

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 1071 of 2018
and C.M.P. No. 8940 of 2018
and C.M.P. No. 15533 of 2019
in Cross Objection SR. 91311 of 2019

C.M.A. No. 1071 of 2018

M/s. Reliance General Insurance Co. Ltd.,
"Rais Tower", 2nd Floor,
Plot No. 2054, 2nd Avenue,
Next to Senthil Nursing Home,
Anna Nagar,
Chennai 600 040. ..2nd Respondent/ Appellant

Vs.

1.S. Sudhakar ..Petitioner/Ist respondent
2.E. Bhuvaneswari ..Ist respondent/
2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 31.08.2017, made in M.C.O.P. No. 536 of 2014, on the file of the Special Sub Court No.2, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. S. Arun Kumar

For Respondents: Mr. R. Kishore (For R1)
for M/s. A.N. Viswanatha Rao

Cross Objection SR. 91311 of 2019

S. Sudhakar .. Cross Objector/Ist respondent
Vs.

1.E. Bhuvaneswari ...Ist respondent/2nd respondent

2.M/s. Reliance General Insurance Co. Ltd.,
"Rais Tower", 2nd Floor,
Plot No. 2054, 2nd Avenue,
Next to Senthil Nursing Home,
Anna Nagar,
Chennai 600 040.

..2nd Respondent/Appellant

Prayer: This Cross Objection is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 31.08.2017, made in M.C.O.P. No. 536 of 2014, on the file of the Special Sub Court No.2, (Motor Accident Claims Tribunal), Chennai.

For Cross Objector : Mr. R. Kishore
for M/s. A.N. Viswanatha Rao

For Respondents : Mr. S. Arun Kumar (For R2)

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 challenging the quantum of compensation granted by the award dated 31.08.2017, made in M.C.O.P. No. 536 of 2014, on the file of the Special Sub Court No.2, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

Cross Objection SR. 91311 of 2019 has been filed seeking enhancement of compensation granted by the Tribunal by the award dated 31.08.2017, made in M.C.O.P. No. 536 of 2014, on the file of the Special Sub Court No.2, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellant is the 2nd respondent in M.C.O.P. No. 536 of 2014, on the file of the Special Sub Court No.2, Small Causes Court, (Motor Accident Claims Tribunal), Chennai. 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 13.10.2013.

3.According to the 1st respondent, on the date of accident viz., 13.10.2013, he was travelling in a Mahindra Van bearing Registration No. TN-22-CE-3571, belonging to the 2nd respondent. At about 13.45 hours, when the Mahindra Van was proceeding from

Tamparam-Maduranthagam direction at G.S.T Road, near Irumpuliyur Pomma Kadai, the Driver of the said vehicle drove the same at high speed, in a rash and negligent manner, endangering public safety and hit against the road wall and caused the accident. Due to the sudden impact, the 1st respondent sustained injuries. The accident has occurred only due to rash and negligent driving by the Driver of the Mahindra Van belonging to the 2nd respondent and hence, filed the claim petition, claiming compensation against the 2nd respondent as owner and appellant as insurer of the said vehicle.

4.The 2nd respondent remained exparte before the Tribunal.

5.The appellant-Insurance Company filed counter statement and denied all the averments made by the 1st respondent in the claim petition. According to the appellant, the Mahindra Van was overloaded and the 1st respondent contributed to the accident by travelling in the overloaded Van. The 1st respondent has to prove that the Van was insured with the appellant and the Driver of the Van possessed valid driving license. The appellant denied the age, avocation, income, injuries sustained and disability suffered to claim compensation and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1 and marked 12 documents as Exs.P1 to P12. The 2nd respondent and appellant did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence let in by the 1st respondent, held that the accident occurred due to rash and negligent driving by the Driver of the Mahindra Van belonging to the 2nd respondent and directed the appellant-Insurance Company to pay a sum of Rs.8,12,400/- as compensation to the 1st respondent.

