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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2206 of 2013 and 2494 of 2014
and
M.P.No.1 of 2013

C.M.A.No.2206 of 2013

M/s.United India Insurance Company Ltd.
IV floor, Sillingi building
No.134, Greams road
Chennai-600 006.

.. Appellant / 3rd Respondent

Vs.

1.Arularasan	...1 st Respondent / Petitioner
2.U.Arun Kumar	...2 nd Respondent / 1 st Respondent
3.G.Sakthivel	...3 rd Respondent / 2 nd Respondent

C.M.A.No.2494 of 2014

Arularasan

.. Appellant / Petitioner

Vs.

1.U.Arunkumar	...1 st Respondent / 1 st Respondent
2.G.Sakthivel	...2 nd Respondent / 2 nd Respondent
3.M/s.United India Insurance Company Ltd. IV floor, Silingi building No.134, Greams road Chennai-600 006.	...3 rd Respondent / 3 rd Respondent

(Respondents 1 and 2 remained exparte
in lower Court and hence, notice to them
is dispensed with)

Prayer: These Civil Miscellaneous Appeals are filed under
Section 173 of Motor Vehicles Act, 1988, against the judgment
and decree dated 17.12.2012 made in M.C.O.P.No.2900 of 2011 on
the file of the Motor Accidents Claims Tribunal, IV Small Causes
Court, Chennai.



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In C.M.A.No.2206 of 2013

For Appellant : Mr.J.Michael Visuvasam

For R1 : Mr.K.Varadha Kamaraj

For R2 and R3 : No appearance

In C.M.A.No.2494 of 2014

For Appellant : Mr.K.Varadha Kamaraj

For R3 : Mr.J.Michael Visuvasam

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

(This matter is heard through "Video-conferencing")

C.M.A.No.2206 of 2013 is filed by the Insurance Company against the award dated 17.12.2012 made in M.C.O.P.No.2900 of 2011 on the file of the Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai.

C.M.A.No.2494 of 2014 is filed by the claimant for enhancement of compensation granted by the Tribunal in the award dated 17.12.2012 made in M.C.O.P.No.2900 of 2011 on the file of the Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to by their respective ranks in the claim petition for the sake of convenience.

3.The claimant filed M.C.O.P.No.2900 of 2011 on the file of the Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai, claiming a sum of Rs.17,00,000/- as compensation for the injuries sustained by him in the accident that took place on 03.12.2010.

4.According to the claimant, on the date of accident i.e., on 03.12.2010 at about 22.00 hours, while he was travelling in a Maruti zen car bearing Registration No.TN-38-AB-9694 from Neyveli to Chennai, along with his friends, at GST road, near Maduranthagam bye-pass bus stand, the driver of the bus, who was going in front of the car, suddenly stopped the bus without any signal. On seeing this, the driver of the car in which the claimant travelled, applied sudden brake and immediately turned on the right side, as a result of which, the car dashed against



the bus on the left side and thus the accident has occurred. In the accident, the claimant, who was sitting on the left side of the car sustained grievous injuries all over the body. Therefore, the claimant has filed the above claim petition claiming compensation as against the respondents 1 and 2, owners of the car and 3rd respondent, being insurer of the said car.

5.The respondents 1 and 2, owners of the car remained exparte before the Tribunal.

6.The 3rd respondent/Insurance Company, insurer of the car filed counter statement denying the averments made by the claimant and stated that the driver of the car is not responsible for the accident. The claimant has stated that the driver of the bus, who was going in front of the car, suddenly stopped the bus without any signal and the driver of the car despite applying sudden brake, dashed against the bus and thus the accident has occurred. The driver, owner and insurer of the bus were not made as parties to the claim petition and hence, the claim petition is dismissed for non-joinder of necessary parties. Therefore, the 3rd respondent/Insurance Company is not liable to pay any compensation to the claimant. The 3rd respondent/Insurance Company has also denied the age, avocation, income and nature of injuries sustained by the claimant. In any event, the compensation claimed by the claimant is excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the claimant examined himself as P.W.1, Dr.N.Saichandran was examined as P.W.2 and 24 documents were marked as Exs.P1 to P24. The 3rd respondent/Insurance Company did not let in any oral and documentary evidence.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent driving by the driver of the car belonging to the respondents 1 and 2 and the claimant has also contributed to the accident, fixed 10 : 90 negligence on the part of the claimant as well as the driver of the car belonging to the respondents 1 and 2, awarded a sum of Rs.16,01,354/- as compensation to the claimant and directed the 3rd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.14,41,300/- being 90% of the award amount as compensation to the claimant.

