IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No. 2194 of 2021
and
Cros. Obj. No. 98 of 2021

J. Savarraj

...Appellant in C.M.A. No. 2194 of 2021
& 1st respondent in Cros.Obj.No.98 of 2021

Vs.

1. P. Prakash ...1st respondent in CMA.No.2194 of 2021
& 2nd respondent in Cros.Obj No.98 of 2021

2. M/s. Reliance General Insurance Company Limited,
Claims Department,
No.6, Haddows Road,
Chennai - 600 026. ...2nd respondent in CMA.No.2194 of 2021
& Cross Objector in Cros.Obj.No.98 of 2021

Prayer in C.M.A. No. 2194 of 2021 : Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree made in M.C.O.P. No.469 of 2017, dated 05.03.2020 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

Prayer in Cros. Obj. No. 98 of 2021: Cross Objection filed under Order XLI Rule 22 of Code of Civil Procedure against the decree and judgment dated 5th day of March, 2020 made in M.C.O.P. No.469 of 2017 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant
in C.M.A. No. 2194 of 2021
and
For 1st Respondent
in Cros. Obj. No. 98 of 2021 : Mr. A. Babu

For Respondent 2
in C.M.A. No. 2194 of 2021
and

For Cross Objector
in Cros. Obj. No. 98 of 2021 : Mr. K. Vinod

COMMON JUDGMENT

This Appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 05.03.2020 passed by the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai in M.C.O.P. No.469 of 2017.

2. The second respondent Insurance Company has also filed Cross Objection Cros. Obj. No. 98 of 2021 challenging the very same award questioning the quantum of compensation awarded by the Tribunal to the Appellant in C.M.A. No. 2194 of 2021 who is the claimant in M.C.O.P. No.469 of 2017.

3. The Tribunal under the impugned award directed the Insurance Company to pay the claimant a compensation of Rs. 8,22,530/- together with interest and costs as detailed hereunder.

Heads	Awarded by the Tribunal in Rs.
Pain and Sufferings	30,000
Transport and Extra Nourishment expenses	20,000
Towards loss of Earning Capacity	1,80,000 (15000 x 12 x 5 x 20%)
Attender charges	3,000
Medical expenses	5,78,528
Loss of Amenities due to disability	10,000
Damages to Clothes	1,000
Total	8,22,528
Rounded off to	8,22,530

4. The claimant was a building facility manager, aged 66 years at the time of the accident which happened on 13.10.2016. In the claim petition, he has pleaded that he was earning Rs.20,000/- per month. However, the Tribunal under the impugned award fixed the notional monthly income of the claimant at Rs.15,000/- as no evidence has been produced by the claimant to show that he was earning Rs.20,000/- per month. This Court does not find any infirmity in the assessment of monthly income of the claimant. Hence, the same is confirmed by this Court.

5. As a result of an accident caused by a vehicle insured with the second respondent Insurance Company, the claimant has sustained severe spinal cord injury resulting in quadriparesis besides multiple injuries all over his body and due to the spinal cord injury, he has lost the use of his hands and legs. The nature of injuries sustained by the claimant has not been disputed by the Insurance Company before the Tribunal. Sufficient documentary evidence has been produced by the claimant to prove his injuries before the Tribunal. The medical board which examined the claimant has assessed his whole body disability at 20% which has been accepted by the Tribunal under the impugned award. The Tribunal has adopted the multiplier method after giving due consideration to the nature of injuries sustained by the claimant and his long period of hospitalisation as seen from the discharge summaries filed by the claimant before the Tribunal which has also not been disputed by the Insurance Company. As seen from the evidence available on record, the claimant has also taken continuous treatment eversince the date of the accident which resulted in the injuries sustained by him. The Tribunal has also adopted the correct multiplier of 5, since the claimant was aged 66 years at the time of the accident. This court does not find any infirmity in the findings of the Tribunal. Only after giving due consideration to the aforementioned factors, the Tribunal has adopted the multiplier method and has awarded the compensation towards loss of earning capacity to the claimant at Rs.1,80,000/- (15,000 x 12 x 5 x 20%).

6. The Tribunal has awarded a compensation of Rs.30,000/- towards pain and suffering to the claimant which in the considered view of this Court is low. If the nature of injuries sustained by the claimant was given due consideration, the Tribunal ought to have awarded a higher compensation towards pain and suffering. After giving due consideration to the same, this Court enhances the compensation to the claimant towards pain and suffering to Rs.75,000/- instead of Rs.30,000/- erroneously assessed by the Tribunal.

