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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.3320 of 2013

and

M.P. No.1 of 2013

and

Cross Objection No.37 of 2018

C.M.A. No.3320 of 2013

The New India Assurance Co. Ltd.,
Obli Towers D.B. Road,
R.S. Puram, Coimbatore 2.

.. Appellant

Vs.

1.C.P. Premnath

2.S. Kanakaraj

3.K.V.K. Brothers Transport,
No.76, Vallar Street,
Venkatesa Colony,
Pollachi.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 02.01.2013, made in M.C.O.P. No.895 of 2012, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Coimbatore.

For Appellant : Mr. R. Neetheperumal

For Respondents: Mr. P. Parthikannan (For R1)

No appearance (For R3)

Cross Objection No.37 of 2018

C.P. Premnath

.. Cross Objector

Vs.

1.The New India Assurance Co. Ltd.,
Obli Towers D.B. Road,
R.S. Puram, Coimbatore 2.

2.S. Kanakaraj



3.K.V.K. Brothers Transport,
No.76, Vallar Street,
Venkatesa Colony,
Pollachi.

.. Respondents

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Prayer: This Cross Objection is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 02.01.2013, made in M.C.O.P. No.895 of 2012, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Coimbatore.

For Cross Objector: Mr. P. Parthikannan

For Respondents : Mr. R. Neetheperumal (For R1)
No appearance (For R3)

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

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the award dated 02.01.2013, made in M.C.O.P. No.895 of 2012, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Coimbatore.

Cross Objection No.37 of 2018 has been filed seeking enhancement of compensation granted by the Tribunal by the award dated 02.01.2013, made in M.C.O.P. No.895 of 2012, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Coimbatore.

2.The appellant is the 3rd respondent in M.C.O.P. No.895 of 2012, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Coimbatore. The 1st respondent filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 16.01.2011.

3.The parties are referred to as per their rank in appeal for the sake of convenience.

4.According to the 1st respondent, on the date of accident viz., 16.01.2011, he was riding his Motorcycle bearing Registration No.TN-37-AT-8321 on the Pollachi main road from South to North. While nearing Singarampalayam Pirivu, the 2nd respondent, driver of the Bus bearing Registration No. TN-41-P-9900 belonging to the 3rd respondent, driving the same in a rash and negligent manner, suddenly turned the Bus without any signal and hit against the Motorcycle driven by the 1st respondent and caused the accident. In the accident, the 1st respondent suffered grievous injuries. The accident occurred only due to rash and negligent driving by the 2nd respondent, driver of the Bus belonging to the 3rd respondent and hence, the 1st respondent filed the claim petition, claiming



compensation against the respondents 2 and 3 and appellant as driver, owner and insurer of the Bus respectively.

5. The respondents 2 and 3 remained exparte before the Tribunal.

6. The appellant-Insurance Company, insurer of the Bus filed counter statement and denied all the averments made by the 1st respondent in the claim petition. According to the appellant, the accident occurred only due to negligent driving of Motorcycle by the 1st respondent and not due to negligent driving by the 2nd respondent, driver of the Bus insured with them. The 1st respondent has to prove that the 2nd respondent, driver of the Bus possessed valid driving license and Badge endorsement to drive the commercial vehicle at the time of accident. The 1st respondent has to prove his age, avocation and income, injuries sustained and disability suffered, to claim compensation. In any event, the total compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

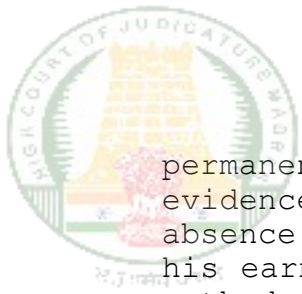
7. Before the Tribunal, the 1st respondent examined himself as P.W.1, examined Doctor as P.W.2 and marked 17 documents as Exs.P1 to P17. The appellant did not let in any oral and documentary evidence.

8. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 2nd respondent, driver of the Bus and directed the appellant as insurer of the said vehicle, to pay a sum of Rs.17,45,290/- as compensation to the 1st respondent.