8.Challenging the quantum of compensation granted by the Tribunal by the award dated 31.08.2017, made in M.C.O.P. No. 536 of 2014, the appellant-Insurance Company has come out with the present appeal.

9.Learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in assuming 25% loss of earning capacity, relying on Ex.P10. The 1st respondent failed to prove that he lost earning capacity. In the absence of any

documentary evidence produced by the 1st respondent, the Tribunal ought not to have granted Rs.4,97,250/-, towards loss of earning capacity. In addition to granting compensation towards pain and suffering, the Tribunal erred in awarding separate compensation towards mental agony and loss of amenities. The amounts awarded by the Tribunal towards pain and suffering, extra nourishment and attendant charges are excessive and prayed for reducing the compensation.

10.Learned counsel appearing for the 1st respondent submitted that at the time of accident, the 1st respondent was doing Executive Work in SVS Enterprises, Chennai and was earning a sum of Rs.10,000/- per month and a sum of Rs.100/- daily as batta. The Tribunal has fixed only meagre sum of Rs.6,500/- per month as notional income of the 1st respondent. In the accident, the 1st respondent sustained degloving injuries at fore arm, with grade II CPD fracture Supra Condylar (l) femur with laceration, right knee fracture fibula proximal 1/3rd and wound debridement and kneespanning fixator. The Tribunal erroneously fixed 25% functional disability, while the Assistant Surgeon of the Government Thiruvannamalai Medical College Hospital has assessed that the 1st respondent suffered 60% permanent physical impairment and issued disability certificate - Ex.P10. In any event, the total compensation awarded by the Tribunal is meagre. The 1st respondent has also filed Cross Objection and the same is pending in SR stage and prayed for dismissal of the appeal and enhancement of the compensation.

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

12.It is the contention of the 1st respondent that in the accident, he suffered fracture of right fore arm, left thigh and right thigh and has taken treatment as in-patient in Rajiv Gandhi Government General Hospital, Chennai from 13.10.2013 to 25.10.2013 and produced Ex.P2 to prove the same. He has also marked the medical records of Rajiv Gandhi Government General Hospital, Chennai to show the treatment taken for the period from 26.10.2013 to 14.11.2013 as Ex.P3. The Assistant Surgeon, Government Tiruvannamalai Medical College Hospital, Tiruvannamalai District has assessed that the 1st respondent suffered 60% permanent disability and issued disability certificate which is marked as Ex.P10. The Tribunal considering the injuries in the right arm and right leg, fixed the functional disability and loss of earning capacity of the 1st

respondent as 25%. It is claimed that at the time of accident, the 1st respondent was doing Executive work in SVS Enterprises, Chennai and was earning a sum of Rs.10,000/- per month, but he failed to prove the same. In the absence of any material evidence to prove the avocation and income of the 1st respondent, the Tribunal fixed a sum of Rs.6,500/- per month as notional income and awarded a sum of Rs.4,97,250/- towards loss of earning capacity. The Tribunal reduced the percentage of disability assessed by the Doctor to 50% and awarded a sum of Rs.1,50,000/- towards disability. It is well settled that based on the facts and circumstances of each case, the Courts can award compensation for loss of earning power and disability separately. In the present case, the Tribunal considering the materials on record, has granted compensation for both loss of earning power and disability and other needs separately. In view of the above, the appellant is not entitled to compensation separately for loss of income and mental agony. The sum of Rs.8,233/- and Rs.25,000/- granted for loss of income and mental agony are set aside. 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 earning capacity	4,97,250/-	4,97,250/-	Confirmed
2.	Compensation containing permanent disability	1,50,000/-	1,50,000/-	Confirmed
3.	Pain and suffering	40,000/-	40,000/-	Confirmed
4.	Attendant charges	15,000/-	25,000/-	Enhanced
5.	Loss of income	8,233/-	-	Set aside
6.	Transportation	13,170/-	25,000/-	Enhanced
7.	Extra nourishment	25,000/-	25,000/-	Confirmed
8.	Medical expenses	13,725.53/-	13,725.53/-	Confirmed

