

1.S.Meenakshisundaram @ Mahesh ...Respondent/Petitioner  
2.N.Manikandan ... Respondent/1<sup>st</sup> Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 13.07.2012 in M.C.O.P.No.1555 of 2006 on the file of the Motor Accident Claims Tribunal, (III Judge I/c II Judge) II Court of Small Causes, Chennai.

For Appellant : Mrs.R.Sreevidhya

For Respondents : Mr.P.Chinnaraj for R1  
R2 - Exparte

Cross Objection No.1 of 2015

S.Meenakshisundaram @ Mahesh ...cross objector

vs.

1.National Insurance Company Limited,  
No.7, Umberson Street,  
Chennai - 600 108.  
2.N.Manikandan ... Respondents

PRAYER: Cross Objection filed under Order XXXXI, Rule 22 of CPC against the decree and Judgment dated 13.07.2012 in M.C.O.P.No.1555 of 2006 on the file of the Motor Accident Claims Tribunal, (III Judge I/c II Judge) II Court of Small Causes, Chennai.

For Cross objector : Mr.P.Chinnaraj  
For Respondents : Mrs.R.Sreevidhya for R1  
R2 - Exparte

## J U D G M E N T

The National Insurance Company Limited, the second respondent in MCOP.No.1555 of 2006 on the file of the Motor Accident Claims Tribunal, (III Judge I/c II Judge) II Court of Small Causes, Chennai has filed the present appeal questioning the quantum of compensation awarded by the Tribunal. The claimant in the said MCOP filed Cross Objection. No.1 of 2015 seeking for enhancement of compensation awarded by the Tribunal.

2. The parties are referred to as per their ranking before the Tribunal and at appropriate places their ranks in the present Civil Miscellaneous Appeal would also be indicated.

3. The claimant filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.10,20,000/- for the injuries sustained by him in a road accident that took place on 04.03.2006.

4. The case of the claimant is that on 04.03.2006, at about 22.45 hours, when he tried to cross the north Usman Road in front of Door No.7, a motorcycle bearing Registration No.TN 01 V 1323 came in a rash and negligent manner and hit him, as a result of which, he sustained grievous injuries. According to the claimant, the rash and negligent riding of the rider of the motorcycle was the cause of the accident. Therefore, he filed MCOP.No.1555 of 2006 seeking compensation for the injuries sustained by him.

5. The owner of the motorcycle (second respondent in the appeal) remained absent before the Tribunal and therefore, he was set exparte. The National Insurance Company contested the claim petition. The learned Judge / Motor Accident Claims Tribunal, II Small Causes Court, Chennai after analysing the documents and evidences on record, awarded a compensation of Rs.8,94,800/- together with interest at the rate of 7.5% per annum to the claimant. Challenging the said award dated 13.07.2012 made in M.C.O.P.No.1555 of 2006, the appellant / Insurance Company has filed the present appeal.

6. The learned counsel appearing for the appellant / Insurance Company contended that the Tribunal wrongly fixed disability at 40% and awarded a sum of Rs.4,89,600/- towards

disability and loss of earning power. She submitted that the Tribunal erred in invoking the structural formula and adopting multiplier method in the instant case. She further submitted that in the absence of income proof, the Tribunal ought not have awarded a sum of Rs.36,000/- towards loss of income for a period of six months. She also prayed for reducing the award passed under other heads.

7. Per contra, the learned counsel appearing for the claimant / cross objector submitted that the claimant underwent surgery twice and a plate was also fixed in his right leg. He submitted that the claimant is an Engineer in Computer Hardware, earning a sum of Rs.10,000/- per month and in the facts and circumstances, he prayed to enhance the compensation awarded by the Tribunal.

8. Heard the learned counsel for the Insurance Company and the claimant and perused the materials available on record.

9. From the claim petition, it is seen that the claimant is an Engineer, aged 30 years, earning a sum of Rs.10,000/- per month. In the absence of income proof, the Tribunal fixed the notional income as Rs.6,000/- per month and the same is hereby confirmed. A perusal of discharge summary (Ex.P2) and case summary (Ex.P13) shows that the claimant was admitted in the Sooriya Hospital, Chennai on 04.03.2006 and discharged on 04.04.2006. It is also seen that the claimant suffered fracture of shaft of right femur and fracture of right ribs and had undergone surgery on 08.03.2006. It is evident from the discharge summary (Ex.P3) that the claimant was again treated as an inpatient in the very same hospital from 11.05.2006 to 17.05.2006. Dr.J.R.R.Thiagarajan (PW2) has assessed the partial permanent disability as 75%. Considering the nature of injuries, adopting multiplier method is warranted in the present case and the whole body disability is fixed at 30%. The Tribunal has rightly adopted the multiplier as 17. The 'disability and loss of earning power' is calculated as follows:

$$\begin{aligned} &= \text{Rs.}6,000/- \times 12 \times 17 \times 30/100 \\ &= \text{Rs.}3,67,200/- \end{aligned}$$

All the other heads awarded by the Tribunal are just and reasonable and they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

| S.No | Description | Amount awarded<br>by Tribunal<br>(Rs) | Amount awarded<br>by this Court<br>(Rs) |
|------|-------------|---------------------------------------|-----------------------------------------|
|------|-------------|---------------------------------------|-----------------------------------------|

|   |                                      |               |               |
|---|--------------------------------------|---------------|---------------|
| 1 | Disability and loss of earning power | 4,89,600      | 3,67,200      |
| 2 | Loss of income for six months        | 36,000        | 36,000        |
| 3 | Medical expenses                     | 3,14,200      | 3,14,200      |
| 4 | Transportation                       | 5,000         | 5,000         |
| 5 | Extra nourishment                    | 10,000        | 10,000        |
| 6 | Loss of amenities                    | 15,000        | 15,000        |
| 7 | Pain and sufferings                  | 25,000        | 25,000        |
|   | Total                                | Rs.8,94,800/- | Rs.7,72,400/- |

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the Cross Objection is dismissed. The compensation awarded by the Tribunal at Rs.8,94,800/- is hereby reduced to Rs.7,72,400/- 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 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, to the credit of MCOP.No.1555 of 2006 on the file of the Motor Accident Claims Tribunal / II Court of Small Causes, Chennai within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimant (first respondent in the appeal) is permitted to withdraw the modified award amount along with interest and costs, less the amount if any, already withdrawn. The appellant / Insurance Company is permitted to withdraw the excess amount, lying in the deposit to the credit of MCOP.No.1555 of 2006, if the award amount has already been deposited by them. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The III Judge, I/C of II Judge,  
The Motor Accidents Claims Tribunal,  
II Court of Small Causes,  
Chennai.

2.Section Officer,  
VR Section,  
High Court of Madras, Chennai.

+lcc to Mrs.R.Sreevidhya, Advocate SR.15780

C.M.A.No.1976 of 2013 &  
Cross Objection No.1 of 2015 &  
MP.No.1 of 2013

SVI (CO)  
CB(05/01/2021)



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