

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 2191 of 2014
and Cross Objection No. 93 of 2014

C.M.A. No. 2191 of 2014

The Oriental Insurance Company Ltd.,
115/116, Prakasam Salai,
Chennai 13. ... Appellant /2nd Respondent

Vs.

1.Vedhagiri ...1st Respondent/Petitioner
2.Vedachalam D. ...2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 10.01.2014, made in M.C.O.P. No. 2406 of 2013, on the file of the V Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. K. Vinod
for M/s. Elveera Ravindran

For Respondents: Mr. F. Terry Chellaraja
for M/s. M. Malar (For R1)
R2-Givenup

Cross Objection No. 93 of 2014

Vedhagiri ... Cross Objector/Respondent

Vs.

1.The Oriental Insurance Company Ltd.,
115/116, Prakasam Salai,
Chennai 13. ...1st Respondent/Appellant

2.Vedachalam D. ...2nd Respondent/2nd Respondent

Prayer: This Cross Objection is filed under Order XLI Rule 22 of C.P.C seeking enhancement of the compensation granted by the judgment and decree dated 10.01.2014, made in M.C.O.P. No. 2406 of 2013, on the file of the V Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Cross Objector : Mr. F. Terry Chellaraja

For Respondents : Mr. K. Vinod (For R2)
for M/s. Elveera Ravindran

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

C.M.A. No. 2191 of 2014 has been filed by the appellant-Insurance Company challenging the quantum of compensation granted by the award dated 10.01.2014, made in M.C.O.P. No. 2406 of 2013, on the file of the V Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

Cross Objection No. 93 of 2014 has been filed seeking enhancement of the compensation granted by the award dated 10.01.2014, made in M.C.O.P. No. 2406 of 2013, on the file of the V Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.The appellant in C.M.A. No. 2191 of 2014 is the 2nd respondent in M.C.O.P. No. 2406 of 2013, on the file of the V Court of Small Causes, (Motor Accident Claims Tribunal), Chennai. The 1st respondent filed the said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 19.03.2013.

4.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 Mahindra Van belonging to the 2nd respondent and directed the appellant-Insurance Company to pay a sum of Rs.4,50,500/- as compensation to the 1st respondent.

5.Questioning the quantum of compensation granted by the Tribunal by the award dated 10.01.2014, made in M.C.O.P. No. 2406 of 2013, the appellant-Insurance Company has come out with the present appeal and for enhancement of the compensation, the 1st respondent has come out with Cross Objection No. 93 of 2014.

6.Learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in accepting 65%

disability and fixing 25% loss of earning capacity and awarding compensation by applying multiplier method. P.W.2 - Doctor has not assessed the disability for whole body or has not assessed the functional disability of the 1st respondent. The Tribunal erred in awarding compensation towards loss of income for 3 months. The amount of Rs.1,00,000/- awarded by the Tribunal for pain and suffering and Rs.75,000/- for loss of amenities are excessive. In the absence of any documentary evidence to prove the avocation and income of the 1st respondent, the Tribunal erred in fixing Rs.4,500/- per month as notional income. The amounts awarded by the Tribunal under other heads are also excessive and prayed for setting aside the award.

7.Per contra, the learned counsel appearing for the 1st respondent contended that the 1st respondent suffered multiple injuries, fracture of right temporal bone with right temporo parietal EDH with left parietal contusion and has taken treatment as in-patient from 19.03.2013 to 25.03.2013 and undergone surgery on 19.03.2013. The 1st respondent proved the same by examining P.W.2 - Doctor who has assessed that the 1st respondent suffered 65% partial permanent disability and issued Ex.P6 - Disability Certificate to that effect. The Tribunal ought to have granted compensation for 65% disability by applying the multiplier method, instead of granting loss of earning power at 25%. In any event, the total compensation granted by the Tribunal under different heads are meagre and prayed for enhancement of the same.

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

9.It is the contention of the 1st respondent that in the accident, he sustained fracture and head injuries and has taken treatment as in-patient from 19.03.2013 to 25.03.2013 and undergone surgery on 19.03.2013. To substantiate the same, he has examined P.W.2 - Doctor. P.W.2 Doctor deposed in detail the nature of injuries, treatment taken and certified that the 1st respondent suffered 65% disability. The Tribunal considering the evidence of P.W.2 Doctor, fixed 25% as loss of earning power of the claimant, holding that the Doctor has not assessed the disability for whole body and has not assessed the functional disability. Considering the nature of work done by the 1st respondent as Cleaner, injuries suffered by him and surgery undergone by him, there is no error in the reasoning of the Tribunal fixing 25% loss of earning power and thereby applying the multiplier method. The 1st respondent contended that he was earning a sum of Rs.10,000/- per month from the Cleaner job, but failed to prove the same. In the absence of any material

evidence to prove the avocation and income, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the 1st respondent. The accident is of the year 2013 and the monthly income fixed by the Tribunal is meagre. Considering the raise in cost of living, a sum of Rs.8,000/- per month is fixed as the notional income of the 1st respondent. The 1st respondent has contended that he was aged 35 years at the time of accident. The appellant has not disputed the same. Hence, the Tribunal considering 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], applied the correct multiplier '16'. Hence, the amounts awarded by the Tribunal towards loss of earning power is modified to Rs.3,84,000/- [Rs.8,000/- x 12 x 16 x 25%]. Due to the injuries sustained in the accident, the 1st respondent would not have worked atleast for a period of 3 months. Hence, the amount awarded by the Tribunal towards loss of income is enhanced to Rs.24,000/-.

