

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 933 of 2015
and Cross Objection No. 74 of 2015

C.M.A. No. 933 of 2015

Royal Sundaram Alliance Insurance Company Ltd.,
Millenium City, IT Park, Unit Nos. T2, 2A,
Tower II, Plot Nos. DN62,
Sector V Salt Lake,
Kolkatta 700 091. ... Appellant /R2

Vs.

1.Sathikbasha ... R1/Petitioner

2.M/s. Chetna Carrying Corporation,
No. 32, Ezra Street, North Block,
Suit No. 863, 8th Floor,
Kolkatta 700 001. .. R2/R1

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 12.08.2014, made in M.C.O.P. No. 66 of 2012, on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Ms. C. Harini
for M/s. N. Vijayaraghavan
For Respondents : Mr. F. Terry Chella Raja (For R1)
for Mr. V. Velu
R2 : Not Ready Notice

Cross Objection No. 74 of 2015

Sathikbasha ... Cross objector
Vs.

1.Royal Sundaram Alliance Insurance Company Ltd.,
Millenium City, IT Park, Unit Nos. T2, 2A,
Tower II, Plot Nos. DN62,
Sector V Salt Lake,
Kolkatta 700 091.

2.M/s. Chetna Carrying Corporation,
No. 32, Ezra Street, North Block,
Suit No. 863, 8th Floor, Kolkatta 700 001. .. Respondents

Prayer: This Cross Appeal is filed under Order XLI Rule 22 of C.P.C to enhance the Decree and Judgment dated 12.08.2014, made in M.C.O.P. No. 66 of 2012, on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Cross Objector : Mr. F. Terry Chella Raja
for Mr. V. Velu

For Respondents : Ms. C. Harini (For R1)
for M/s. N. Vijayaraghavan

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

C.M.A. No. 933 of 2015 has been filed by the appellant-Insurance Company, challenging the award dated 12.08.2014, made in M.C.O.P. No. 66 of 2012, on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

The Cross Objection No. 74 of 2015 has been filed by the Cross-Objector/claimant to enhance the award amount granted by the Tribunal by the award dated 12.08.2014, made in M.C.O.P. No. 66 of 2012, on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.Both the appeal and cross objection arise out of the same accident and same award. Hence, they are disposed of by this common judgment.

3.The parties are referred to as per their rank in the claim petition.

4.The Insurance Company is 2nd respondent in M.C.O.P. No. 66 of 2012, on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai. The claimant filed the said claim petition, claiming a sum of Rs.30,00,000/- (enhanced as per order dated 02.09.2013 in M.P. No. 2015 of 2013) as compensation for the injuries sustained by him in the accident that took place on 24.10.2011.

5.According to the claimant, on the date of accident, viz., on 24.10.2011, while he was traveling in the Bus bearing Registration No. TN-21-AJ-5436, a Tata Container bearing Registration No. NL-01-D-4894 driven by its driver dangerously in a rash and negligent manner, turned left side and dashed the

Bus in which the claimant travelled and caused the accident. The claimant sustained grievous injuries in the accident. The accident occurred only due to rash and negligent driving by the driver of the Tata Container belonging to the 1st respondent and filed claim petition against the 1st respondent as owner and 2nd respondent as insurer of the said vehicle, claiming compensation.

6.The 1st respondent remained exparte before the Tribunal.

7.The 2nd respondent filed counter statement and denied all the averments made in the claim petition. According to the 2nd respondent, the accident has occurred only due to rash and negligent driving by the driver of the Bus in which the claimant has travelled. The claim petition is bad for non-joinder of the owner and insurer of the Bus involved in the accident. The claimant has to prove his age, avocation, income, the nature of injuries, period of treatment taken, expenses incurred and disability suffered, to claim the compensation. The claimant also has to prove that the 1st respondent's vehicle is insured with the 2nd respondent and prayed for dismissal of the claim petition.

8.Before the Tribunal, claimant examined himself as P.W.1 and one employer as P.W.2 and Dr. J.R.R. Thiagarajan as P.W.3 and marked 30 documents as Ex.P1 to P30. No oral and documentary evidence was let in on the side of the respondents.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Tata Container belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.14,85,000/- as compensation to the claimant.

10.Against the said award of the Tribunal, the 2nd respondent-Insurance Company has filed C.M.A. No. 933 of 2015, questioning the quantum of compensation and the claimant has filed Cross Objection No.74 of 2015, seeking enhancement of compensation.