9.Questioning the quantum of compensation awarded by the Tribunal, the Insurance Company has come out with C.M.A.No.2206 of 2013. Not being satisfied with the amounts awarded by the Tribunal, the claimant has come out with C.M.A.No.2494 of 2014 seeking enhancement of compensation.



10. The learned counsel appearing for the claimant contended that the claimant is an M.B.A. graduate. In the accident, he suffered crush injury on his left hand, bones and tendons were exposed. Flap thinning, thumb web releas, CMC arthrodesis left thumb and vein grafting was done and underwent surgeries. The claimant has taken treatment in CMC Hospital, Chengalpet and Right hospital, in four spells for more than 60 days. The left hand wrist was partially amputated. The claimant is unable to use his left hand for any purpose. He was aged 24 years at the time of accident. Due to disfigurement and partial amputation, his marital prospect is affected. The Tribunal failed to grant compensation for disfigurement and loss of marital prospects. P.W.2/Doctor examined the claimant and assessed the disability at 65%. The 3rd respondent/Insurance Company did not let in any evidence to disprove the evidence of P.W.2/Doctor and documents filed by the claimant. In the absence of any contra evidence, the Tribunal erroneously reduced the disability at 55% and granted meagre amount towards disability. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

11. The learned counsel appearing for the 3rd respondent/Insurance Company contended that the Tribunal erred in fixing monthly income of the claimant at Rs.8,500/-, when the claimant was not employed. An M.B.A. graduate will not be getting Rs.8,500/- per month. The Tribunal erred in adopting multiplier method in the absence of any evidence to prove the loss of earning capacity. The Tribunal failed to see that P.W.2/Doctor is not the Doctor who treated the claimant. P.W.2/Doctor has not filed any calculation as to how he arrived percentage of disability. P.W.2/Doctor has not followed the guidelines of Government of India while assessing the disability. The Tribunal arbitrarily determined the permanent disability of the claimant at 55% and granted excessive compensation. The Tribunal has not converted the disability assessed by P.W.2/Doctor to the whole body. The Tribunal failed to consider that claimant being M.B.A. graduate will not suffer any loss of earning capacity due to the physical disability in his left hand. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

12. Though notice has been served on the respondents 1 and 2 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

13. Heard the learned counsel appearing for the claimant as well as the learned counsel appearing for the 3rd respondent/Insurance Company and perused the entire materials on record.



14. From the materials on record, it is seen that it is the case of the claimant that he suffered crush injury on his left hand wrist in the accident. After taking initial treatment at CMC Hospital, Chengalpet, for one day, the claimant has taken treatment in Right hospital, Chennai, in three different spells i.e., from 04.12.2010 to 26.01.2011, 12.09.2011 to 15.09.2011 and 10.10.2012 to 13.10.2012. He produced four discharge summaries under Exs.P2 to P5 to show that he has taken treatment in one day in CMC Hospital, Chengalpet, three different spells in Right Hospital, Chennai and to show that he underwent multiple surgeries, flap thinning, thumb web releas, CMC arthrodesis left thumb and vein grafting. In addition to that, the claimant also examined P.W.2/Doctor, who after clinically examining the claimant and medical records, certified that he suffered 65% disability. P.W.2/Doctor deposed that injuries and disability suffered by the claimant is equal to amputation, it will affect his marital life and the claimant cannot do any work using his left hand. The 3rd respondent/Insurance Company did not let in any evidence to disprove the evidence of P.W.2/Doctor, contents of discharge summaries and disability certificate produced by the claimant. The Tribunal took note of the fact that there is partial amputation of left hand wrist, fixed disability of the claimant at 55% and adopted multiplier method for granting compensation. Considering the entire materials available on record with regard to nature of injuries and disability, this Court is of the view that there is no evidence that the claimant cannot do any work after the accident. Hence, the disability assessed by Doctor has to be converted for whole body and 22% disability is fixed for the whole body.