10.As rightly pointed out by the learned counsel appearing for the appellant, the Tribunal has awarded excessive amount of Rs.1,00,000/- and Rs.75,000/- towards pain and suffering and loss of amenities and hence, the same are hereby reduced to Rs.50,000/- each. The sum of Rs.5,000/- each awarded by the Tribunal towards extra nourishment and attendant charges are meagre. Considering the nature of injuries and the period of treatment taken, the amounts awarded towards extra nourishment and attendant charges are hereby enhanced to Rs.7,500/- each. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, they 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	13,500/-	24,000/-	Enhanced
2.	Transportation	5,000/-	5,000/-	Confirmed
3.	Pain and suffering	1,00,000/-	50,000/-	Reduced
4.	Attendant charges	5,000/-	7,500/-	Enhanced
5.	Extra nourishment	5,000/-	7,500/-	Enhanced
6.	Damage to clothes	1,000/-	1,000/-	Confirmed

7.	Disfigurement	25,000/-	25,000/-	Confirmed
8.	Medical expenses	5,000/-	5,000/-	Confirmed
9.	Loss of earning power	2,16,000/-	3,84,000/-	Enhanced
10.	Loss of amenities	75,000/-	50,000/-	Reduced
	Total	4,50,500/-	5,59,000/-	Enhanced by Rs.1,08,500/-

11. In the result, both C.M.A. No. 2191 of 2014 and Cross Objection No. 93 of 2014 are partly allowed and the compensation awarded by the Tribunal at Rs.4,50,500/- is enhanced to Rs.5,59,000/- along with 7.5% interest and costs. The appellant-Insurance Company is directed to deposit the compensation now determined by this Court, along with interest and costs, less the amount, if any already deposited, 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. 2406 of 2013. On such deposit, the 1st respondent is permitted to withdraw the enhanced award amount along with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The 1st respondent is directed to pay the court fee, if any, on the enhanced amount of Rs.1,08,500/-. No costs.

Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

gsa

To

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

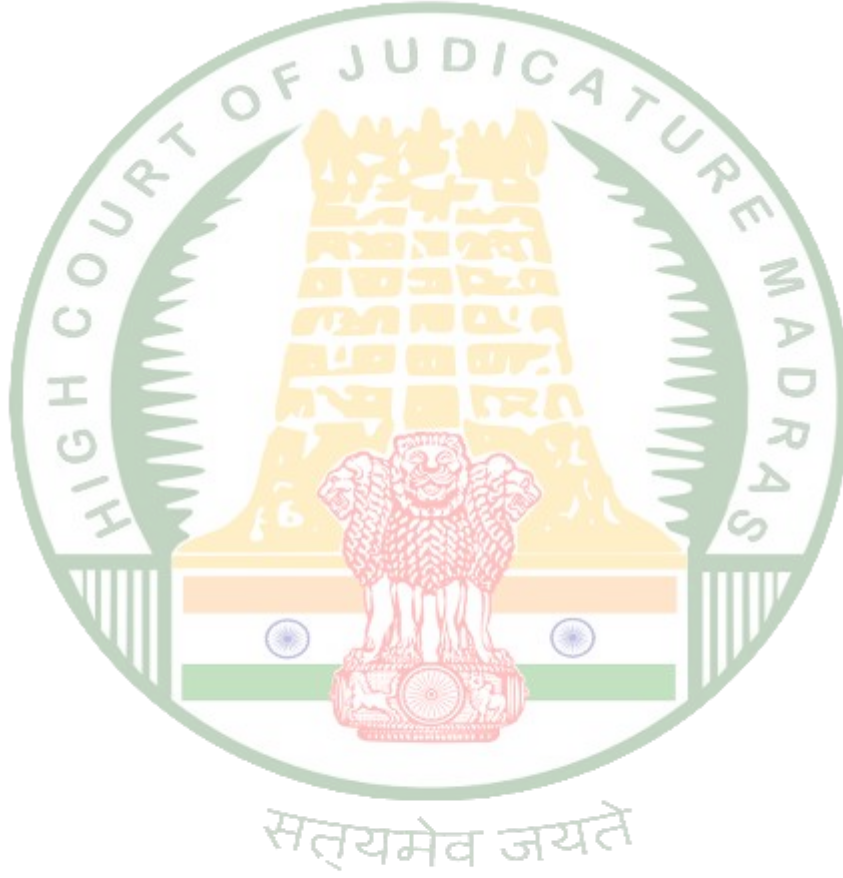
2. The Section Officer,
V.R Section,
High Court, Madras.

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+lcc to Mrs.Elveera Ravindran, Advocate, S.R.No.23336
+lcc to Mrs.M.Malar, Advocate, S.R.No.23445

C.M.A. No. 2191 of 2014
and Cross Objection No. 93 of 2014

BR (CO)
CB (22/04/2021)



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