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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 24.03.2021

Judgment Delivered on : 21.04.2021

CORAM

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.3002 of 2011

and

Cros. Obj. No.53 of 2020

The New India Assurance Company Ltd.,
Ram Complex, No.29, Paramathi Road,
Namakkal.

... Appellant in CMA

...2nd Respondent in Cros. Obj

Vs.

1. C.Chandrasekaran
S/o. Chinnadurai

...1st Respondent in CMA.

Cross Objector in Cros. Obj

2. S.Subramanian
S/o. Chellappa Gounder

(The second respondent herein remained
exparte before lower court, hence notice
to him is dispensed with)

...2nd Respondents in CMA /

1st Respondent/Cros. Obj

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.662 of 2003 dated 12.01.2011 on the file of the Motor Accidents Claims Tribunal, Fast Track Court, Namakkal.

Prayer: Cross Objection filed under Order XLI Rule 22 of CPC, to enhance the award dated 12.01.2011 in M.C.O.P.No.662 of 2003 on the file of the Motor Accidents Claims Tribunal, Fast Track Court, Namakkal.

For Appellant : Mr. S.Jayasankar
For Respondents/

Cross Objector : Mr.C.Thangarasa



JUDGMENT

(This case has been heard through video conference)

The Civil Miscellaneous Appeal had been filed challenging the fair and decretal order dated 12.01.2011 passed in MCOP.No.662 of 2003 by the Motor Accidents Claims Tribunal, Fast Track Court, Namakkal.

2. The brief facts regarding the claim petition which are relevant to the appeal are as follows:

On 26.01.2003 by around 1.30 p.m., when Mr.Thangaraj/claimant was proceeding on his two wheeler on Namakkal to Trichy Road, the lorry bearing Registration No.TN-28-A-5868, had run over a child and collided head on with the two wheeler driven by the claimant herein, thereby he suffered multiple fractures. He was taken to hospital and underwent surgery. Also for almost an year, he was out of employment. He could not attend his job. He is unable to stand, walk, speak and think cogently. Therefore, at the time of filing claim petition, his wife alone had filed it on his behalf. Also during enquiry, instead of the claimant, his wife had deposed evidence and marked documents regarding the expenses met and the period of treatment from July 2004 to August 2006. He had been under treatment as in-patient under various spells.

3. The learned counsel for the Cross objector/claimant would submit that now he is employed in the Police Department, but not as a Police Constable. Due to his partial permanent disability, he was given an alternative employment. Even today, he attend his office by Auto Rickshaw. Due to this accident, he had lost his seniority and promotion and his juniors had been promoted. This fact was ignored by the learned Tribunal. The learned Tribunal also observed that being a Government servant, his expenses was met by the Government. In the course of the order passed by the Tribunal, it was mentioned that the claimant had been under treatment on earned leave on medical certificate, un-earned leave on medical certificate and loss of income. Therefore, those fact had not been considered.

4. The Doctor, who had deposed the evidence before the Tribunal, had stated that considering the total disability suffered by the claimant, it was assessed as 75% but the claimant had not suffered termination from employment. He only suffered loss of seniority and loss of promotions. Therefore, the multiplier system need not be invoked. At the same time, for the 75% disability, no amount was granted by the learned Tribunal.



5. The learned counsel for the Cross objector/claimant further submits that the fees for the speech therapy and the physiotherapist was declined on the ground that they had not furnished proper documents. They had claimed fees entered on the note book which was marked as document before the Tribunal.

6. Considering the facts and circumstances under which a person like the claimant had suffered multiple injuries and had to undergo hospitalization for a long period of time. Subsequently, after discharge from hospital, he had to undergo speech therapy and the physiotherapy, it can be presumed but the same was rejected by the Tribunal. Therefore, the learned counsel for the Cross Objector/claimant claims Rs.3,000/- per percentage may be fixed for 75% disability suffered and appropriate amount may be considered. Also, he would submit that fees for speech therapist and the physiotherapist may also be considered along with number of days, number of trips. The claimant was taken to Kovai Medical Centre, Coimbatore, for admission and as in-patient treatment. Ambulance service, hospitalization for the same, transportation expenses will be high. Those things may be considered. Also, the claimant needed personal attender during his treatment period. For such attender charges, Rs.5,000/- per month can be fixed for the entire period of treatment commencing from July 2004 to August 2006.

