



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 02.12.2020
CORAM

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

C.M.A(MD)No.878 of 2008

and

Cross Objection(MD)No.25 of 2013

and

M.P(MD)Nos.1 of 2008 & 1 of 2011

C.M.A(MD)No.878 of 2008

National Insurance Company Limited,
Branch Office 1, Promenade Road,
Cantonment, Trichy - 1 .. Appellant/2nd Respondent

vs.

1.Jothilakshmi ...Respondent No.1/Petitioner
2.Thiagarajan .. Respondent No.2/1st Respondent
3.R.Apparsamy .. Respondent No.3/3rd Respondent

4.National Insurance Company Limited,
Branch Office 1, Promenade Road,
Cantonment, Trichy - 1
(given up) ...4th Respondent/4th Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the order and decree dated 30.07.2007 passed in MACOP No.1390 of 2002 on the file of the Motor Accident Claims Tribunal, Additional District Court/Fast Track Court No.2, Tiruchirappalli.

For Appellant : Mr.A.K.Baskarapandian
For Respondents : Mr.S.Ramu (for R1)
R2 - Dismissed
R4 - Given up
No appearance for R3

Cross Objection(MD)No.25 of 2013

1.Jothilakshmi (died) : Appellant /Respondent No.1
2.R.J.Kalimuthu
3.K.Prem
4.K.Ramya : Appellants 2 to 4
(Appellants 2 to 4 are brought on record as LR's of the deceased sole appellant vide Court order dated 12.10.2020 made in CMP(MD)No.5342 to 5344 of 2018 in Cross Objection (MD)No.25/2013)



vs.

1.Thiagarajan

...1st Respondent/2nd Respondent/1st Respondent

2.National Insurance Company Limited,

Branch Office 1, Promenade Road,

Cantonment, Trichy - 1. : 2nd Respondent/Appellant/2nd Respondent

3.Apparsamy

: 3rd Respondent/3rd Respondent/ 3rd Respondent

4.National Insurance Company Limited,

Branch Office 1, Promenade Road,

Cantonment, Trichy - 1. ...4th Respondent/ 4th Respondent/
4th Respondent

Prayer: Cross Objection filed under Order 41, Rule 22 of C.P.C to enhance the compensation amount to the claimant in MCOP No.1390 of 2002 on the file of the Motor Accident Claims Tribunal (Additional District Court (FTC-II), Tiruchirappalli.

For Appellants : Mr.S.Ramu

For Respondents : Mr.AK.Baskara Pandian (for R2)
R1, R3 & R4 - Given up

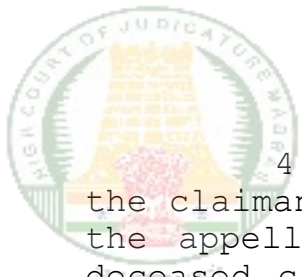
COMMON JUDGMENT

This appeal is preferred aggrieved over the award of the Motor Accident Claims Tribunal, Additional District Judge, (Fast Track Court No.II), Tiruchirappalli in MCOP No.1390 of 2002 by the Insurance Company. Pending appeal, being dissatisfied with the quantum fixed by the Tribunal, the claimant has also preferred this Cross Objection seeking enhancement of compensation.

2.This is case of injury. According to the claimant, when he was travelling in a Van bearing Reg.No.TAA 4064 on 13.10.2001, it was hit by another Van belonging to the third respondent bearing Reg.No.TN-48-A-6687. In the accident, he suffered fracture on the left hip and leg. The claimant would state that immediately, she was taken to Sutharsana Hospital, Uraiyur, where she took treatment from 13.10.2001 to 08.11.2001 as inpatient and thereafter, she was treated as outpatient. It is her further case that during the treatment, she underwent surgery and a rod was also fixed.

3.The claim was resisted by the Insurance Company on various grounds. However, the Tribunal after analyzing the evidence on record awarded Rs.1,70,000/-. Aggrieved over the award of the Tribunal, the Insurance Company has preferred this appeal as stated supra. Being dissatisfied with the quantum awarded Tribunal, the claimant has filed the cross objection seeking enhancement of Rs.1,00,000/-.

