IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2021

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.2558 OF 2016
AND
C.M.P.NO.18277 OF 2016
AND
CROSS OBJECTION NO.2 OF 2017

The Oriental Insurance Co. Ltd.,
Oriental House, 2nd floor, Old No.115,
New No.216, Prakasam Salai,
Broadway, Chennai - 600 108.

... Appellant in C.M.A.No.2558 of 2016 & 1st Respondent in Cross Obj.No.2 of 2017

.Vs.

1. P.Sekar

... 1st respondent in C.M.A.No.2558 of 2016 & Cross Appellant in Cross Obj.No.2 of 2017

2. K Devendran

... 2nd respondent in C.M.A.No.2558 of 2016 as well as in Cross Obj.No.2 of 2017

PRAYER IN C.M.A.NO.2558 OF 2016:-

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgement and Decree dated 10th day of April, 2015 made in M.C.O.P. No.7596 of 2013 on the file of the Motor Accidents Claims Tribunal (IV Court of Small Causes) of Madras.

PRAYER IN CROSS OBJ.NO.2 OF 2017:-

Cross Objection filed under Order XLI Rule 22 of Code of Civil Procedure against the award dated 10.04.2015 and made in M.C.O.P. No.7596 of 2013 on the file of the Motor Accidents Claims Tribunal, IV Judge, Small Causes, Chennai.

For Appellant in C.M.A.No.2558 of 2016 & for 1st respondent in Cr.Obj.No.2 of 2017 : Mr.K.Vinod For Mr.E.L.Veera Ravindhran

For 1st Respondent in C.M.A.No.2558 of 2016 & for the Cross Appellant in Cross Obj.No.2 of 2017 : Ms.A.Subadra For Mr.F.Terry Chella Raja

COMMON JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal under the impugned award dated 10.04.2015 passed by the Motor Accident Claims Tribunal (IV Court of Small Causes of Madras) in M.C.O.P. No. 7596 of 2013. According to the insurance company, the quantum of compensation awarded by the Tribunal is excessive.

Unsatisfied with the quantum of compensation awarded by the Tribunal, the claimant has also filed a cross objection Cr.Obj.No.2 of 2017 challenging the very same award.

2. The Tribunal under the impugned award has directed the insurance company to pay the claimant a compensation of Rs.7,24,000/- as detailed hereunder.

S.No.	Heads	Awarded amount (Rs.)
1.	Disability	1,50,000
2.	Pain and suffering	1,00,000
3.	Extra nourishment	75,000
4.	Transport to Hospital	75,000
5.	Damages to cloth	3,000
6.	Attender Charges	50,000
7.	Medical expenses	1,01,000
8.	Future Medical Expenses	50,000
9.	Loss of Income	60,000
10.	Loss of Earning Power	60,000
	Total	7,24,000

3. The claimant sustained open fracture of right patella with deep laceration, fracture of 2nd metatarsal neck right foot

and fracture of ulna styloid as a result of an accident which happened on 17.10.2013 caused by a vehicle insured with the insurance company. The nature of injuries sustained by the claimant as a result of the accident has not been disputed by the Insurance Company before the Tribunal.

4. The claimant was aged 38 years and in the claim petition, he pleaded that he was an owner cum driver. But no documentary evidence was placed by him before the Tribunal to prove that he was earning Rs.15,000/- p.m. as claimed in his claim petition. Therefore, the Tribunal has fixed his monthly income on notional basis at Rs.10,000/- p.m. The accident happened on 17.10.2013. This Court is of the considered view that since documentary evidence has not been produced by the claimant to prove his monthly income, the fixation of notional monthly income at Rs.10,000/- by the Tribunal is on the higher side and it has to be reduced to Rs.8,000/-. Accordingly, this Court reduces the notional monthly income of the claimant as Rs.8,000/- instead of Rs.10,000/- fixed by the Tribunal.

5. The Claimant took treatment at Parvathi Hospital on inpatient between 17.10.2013 and 25.10.2013 and the discharge summary given by the Hospital was marked as Ex P2 and the Medical Prescriptions were marked as Ex P4 before the Tribunal. The period of hospitalization is 9 days. The Doctor (PW2) has assessed the disability of the Claimant at 55% and the Tribunal has reduced the same to 50%, after giving reasons for the said reduction under the impugned award. This Court confirms the assessment made by the Tribunal as regards the claimant's disability. The Tribunal has awarded a compensation of Rs.1,50,000/- towards 50% disability suffered by the claimant calculated at Rs.3,000/-per percentage of disability which is confirmed by this Court.