9.	Mental agony to the claimant	25,000/-	-	Set aside
10	Loss of amenities and enjoyment of life	25,000/-	25,000/-	confirmed
	Total	8,12,378.53 /-rounded off to 8,12,400/-	8,00,975.5 3/-rounded off to 8,01,000/-	Reduced by Rs.11,400/-

13. In the result, the appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,12,400/- is modified to Rs.8,01,000/- along with 7.5% interest and costs. The appellant-Insurance Company is directed to deposit the compensation awarded by the Tribunal, together 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. 536 of 2014. On such deposit, the 1st respondent is permitted to withdraw the award amount together with interest and costs, after adjusting the amount, if any, already withdrawn, by filling necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw excess amount, if any, lying in the credit of M.C.O.P. No. 536 of 2014, if the entire award amount has already been deposited. Consequently, C.M.P. No. 8940 of 2018 is closed.

14. Considering the materials on record, this Court has enhanced the compensation payable to the 1st respondent for attendant charges and transportation. The 1st respondent is not entitled to any further enhancement. In view of the same and judgment passed in Civil Miscellaneous Appeal, C.M.P. No. 15533 of 2019 is dismissed and the Cross Objection SR. 91311 of 2019 is rejected at the SR stage itself. No costs.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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To

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

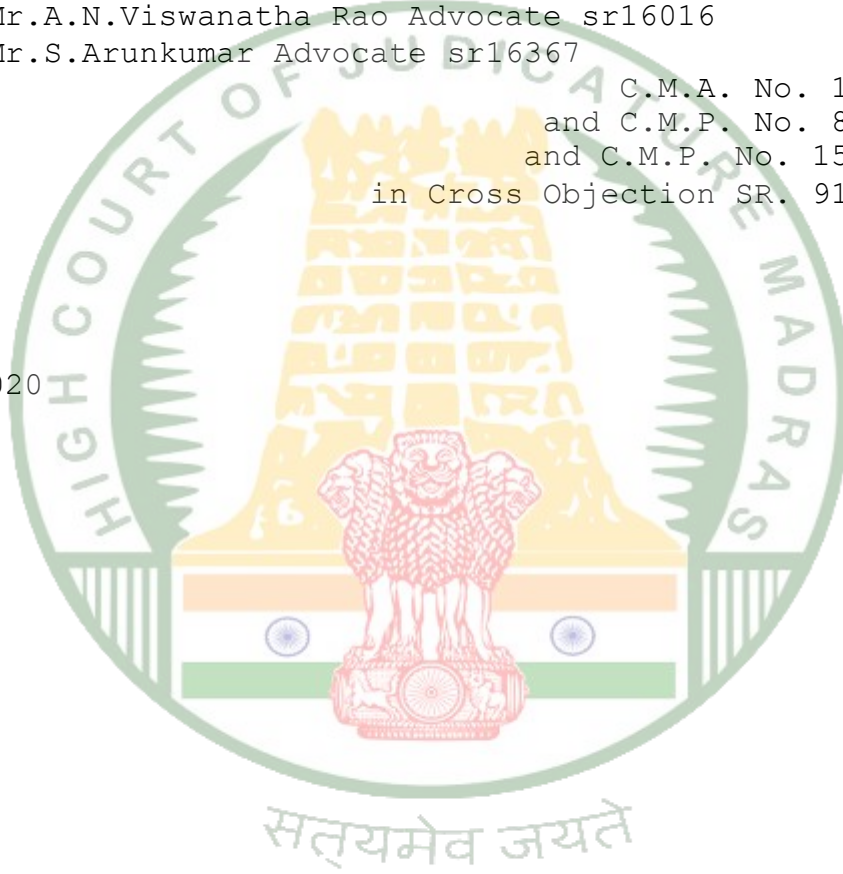
2.The Special Subordinate Judge No. 2,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

+1 cc to Mr.A.N.Viswanatha Rao Advocate sr16016

+1 cc to Mr.S.Arunkumar Advocate sr16367

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