9. Challenging the liability fixed on them and questioning the quantum of compensation granted by the Tribunal in the award dated 02.01.2013, made in M.C.O.P. No.895 of 2012, the appellant-Insurance Company has come out with the present appeal.

10. Not being satisfied with the amounts awarded by the Tribunal, the 1st respondent has filed Cross-Objection, seeking enhancement of compensation.

11. The learned counsel appearing for the appellant-Insurance Company contended that the accident has not occurred due to rash and negligent driving by the 2nd respondent, driver of the Bus belonging to the 3rd respondent. The accident has occurred only due to the negligence of the 1st respondent who dashed his Motorcycle against the Bus and invited the accident. The Tribunal erred in awarding compensation by adopting multiplier method for disability. P.W.2 Doctor



permanent disability. The 1st respondent has not let in any evidence to prove that he lost his earning power. In the absence of any materials to show that the 1st respondent lost his earning power, the Tribunal erroneously adopted multiplier method for 41% disability and awarded compensation excessively. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

12.The learned counsel appearing for the 1st respondent/Cross Objector contended that the accident has occurred only due to rash and negligent driving by the 2nd respondent, driver of the Bus. The 1st respondent proved the same by examining himself as P.W.1 and marking FIR as Ex.P1, which was registered against the 2nd respondent, driver of the Bus. The appellant did not let in any contra evidence. The Tribunal considering the evidence of 1st respondent and FIR, rightly held that 2nd respondent, driver of the Bus belonging to the 3rd respondent was responsible for the accident. There is no error in the said finding of the Tribunal. The learned counsel appearing for the 1st respondent further contended that the 1st respondent was aged 23 years at the time of accident, was working in Customer Care of Aircel, Chennai and was earning a sum of Rs.13,000/- per month. Due to the injuries sustained in the accident, he has taken treatment as in-patient at KG Hospital, Coimbatore, from 16.01.2011 to 04.02.2011. Due to the injuries, he could not do his work as he was doing earlier. The 1st respondent lost his entire earning power. The Tribunal ought to have awarded more compensation for disability and loss of earning power. The Tribunal has not awarded any amount for attendant charges, loss of amenities and reduction of marital prospects. The total compensation awarded by the Tribunal is meagre and prayed for dismissal of the appeal filed by the appellant/Insurance Company and for allowing the Cross Objection filed by him for enhancement of the compensation.

13.Though notice has been served on the 3rd respondent and their name is printed in the cause list, there is no representation for them either in person or through counsel.

14.Heard the learned counsel appearing for the appellant as well as the 1st respondent and perused the materials available on record.

15.From the materials on record, it is seen that it is the contention of the 1st respondent that while he was riding his Motorcycle, the 2nd respondent, driver of the Bus, belonging to the 3rd respondent drove the same in a rash and negligent manner and dashed against the Motorcycle of the 1st respondent and caused accident. In support of his case, the 1st respondent examined himself as P.W.1 and marked FIR which was registered against the 2nd respondent, driver of the Bus. On



the other hand, it is the contention of the appellant that accident has occurred only due to the negligence of the 1st respondent and not due to the driver of the Bus. The appellant has not examined the 2nd respondent, driver of the Bus or any eye witness in support of their case and disprove the case of the 1st respondent. The Tribunal considering the evidence of P.W.1, FIR and in the absence of any contra evidence by the appellant, held that accident occurred only due to rash and negligent driving by the driver of the Bus. There is no error in the said finding of the Tribunal, warranting interference by this Court.

