



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 11.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

WEB COPY

C.M.A(MD) No.17 of 2008
and Cross Objection(MD) No. 48 of 2008

In C.M.A(MD)No.17 of 2008:

M/s.New India Assurance Company Limited

66, West Boulevard Road,

Tiruchirappalli 620 008.

Rep. through its Divisional Manager

...Appellant/Respondent No.4

Vs.

1.M.Raja

...1st Respondent/Petitioner

2.B.Ganesan

3.M/s. Oriental Insurance Company Limited.,

216-A, Nethaji Road,

Madurai - 625 001.

4.D.Rengaraj

... Respondents 2 to 4/Respondents 1 to 3

PRAYER: The Civil Miscellaneous Appeal is filed under Section 173 of M.V. Act, 1988 amended by M.V. (Amendment) Act, 1994, against the judgment and decree made in M.C.O.P.No.1845 of 2000 dated 29.08.2006 on the file the Motor Accidents Claims Tribunal, III Additional Sub Court, Madurai.

For Appellant

: Mr.D.Sivaraman

For R1

: Mr.S.Srinivasa Raghavan

For R3

: Mr.Jawahar Ravindran

For R2 & R4

: No appearance

In Cross Objection (MD) No.48 of 2008:

M.Raja

Vannamparaipatti Village,

Kottanathampatti Post, Melur Taluk, Madurai District.

(Natural Guardian was discharged in MP No.2/2007 by order dated

02/11/2007.

... Cross Objectior / 1st Respondent

Vs.

1. M/s.New India Assurance Company Limited

66, West Boulevard Road,

Tiruchirappalli 620 008

Represented through its Divisional Managaer.



2. B.Ganesan, S/o.Bala Gurusamy,
1/32-A, Vannamaparaipatti Village,
Kottanathampatti Post,
Melur Taluk, Madurai District.

3. M/s. Oriental Insurance Company Limited.,
216-A, Nethaji Road,
Madurai - 625 001.

4. D.Rengaraj,
S/o Duraisamy,
Samayapuram Pudur,
Samayapuram, Trichy .

... Respondents / Appellant /
Respondents 2 to 4

PRAYER: The Cross Appeal filed under Order XLI Rule 22 C.P.C to enhance the award of compensation granted by the Motor Accident Claims Tribunal (III Additional Sub Court) Madurai dated 29.08.2006 made in M.C.O.P.No.1845 of 2000 from Rs.40,000/- to Rs.3,40,000/-.

For Cross Objector/R1 : Mr.S.Srinivasa Raghavan
For Appellant : Mr.D.Sivaraman
For R3 : Mr.Jawahar Ravindran
For R2 & R4 : No appearance

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

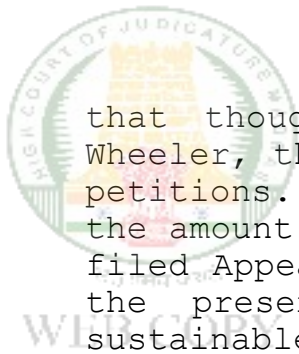
In C.M.A(MD)No.17 of 2008:

This Civil Miscellaneous Appeal has been filed against the judgment and decree made in M.C.O.P.No.1845 of 2000 dated 29.08.2006 on the file the Motor Accidents Claims Tribunal, III Additional Sub Court, Madurai.

2. The appellant Insurance Company has filed the present appeal questioning liability.

3.The learned counsel for the appellant/Insurance Company would submit that at the time of accident, the claimant was travelling in a Two Wheeler (TVS 50) and 3 persons stated to have been travelling in the Two Wheeler, due to that negligence on the part of the rider of the Two Wheeler, accident occurred. This fact has not been considered by the Tribunal. The Tribunal has wrongly fastened liability on the driver of the lorry.