<https://hcservices.ecourts.gov.in/hcservices/>

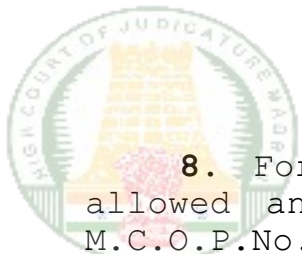


4.It is to be noted that during the pendency of the appeal, the claimant died on 11.06.2017. Though this factum was informed to the appellant/Insurance Company on 07.06.2018 and the LRs of the deceased claimant filed application to bring them on record in the cross objection, but so far, the LRs of the deceased claimant have not been brought on record in the appeal. This appeal is filed by Mr.S.Ramachandran, Standing Counsel for the appellant/Insurance Company and thereafter, Mr.A.K.Baskara Pandian filed change of vakalat. When the matter is taken up for hearing, Mr.A.K.Baskara Pandian, learned counsel for the appellant/Insurance Company would state that he had already given change of vakalat to the appellant/Insurance Company, but so far no other counsel has filed vakalat to pursue the appeal. Considering the fact that this appeal came to be filed in the year 2008 and so far, legal heirs of the deceased claimant have not been brought on record, I am of the opinion that this appeal is liable to be dismissed as abated.

5.Coming to the quantum, it is the case of the claimant that at the time of accident, she was 45 years old and she suffered fracture in the left hip and leg. Ex.P.3 was produced to show that she took treatment as an inpatient from 13.10.2001 to 08.11.2001 at Sutharsana Hospital, Trichy. P.W.2, Dr.Rajendran has deposed that after examination of the claimant and the medical records, he found that she suffered 79% disability. In this regard, he issued Ex.P.6 disability certificate. Exs.P.4 and P.5 are the medical records. The Tribunal, based on the evidence adduced by the claimants, awarded Rs.20,000/- towards pain and suffering; Rs.65,000/- towards medical expenses as per medical records; Rs.79,000/- for disability; Rs.5,000/- for loss of income and Rs.1,000/- towards transportation. In total, the Tribunal awarded Rs.1,70,000/-.

6.Considering the age of the claimant and the period of treatment and the nature of disability suffered by her, this Court is of the view that the claimant would be entitled for enhancement and the amount of Rs.79,000/- under the head of disability is enhanced to Rs.1,58,000/- by applying Rs.2000/- per percentage. Further, the Tribunal has not awarded any amount for attendant charges. Hence, this Court awards Rs.11,000/- for attendant charges. The amounts granted in other heads by the Tribunal are confirmed. Therefore, the total award of the tribunal is enhanced to Rs.2,60,000/- from Rs.1,70,000/-.

7. The appellant/Insurance Company is directed to deposit the above modified award amount with accrued interest and costs, less the amount already deposited, before the Tribunal within a period of eight weeks from the date of receipt of a copy of this Judgment. The enhanced amount will carry interest at the rate of 6% per annum. On such deposit, the claimants are permitted to withdraw the award amount, equally, less the amount already withdrawn, if any, together with proportionate interest and costs.



8. For the foregoing reasons, the cross objection is partly allowed and the Judgment and Award, dated 30.07.2007 passed in M.C.O.P.No.1390 of 2002, by the Motor Accident Claims Tribunal / Additional District and Sessions Judge, Fast Track Court No.2, Tiruchirappalli, are modified to the extent as indicated above and the appeal in CMA(MD)No.878 of 2008 is dismissed as abated. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skn

To

1.The Motor Accident Claims Tribunal
Additional District Judge,
Fast Track Court No.2, Tiruchirappalli,

2. The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+2cc to Mr.S.Ramu, Advocate Sr.No.23990

JUDGMENT MADE IN

C.M.A(MD)No.878 of 2008

and

Cross Objection(MD)No.25 of 2013

02.12.2020

VB (18.03.2021) 4P 6C