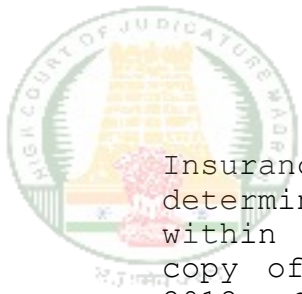
16.As far as the quantum of compensation is concerned, the 1st respondent claimed that he was working in Customer Care of Aircel, Chennai and was earning a sum of Rs.13,000/- per month. The 1st respondent produced Ex.P17 - salary certificate, which shows that the 1st respondent was earning a sum of Rs.11,234/- per month. The Tribunal fixed the monthly income at Rs.11,000/-, without giving any reason for reducing Rs.234/-. The appellant has not disproved Ex.P17-salary certificate of the 1st respondent. Hence, the monthly income of the 1st respondent is fixed at Rs.11,234/-, as claimed by the 1st respondent. In the accident, the 1st respondent suffered grievous injuries and fractures and he has taken treatment as in-patient in KG Hospital, Coimbatore, in two different spells, viz., from 16.01.2011 to 04.02.2011 and from 09.07.2011 to 18.07.2012. He has also underwent surgeries. The 1st respondent deposed about the nature of injuries and disability suffered. He examined P.W.2 Doctor to narrate the nature of injuries. P.W.2 Doctor examined the 1st respondent and certified that the 1st respondent suffered 41% partial permanent disability. The Tribunal considering the evidence of P.W.1, P.W.2-Doctor, wound certificate and discharge summaries and documents filed by the 1st respondent, accepted the disability certificate certified by P.W.2 Doctor. The Tribunal considering the evidence of P.W.1, P.W.2 Doctor, and discharge summaries, found that there were number of grievous injuries held that the person who has undergone such treatment could not do the same work as he was doing earlier. Though the 1st respondent suffered partial permanent disability, the Tribunal granted compensation by adopting multiplier method. Considering the age of the 1st respondent and the injuries sustained by him, there is no error in the reasoning of the Tribunal for adopting multiplier method and hence, the same is not interfered with. The 1st respondent was aged 23 years at the time of accident. The Tribunal erroneously applied the multiplier '17'. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court [Sarla Verma & others vs. Delhi Transport Corporation & another], the correct multiplier applicable is '18'. Hence, the amount awarded by the Tribunal towards disability is modified to Rs.9,94,883/- [Rs.11,234/- x 12 x 18 x 41%].



17. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. Considering the period of treatment taken and the nature of injuries sustained, a sum of Rs.15,000/- each is awarded towards attendant charges and loss to amenities. From the award of the Tribunal it is seen that due to the injuries in the skull, face of the 1st respondent has become ugly. Having held so, the Tribunal failed to award any compensation for marital prospects. The 1st respondent was aged 23 years at the time of accident. Considering the age of the 1st respondent, a sum of Rs.1,00,000/- is granted towards loss of marital prospects. The amount awarded by the Tribunal towards extra nourishment is meagre and hence, the same is enhanced to Rs.15,000/-. The Tribunal has not awarded any amount towards damages to clothes. The 1st respondent is entitled to a sum of Rs.2,000/- towards damages to clothes. 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	9,20,040/-	9,94,883/-	Enhanced
2.	Transportation	10,000/-	10,000/-	Confirmed
3.	Extra nourishment	10,000/-	15,000/-	Enhanced
4.	Pain and sufferings	20,000/-	20,000/-	Confirmed
5.	Medical bills	7,85,250/-	7,85,250/-	Confirmed
6.	Attendant charges	-	15,000/-	Granted
7.	Loss of amenities	-	15,000/-	Granted
8.	Damages to clothes	-	2,000/-	Granted
9.	Loss of marital prospects	-	1,00,000/-	Granted
	Total	17,45,290/-	19,57,133/-	Enhanced by Rs.2,11,843/-

18. In the result, the appeal is dismissed and the Cross-Objection is partly allowed. The amount awarded by the Tribunal at Rs.17,45,290/- is enhanced to Rs.19,57,133/- 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 award amount, now determined by this Court, along with interest and costs, 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.895 of 2012. On such deposit, the 1st respondent is permitted to withdraw the award amount now determined by this Court along with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Gsa

To

1.The Special Subordinate Judge,
(Motor Accident Claims Tribunal),
Coimbatore.

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

+1cc to Mr.R.Neethi Perumal, Advocate, S.R.No. 42567

+1cc to Mr.P.Parthikannan, Advocate, S.R.No. 42221

C.M.A. No.3320 of 2013
and M.P. No.1 of 2013
and Cross Objection No.37 of 2018

LN (CO)
GN (11/08/2021)