7. The learned counsel for the Insurance Company submitted his arguments. As per his submissions, the Tribunal had failed to see that the accident had occurred only due to the rash and negligent driving of the two wheeler driven by the claimant. Also, the Tribunal had granted loss of pay to the claimant and physiotherapist and speech therapist fees are on the higher side. The Speech therapist was coming from Tirupur and the hospital wherein he had undergone treatment is at Coimbatore and place of residence of the claimant being Namakkal. Therefore, without any proof, the Tribunal had granted compensation under various heads which are on the higher side. The accident only due to the negligence driving of the claimant, that was also ignored by the Tribunal. The contention of the learned counsel for the appellant cannot be accepted in the absence of evidence to that effect.

8.Points for consideration

Whether the appellant/claimant is entitled to seek enhancement of compensation?

Whether the award passed by the Tribunal is to be set aside?



9. Perused the claim petition filed by the first respondent/claimant before the Motor Accident Claims Tribunal in MCOP.No.662/2003, the counter filed by the appellant/Insurance Company and the Judgment/Order passed by the Motor Accident Claims Tribunal and the Memorandum of appeal filed in this appeal and the Cross objection filed by the first respondent/claimant.

10. On perusal of the award passed by the Motor Accident Claims Tribunal, it is found that the claimant had suffered multiple injuries all over the body. The Doctor who had assessed his injuries, had issued disability certificate, wherein it has been mentioned as 75% disability suffered by the claimant. Considering the disability, if Rs.3000/- is taken as compensation for each percentage, for 75%, it is Rs.2,25,000/- ($75\% \times 3000 = 2,25,000$). Therefore, this Court awards a sum of Rs.2,25,000/- towards Permanent Disability.

11. No amount was awarded by the Tribunal under the heads like "Loss of Expectation of life", "Speech Therapy" and "Attendant Charges". Therefore, this Court awards a sum of Rs.1,00,000/- towards "Loss of Expectation of life" and Rs.52,950/- towards "Speech Therapy" as per the Medical bills under Ex.P.7. This Court fixes a sum of Rs.1,80,000/- (5000×36) towards "Attendant Charges" for a period of 36 months.

12. Considering the nature of injuries and the period of treatment, this Court enhanced from Rs.75,000/- to 2,00,000/- towards pain and sufferings and Rs.15198/- to 50,000/- towards Transportation and from Rs.50,000/- to Rs.75,000/- towards Nutritious Food.

13. Since the amounts awarded by the Tribunal under all the other heads are just and fair, the same are hereby confirmed. The break-up details of the amounts awarded under various heads are as follows:

Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Loss of earning	46,376	-
2	Pain and Sufferings	75,000	2,00,000
3	Transportation	15,198	50,000



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Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
4	For Nutritious Food	50,000	75,000
5	Loss of amenities	50,000	50,000
6	Attendant Charges	-	1,80,000
7	Medical Bills I	3,51,441	3,51,441
8	Medical Bills II	15,362	15,362
9	Speech Theraphy	-	52,950
10	Natural Theraphy	39,712	39,712
11	Physio Theraphy	36,675	48,900
12	Permanent Disability	-	2,25,000
13	Loss of Expectation	-	1,00,000
	Total	6,79,764	13,88,365
	Rounded off	6,79,800	13,88,500

14. The point for consideration is answered in favour of the first respondent/claimant and against the appellant /Insurance Company herein.

15. This Civil Miscellaneous Appeal filed by the Insurance company has no merits and the appeal is dismissed.

16. Regarding the claims under various non-pecuniary heads, it is only a presumption. Therefore, the compensation under the pecuniary heads granted by the Tribunal is found reasonable. Considering the injuries suffered by the claimant and the treatment undergone by him over a period of time. Therefore, the contention of the learned counsel for the Insurance Company is found not acceptable and reasonable.

17. The point for consideration in Cros.Obj.53 of 2020 is answered in favour of the cross objector and against the respondent/Insurance Company.

18. The Cross Objection filed by the claimant is allowed. The second respondent/Insurance Company is directed to deposit the amount, which this Court determined in this appeal, to the credit of M.C.O.P.No.662 of 2003 on the file of the Motor



Accidents Claims Tribunal, Fast Track Court, Namakkal, with accrued interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit along with costs, through RTGS or NEFT method as held by this Court in (The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others) 2016 (1) TN MAC 433, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant shall be entitled to withdraw the award amount with accrued interest. The appellant is directed to pay appropriate Court fees within a period of two months, failing which, he is not entitled to claim interest on the award amount. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

dh

To

The Motor Accidents Claims Tribunal,
Fast Track Court, Namakkal.

Copy to:

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

+2CCs to Mr.C.Thangaraju, Advocate, Sr.No.24332
+1CC to Mr.C.Thangaraju, Advocate, Sr.No.23948

C.M.A.No.3002 of 2011

RK (CO)
K.RK. (14.09.2021)