11.The learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal erred in fixing the monthly income of the claimant as Rs.12,000/-, without any basis. The claimant has not proved that he has not suffered any functional disability. In the absence of any material evidence, the Tribunal erred in applying the multiplier method for awarding compensation towards loss of earning power. Ex.P23 is the driving licence renewed by the claimant on 25.07.2013, subsequent to the date of accident, viz., 24.10.2011, which

shows that there is no loss of income. The Tribunal having held that the claimant was prevented from doing work for 8 months and awarded compensation for loss of income for 8 months at the rate of Rs.12,000/- erred in adopting multiplier method and awarded compensation of Rs.10,08,000/- towards loss of earning power. The Tribunal erred in awarding huge amount as compensation towards mental agony. The total compensation awarded under different heads are excessive and prayed for setting aside the award of the Tribunal.

12.The claimant filed Cross-Objection No. 74 of 2015, seeking enhancement of the compensation granted by the Tribunal. The learned counsel appearing for the claimant reiterated the averments in the claim petition and further contended that P.W.2 - Doctor deposed that the claimant is facing difficulty in squatting. He further deposed that the claimant suffered fracture of right acetabulum, which is mal-united, plate screw in situ, fibrosis hip joint right thigh, flexion 60 degree, IRER 60 degrees limited and difficulty in squatting, sciatic nerve right below hip injured EHL muscles foot path, foot droop treated, cannot lift foot and dragging right foot and drive vehicle, malunited fracture right inferior pubic ramus, continuous sitting and bending is difficult and prayed for enhancement of the compensation and dismissal of the appeal filed by the 2nd respondent.

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

14.It is the case of the claimant that he was working as Driver in Parveen Travels, Purasaiwakam, Chennai-7 and was earning a sum of Rs. 14,000/- per month. Due to the injuries sustained by him, he could not continue his work as Driver as he was doing earlier. The claimant examined P.W.3 - Doctor to prove the injuries sustained by him in the accident. The Tribunal held that P.W.3 - Doctor is not the Doctor who treated the claimant. From the evidence of P.W.3 - Doctor as extracted by the Tribunal, it is seen that there is nothing on record to show that the claimant suffered functional disability. Before the Tribunal, the learned counsel appearing for the 2nd respondent contended that the claimant renewed his licence which was marked as Ex.P23 on 25.07.2013 and the claimant can drive light motor vehicle and there is no loss of earning capacity. The Tribunal without considering the contention of the learned counsel appearing for the 2nd respondent, erroneously held that due to the injuries, the claimant could not sit and bend for long time and fixed 50% permanent disability towards loss of earning capacity and on this erroneous finding, applied the multiplier method for awarding compensation. Considering the nature of

injuries and evidence of P.W.1, P.W.3 and Ex.P23, this Court is of the view that the claimant has not suffered any functional disability and not suffered any loss of earning capacity. Hence, the compensation awarded by the Tribunal for loss of earning power by applying the multiplier method is set aside. P.W.3-Doctor has assessed that the claimant suffered 85% disability. The accident is of the year 2011. The claimant is entitled to compensation at the rate of Rs.3,000/- per percentage for 85% disability. Hence, a sum of Rs.2,55,000/- [85% x Rs.3,000/-] is awarded towards disability. The Tribunal has awarded a sum of Rs.25,000/- towards attendant charges. The said amount is excessive and the same is reduced to Rs.15,000/-. The amount granted by the Tribunal towards mental agony which is erroneous and the same is set aside. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are 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 income	96,000/-	96,000/-	Confirmed
2.	Transportation	20,000/-	20,000/-	Confirmed
3.	Extra nourishment	20,000/-	20,000/-	Confirmed
4.	Damages to clothes	1,000/-	1,000/-	Confirmed
5.	Medical expenses	1,75,000/-	1,75,000/-	Confirmed
6.	Attendant charges	25,000/-	15,000/-	Reduced
7.	Mental agony	40,000/-	-	Set aside
8.	Loss of amenities	50,000/-	50,000/-	Confirmed
9.	Pain and suffering	50,000/-	50,000/-	Confirmed
10.	Loss of earning power	10,08,000/-	-	Set aside
11.	Disability	-	2,55,000/-	Granted
	Total	14,85,000/-	6,82,000/-	Reduced by Rs.8,03,000/-

15.In the result, the Civil Miscellaneous Appeal is partly

allowed and the compensation awarded by the Tribunal at Rs.14,85,000/- is modified to Rs.6,82,000/- along with interest and costs. In view of the order passed in the appeal, Cross Objection No. 74 of 2015 is dismissed. The 2nd respondent-Insurance Company is directed to deposit the 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. 66 of 2012. On such deposit, the claimant is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, less the amount already withdrawn if any, by filing necessary applications before the Tribunal. The 2nd respondent-Insurance Company is permitted to withdraw excess amount, if any, lying in the credit of M.C.O.P. No. 66 of 2012, if the entire award amount has already been deposited. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

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

2.The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.V.Velu, Advocate, S.R.No.8533

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No. 9154

C.M.A. No. 933 of 2015
and Cross Objection No. 74 of 2015

EV(CO)
GN(29/01/2021)