7. The Tribunal has awarded a compensation of Rs.20,000/- towards transportation and extra nourishment which is also low and in view of the aforementioned factors, this Court enhances the same to Rs.50,000/- instead of Rs.20,000/- erroneously fixed by the Tribunal.

8. Similarly, the Tribunal has failed to take note of the grievous injuries sustained by the claimant and has erroneously awarded a meagre sum of Rs.3,000/- towards attender charges which has to be necessarily enhanced. This Court after giving due consideration to the nature of injuries sustained by the claimant and the long period of hospitalisation as well as his medical treatment enhances the compensation towards attender charges to Rs.30,000/- instead of Rs.3,000/- erroneously fixed by the Tribunal. The Tribunal has awarded a compensation of Rs.5,78,528/- towards medical expenses which is supported by Ex.P7 - medical bills and the same is confirmed by this Court.

9. The Tribunal has awarded a meagre compensation of Rs.10,000/- towards loss of amenities which has to be necessarily enhanced. Accordingly, the same is enhanced to Rs.50,000/- by this Court instead of Rs.10,000/- erroneously fixed by the Tribunal.

10. Insofar as the compensation awarded by the Tribunal towards damage to clothing at Rs.1,000/- is concerned, the same is confirmed by this Court as it is a just compensation.

11. However, the Tribunal has erroneously failed to award any compensation towards loss of income as well as future medical expenses to the claimant. Having sustained grievous injuries which resulted in him unable to do his regular employment, the Tribunal ought to have awarded some amount of compensation towards loss of income during the period of treatment of the claimant. The Tribunal has fixed the monthly income of the claimant at Rs.15,000/-. After giving due consideration to the nature of injuries sustained by the claimant, this court is of the considered view that at least for a period of six months, the claimant would have been unable to do his regular employment and therefore, this Court awards a compensation of Rs.90,000/- towards loss of income during the period of claimant's medical treatment calculated at Rs.15,000/- per month for a period of six months.

12. Before the Tribunal, the claimant has produced evidence to show that he has been incurring regular medical

expenses even after the date of the accident. This Court is of the considered view that the Tribunal ought to have awarded some amount of compensation towards future medical expenses and therefore, this Court awards a compensation of Rs.50,000/- towards future medical expenses to the claimant.

13. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced to Rs.11,05,000/- from Rs.8,22,530/- in the following manner:

Heads	Amount Awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Pain and Sufferings	30,000/-	75,000/-
Transport and Extra Nourishment expenses	20,000/-	50,000/-
Towards loss of Earning Capacity	1,80,000/- (15000 x 12 x 5 x 20%)	1,80,000/- (15000 x 12 x 5 x 20%)
Attender charges	3,000/-	30,000/-
Medical expenses	5,78,528/-	5,78,528/-
Loss of Amenities due to disability	10,000/-	50,000/-
Damages to Clothes	1,000/-	1,000/-
Loss of income (during treatment period)	--	90,000/- (15000 x 6)
Future medical expenses	--	50,000/-
Total	8,22,528	11,04,528/-
Rounded off to	8,22,530	11,05,000/-

14. However, the learned counsel for the Insurance Company vehemently opposed the enhancement of compensation which for the reasons stated above is unacceptable.

15. In view of the reasons stated above and the enhancement of compensation, there is no merit in the cross objection filed by the Insurance Company.

16. In the result, the appeal C.M.A.No.2194 of 2021 filed by the claimant is partly allowed by enhancing the award amount

from Rs.8,22,530/- to Rs.11,05,000/- and the cross objection Cros.No.98 of 2021 is dismissed.

17. The Insurance Company / second respondent in CMA.No.2194 of 2021 is directed to deposit the enhanced award amount, after deducting the amount already deposited if any, together with interest from the date of claim till the date of deposit and costs to the credit of MCOP.No.469 of 2017 before the Tribunal within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the amount lying to the credit of MCOP.No.469 of 2017 to the bank account of the claimant / Appellant in CMA.No.2194 of 2021 through RTGS within a period of one week thereafter. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To
1. The III Judge
Motor Accidents Claims Tribunal,
Court of Small Causes,
Chennai

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

+1 CC to M/s. Elveera Ravindran, Advocate sr 57232.

C.M.A. No. 2194 of 2021
and
Cros. Obj. No. 98 of 2021

SSD(CO)
SP(03/01/2022)