

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2294 of 2014 & M.P.No.1 of 2014
and Cross Objection No.90 of 2014

C.M.A.No.2294 of 2014

The Oriental Insurance Co. Ltd.
No.115, 216, Prakasam Road
T.P.Cell, 2nd floor
Chennai-108. ... Appellant/2nd Respondent

Vs.

1.Karunanidhi

2.K.Suresh ... 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 22.10.2013 made in M.C.O.P.No.378 of 2011 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Appellant: Mr.S.Arunkumar
For R1 : Mr.F.Terry Chella Raja
for Ms.M.Malar

R2- not ready notice

Cross Objection No.90 of 2014

Karunanidhi .. Cross objector

Vs.

1.The Oriental Insurance Co. Ltd.
No.115, 216, Prakasam Road
T.P.Cell, 2nd floor
Chennai-108.

2.K.Suresh

.. Respondents/2nd Respondent/
1st respondent

Prayer: This Cross Appeal is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 22.10.2013 made in M.C.O.P.No.378 of 2011 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Cross Appellant : Mr.F.Terry Chella Raja
for Ms.M.Malar

For R1 : Mr.S.Arunkumar

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

This matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal has been filed by the Insurance Company against the award dated 22.10.2013 made in M.C.O.P.No.378 of 2011 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

The Cross-Objection has been filed by the 1st respondent seeking enhancement of compensation granted by the Tribunal in the award dated 22.10.2013 made in M.C.O.P.No.378 of 2011 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

2.The 1st respondent is the claimant in M.C.O.P.No.378 of 2011 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 18.12.2010.

3.According to the 1st respondent, on the date of accident i.e., on 18.12.2010 at 6.30 a.m., while he was travelling in a car along the ECR Road towards Kalpakkam - Chennai direction, near Mahabalipuram TTDC petrol bunk, the 2nd respondent, the driver-cum-owner of the tempo traveller, which was coming in the back side of the car, drove the vehicle in a rash and negligent manner, hit behind the car in which the 1st respondent was travelling and caused the accident. In the accident, the 1st respondent sustained grievous injuries all over the body and therefore, he filed the above claim petition claiming compensation against the 2nd respondent and the appellant/Insurance Company.

4.The 2nd respondent, owner of the tempo traveller, remained exparte before the Tribunal.

5.The appellant/Insurance Company insurer of the tempo traveller filed counter statement denying the averments made in the claim petition and stated that the driver of the car alone was responsible for the accident. The appellant has denied the validity of the records, driving license of the driver and the insurance coverage. The owner and insurer of the car were not made as parties to the claim petition and hence, the claim petition is bad for non-joinder of necessary parties. The appellant/Insurance Company is not liable to pay any compensation to the 1st respondent. The appellant has also denied the age, avocation, income and nature of injuries sustained by the 1st respondent. In any event, the compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1, Dr.N.Saichandran was examined as P.W.2 and seven documents were marked as Exs.P1 to P7. The appellant/Insurance Company did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the 2nd respondent, the driver-cum-owner of the tempo traveller and directed the appellant/Insurance Company being insurer of the said tempo traveller to pay a sum of Rs.5,43,600/- as compensation to the 1st respondent.

8.Against the said award dated 22.10.2013 made in M.C.O.P.No.378 of 2011, the appellant/Insurance Company has come out with C.M.A.No.2294 of 2014 challenging the quantum of compensation awarded by the Tribunal. Not being satisfied with the amounts awarded by the Tribunal, the 1st respondent has come out with Cros.Obj.No.90 of 2014 seeking enhancement of compensation awarded by the Tribunal.

9.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal awarded excessive amounts as compensation without any basis. If really the 1st respondent suffered 55% disability, he would not have joined duty after being certified as physically fit to join duty by the competent authority. P.W.2/Doctor has not assessed the disability for whole body or in accordance with the guidelines. The amounts awarded by the Tribunal towards loss of amenities and loss of expectation of life are totally unwarranted and the amount granted by the Tribunal towards pain and suffering is excessive. The appellant has not suffered any loss of income. The Tribunal

erroneously awarded a sum of Rs.1,07,562/- towards loss of income without any proof for loss of pay. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal and dismissal of the Cross-objection filed by the 1st respondent.

10.Per contra, the learned counsel appearing for the 1st respondent/cross-objector contended that the 1st respondent suffered fracture of both bones of left leg, L2 Vertebra and multiple injuries all over the body. He underwent surgery and interlocking was done. The 1st respondent examined himself as P.W.1 and the Doctor as P.W.2 to prove the nature of injuries. The Tribunal failed to consider the evidence of P.W.1, P.W.2/Doctor in proper perspective and awarded only meagre amounts as compensation. The amounts awarded by the Tribunal towards transportation, extra nourishment, attendant charges, loss of amenities and pain and suffering are meagre. The Tribunal has not awarded any compensation towards future medical expenses and prayed for enhancement of compensation and dismissal of the appeal filed by the appellant/Insurance Company.

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

12.From the materials available on record, it is seen that it is the contention of the 1st respondent that in the accident, he suffered fractures of spinal cord, left leg and multiple injuries all over the body. The 1st respondent has examined the Doctor as P.W.2 to prove the nature of injuries. P.W.2/Doctor examined the 1st respondent and certified that the 1st respondent has suffered 55% disability. The Tribunal considering the materials, held that assessment of disability by P.W.2/Doctor is on the higher side, but considering the nature of injuries in the head, fixed the disability of the 1st respondent at 55% as assessed by P.W.2/Doctor and awarded a sum of Rs.2,000/- per percentage of disability. The amount awarded by the Tribunal per percentage of disability is not proper. The accident is of the year 2010 and hence, the 1st respondent is entitled to a sum of Rs.3,000/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,65,000/- (Rs.3,000/- X 55%).