6. However, the compensation awarded by the Tribunal under the heads pain and suffering at Rs.1,00,000/-, extra nourishment at Rs.75,000, transport to hospital at Rs.75,000/-, attender charges at Rs.50,000/- and future medical expenses at Rs.50,000/- is on the higher side as the Tribunal has not taken note of the fact that the claimant was hospitalized only for a period of 9 days. Therefore, this Court reduces the compensation under the aforementioned heads to Rs.40,000/-, Rs.20,000/-, Rs.20,000/-, Rs.25,000/- and Rs.25,000/- respectively.

7. Insofar as compensation awarded by the Tribunal towards loss of income at Rs.60,000/- is concerned, this Court is of the considered view that the said compensation is also on the higher side. The Tribunal has assessed the compensation towards loss of income at Rs.60,000/- based on the assessment of notional monthly income of the claimant at Rs.10,000/- for a period of 6

months. This Court is of the considered view that since the claimant was hospitalized only for a period of 9 days and no evidence has been produced by him before the Tribunal to prove that he was unable to do his regular employment for a period of 6 months, the Tribunal ought not to have awarded Rs.60,000/- towards loss of income calculated at Rs.10,000/- per month for a period of six months. Therefore, this court reduces the compensation towards loss of income to Rs.40,000/- calculated at Rs.8,000/- per month for a period of five months from Rs.60,000/- calculated at Rs.10,000/- per month for a period of six months.

8. The Tribunal has also erroneously awarded a compensation of Rs.60,000/- towards loss of earning power to the claimant which he is not legally entitled to in view of the fact that the Tribunal has already awarded disability compensation amounting to Rs.1,50,000/- and in view of the fact that the claimant was hospitalized only for a period of 9 days. Hence, this Court sets aside the compensation awarded by the Tribunal at Rs.60,000/- towards the loss of earning power.

However, the Tribunal has also failed to award any compensation towards the loss of amenities to the claimant which he is legally entitled to. After giving due consideration to the nature of injuries sustained by the claimant and the period of hospitalization, this Court awards a compensation of Rs.10,000/- towards loss of amenities to the claimant.

The Tribunal has rightly awarded a compensation of Rs.3,000/- towards damage to clothing and the same is confirmed by this Court.

The Tribunal has awarded a compensation of Rs.1,01,000/- towards medical expenses, as per the medical bills produced by the claimant which were marked as Ex.P3 and the same is confirmed by this Court.

9. For the foregoing reasons, the amount awarded by the Tribunal is reduced from Rs.7,24,000/- to Rs.4,34,000/- in the following manner:

Heads	Amount awarded by the tribunal	Amount awarded by the Court
Disability	1,50,000	1,50,000
Pain and suffering	1,00,000	40,000
Extra nourishment	75,000	20,000
Transport to Hospital	75,000	20,000

Heads	Amount awarded by the tribunal	Amount awarded by the Court
Damages to clother	3,000	3,000
Attender Charges	50,000	25,000
Medical expenses	1,01,000	1,01,000
Future Medical Expenses	50,000	25,000
Loss of Income	60,000	40,000
Loss of Earning Power	60,000	----------
Loss of amenities	----------	10,000
	7,24,000	4,34,000

10. In view of the reasons stated supra, the Claimant is not entitled for any enhancement as sought for in the Cross Objection.

11. In the result, the Appeal filed by the Insurance Company in CMA No. 2558 of 2016 is partly allowed by reducing compensation awarded by the Tribunal under the impugned award from Rs.7,24,000/- to Rs.4,34,000/- and the Cross Objection filed by the Claimant does not deserve any merit and the same is dismissed. No costs.

12. Learned counsel for the Insurance company would submit that the entire amount awarded by the Tribunal has already been deposited by the Insurance Company before the Tribunal. Since the entire award amount has already been deposited and this Court has reduced the award amount, the Insurance Company who is the Appellant in C.M.A.No.2558 of 2016 as well as the first respondent in Cr.Obj.No.2 of 2017 is permitted to withdraw the excess amount deposited by them before the Tribunal by filing an appropriate application. The Tribunal shall transfer the amount as reassessed by this Court lying to the credit of MCOP.No.7596 of 2013 to the bank account of the claimant who is the first respondent in C.M.A.No.2558 of 2016 and the cross appellant in Cr.Obj.No.2 of 2017 directly through RTGS within a period of one week from the date of receipt of a copy of this Judgment.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal/
   IV Court of Small Causes,
   Madras.

2. The Section Officer,
   V.R. Section,
   High Court,
   Madras - 104.

+1cc to M/s.M.Malar, Advocate, S.R.No.45947

C.M.A.NO.2558 OF 2016 AND
C.M.P.NO.18277 OF 2016 AND
CROSS OBJECTION NO.2 OF 2017

RLD(CO)
PBS/09/11/2021