4. The learned counsel for the first respondent/petitioner would vehemently contend that even P.W.3, who is the eye witness, has deposed that due to rash and negligent driving of the driver of the lorry bearing Reg. No. TN-33-T-3800, accident occurred. There is no evidence to show that the accident had occurred due to rash and negligent driving of the rider of the Two Wheeler. The learned counsel for the first respondent/petitioner would further submit



that though three persons stated to have travelled in the Two Wheeler, they got severe injuries and they have filed separate claim petitions. Out of three claimants, two of them were satisfied with the amount of compensation granted by the Tribunal and they have not filed Appeal before this Court. The first respondent has only filed the present appeal. The contention of the appellant is not sustainable in law and on fact. The lorry was duly insured with the appellant and the appellant Insurance Company is liable to pay compensation.

5. Heard both sides and perused the records.

6. Based on the evidence of eye witness that due to rash and negligent driving of the lorry only accident occurred, the Tribunal has fixed liability on the appellant Insurance Company. The appellant/ Insurance Company has not taken any contra evidence to prove that the driver of the lorry has driven the lorry in a slow speed. Therefore, there is no merit in the appeal.

7. Accordingly, this Civil Miscellaneous Appeal is dismissed confirming the award of the Tribunal. No costs.

In Cross Objection 48 of 2008:

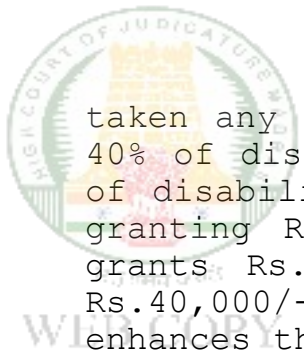
8. Insofar as the Cross Objection is concerned, the claimant has filed this Cross Objection claiming enhancement of compensation.

9. The learned counsel appearing for the claimant/Cross Objector would submit that Disability Certificate was produced by the claimant in which Doctor has stated that the claimant suffered 75% of permanent disability. But the Tribunal has taken only 40% of disability. Even material evidence would show that the claimant could not do work as he performed before the accident but, the Tribunal, without stating any specific reason, has reduced the percentage of disability from 75% to 40%. Further the learned counsel would submit that for each percentage of disability the Tribunal has awarded only Rs.1000/- only and the same may be modified by this Court.

10. Heard both sides and perused the records.

11. Even in the Disability Certificate, the Doctor has certified that the first respondent/claimant has suffered 75% of permanent disability. The Tribunal has reduced the percentage of disability from 75% to 40% even without mentioning any reason for arriving at 40% of disability and the Tribunal has stated disability is neither partial or permanent. The respondent has not given contra evidence regarding disability and the accident is of the year 1999.

12. Considering the facts and circumstances of the case and the facts that the Tribunal has not stated any reason for reducing the percentage of disability from 75% to 40% and the respondent has not



taken any contra evidence to prove that the claimant suffered only 40% of disability, this Court is inclined to modify the percentage of disability as per the Disability Certificate Ex.B.11 at 75%. By granting Rs.1000/- for each percentage of disability, this Court grants Rs.35,000/- towards disability. The Tribunal has granted Rs.40,000/- already by fixing disability at 40% and this Court enhances the same to Rs.75,000/- by fixing disability at 75%. In all other heads, the amount granted by the Tribunal shall stand unaltered.

13. With the above modification, this Cross Objection is partly allowed. No costs. The appellant/Insurance Company in the main appeal is directed to deposit the enhanced amount of Rs.35,000/- with interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit. The first respondent/claimant is permitted to withdraw the same from the Tribunal.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

The III Additional Sub Judge,
Madurai.

+2 CC to M/s.S.SRINIVASARAGAVAN, Advocate (SR-11220 & 11222[F] dated 12/03/2020)

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-11238[F] dated 12/03/2020)

+1 CC to M/s.C.JAWAHAR RAVINDRAN, Advocate (SR-11622[F] dated 13/03/2020)

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SDS (15.06.2020) 4P-6C