12(i).According to the 1st respondent, he has taken treatment as in-patient in Chettinad Hospital, from 18.12.2010 to 10.01.2011. Considering the nature of injuries, disability and the treatment taken by the appellant, the amounts awarded by the Tribunal towards transportation, extra nourishment and attendant charges are meagre and hence, the same are hereby enhanced to Rs.10,000/-, Rs.15,000/- and Rs.15,000/-

respectively. The Tribunal has awarded a sum of Rs.1,00,000/- each towards pain and suffering, loss of amenities and loss of expectation of life and shortening of normal longevity. Considering the nature of injuries and disability suffered by the 1st respondent, the 1st respondent is not entitled to any compensation towards loss of expectation of life and therefore, a sum of Rs.1,00,000/- awarded by the Tribunal towards loss of expectation of life is liable to be set aside and it is hereby set aside. The amounts awarded by the Tribunal towards pain and suffering and loss of amenities are excessive and hence, the same are hereby reduced to Rs.35,000/- and Rs.25,000/- respectively. The learned counsel appearing for the 1st respondent contended that the 1st respondent has taken treatment till 20.10.2012 as out-patient, but the Tribunal has not granted any compensation towards future medical expenses. Considering the nature of injuries suffered by the 1st respondent, a sum of Rs.15,000/- is awarded towards future medical expenses. The amounts awarded by the Tribunal under all 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.	Loss of income	1,07,562	1,07,562	Confirmed
2.	Transportation	5,000	10,000	Enhanced
3.	Extra nourishment	5,000	15,000	Enhanced
4.	Damage to clothes	1,000	1,000	Confirmed
5.	Medical expenses	10,000	10,000	Confirmed
6.	Attendant charges	5,000	15,000	Enhanced
7.	Pain suffering and	1,00,000	35,000	Reduced
8.	Loss of amenities	1,00,000	25,000	Reduced
9.	Loss of expectation of life and shortening of normal longevity	1,00,000	-	Set aside
10.	Disability	1,10,000	1,65,000	Enhanced
11.	Future medical expenses	-	15,000	Granted

	Total	5,43,562 rounded off to 5,43,600	3,98,562 rounded off to 3,98,600	Reduced by Rs.1,45,000/ -
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13. In the result, both the Civil Miscellaneous Appeal and the Cross-Objection are partly allowed. The compensation awarded by the Tribunal at Rs.5,43,600/- is hereby reduced to Rs.3,98,600/- 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, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent is permitted to withdraw the award amount now determined by this Court, 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 M.C.O.P.No.378 of 2011 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

1.V Judge

Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

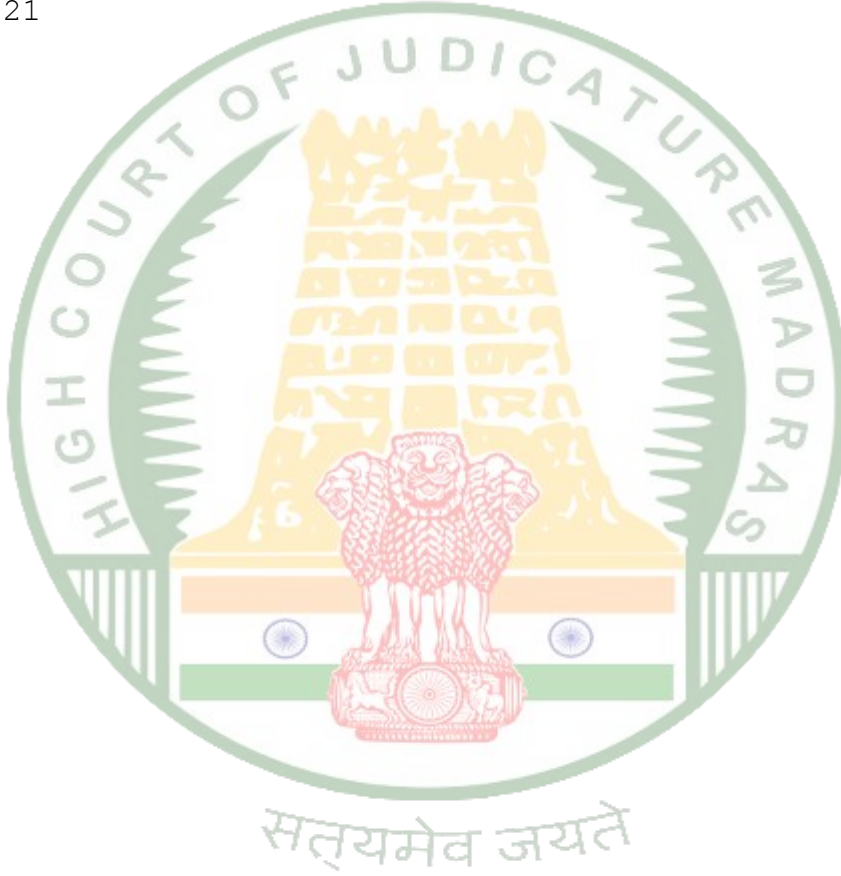
2.The Section Officer

V.R.Section, High Court
Chennai.

+1 cc to M/s.M.Malar Advocate sr42989
+1 cc to Mr.S.Arunkumar Advocate sr43100

C.M.A.No.2294 of 2014 & M.P.No.1 of 2014
and Cross Objection No.90 of 2014

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