14(i) The claimant contended that he is an M.B.A. graduate and while he was going to attend the interview at Chennai, the accident has occurred. The claimant has not produced any letter issued for interview before the Tribunal. The Tribunal considering the documents with regard to educational qualification, fixed monthly income of the claimant at Rs.8,500/- per month. The accident is of the year 2010. The claimant is an M.B.A. Graduate, he would have got some good job and earned decent income. Considering the date of accident and educational qualification, a sum of Rs.11,000/- per month is fixed as notional income of the claimant. The claimant was aged 24 years at the time of accident. The Tribunal applied multiplier '17', which is not correct. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), the correct multiplier applicable is '18'. By fixing monthly income as Rs.11,000/- and the disability for whole body at 22% and applying multiplier '18', the amount granted by the Tribunal

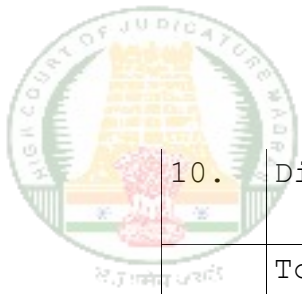


towards disability is modified to Rs.5,22,720/- (Rs.11,000/- X 12 X 18 X 22/100).

14(ii) Due to crush injury and multiple injuries, the claimant has taken treatment as in-patient in Right Hospital, Chennai, in three different spells from 04.12.2010 to 26.01.2011, 12.09.2011 to 15.09.2011 and 10.10.2012 to 13.10.2012. Considering the nature of injuries, disability and treatment taken by the claimant, the amounts granted by the Tribunal towards pain and suffering, extra nourishment, attendant charges and loss of amenities are enhanced to Rs.50,000/-, Rs.40,000/-, Rs.50,000/- and Rs.50,000/- respectively, as amounts awarded by the Tribunal are meagre.

14(iii) P.W.2/Doctor deposed that the injuries and disability suffered by the claimant is equal to amputation, it will affect his marital life and he cannot do the work using his left hand. Considering the same, a sum of Rs.1,00,000/- is granted towards reduction of prospects of marital life and Rs.50,000/- is granted towards disfigurement. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Transportation	10,000	10,000	Confirmed
2.	Extra nourishment	10,000	40,000	Enhanced
3.	Medical expenses	5,71,654	5,71,654	Confirmed
4.	Damage to clothes	1,000	1,000	Confirmed
5.	Loss of amenities	10,000	50,000	Enhanced
6.	Attendant charges	5,000	50,000	Enhanced
7.	Pain and suffering	40,000	50,000	Enhanced
8.	Disability	9,53,700	5,22,720	Reduced
9.	Reduction of prospects of marital life	-	1,00,000	Granted



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10.	Disfigurement	-	50,000	Granted
	Total	16,01,354	14,45,374	
	90% of the award amount	14,41,218.60 rounded off to 14,41,300	13,00,836.60 rounded off to 13,00,900	Reduced by Rs.1,40,400 /-

15. In the result, C.M.A.No.2206 of 2013 filed by the Insurance Company is partly allowed. C.M.A.No.2494 of 2014 filed by the claimant is partly allowed in respect of the heads "Extra nourishment, Loss of amenities, Attendant charges, Pain and suffering, Reduction of prospects of marital life and Disfigurement. The compensation of Rs.16,01,354/- awarded by the Tribunal is hereby reduced to Rs.14,45,374/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 3rd respondent/Insurance Company is directed to deposit a sum of Rs.13,00,900/- being 90% of the award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, after adjusting the amount if any, already withdrawn. The 3rd respondent/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.2900 of 2011 on the file of the Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

kj

To

1. The IV Judge
The Motor Accident Claims Tribunal
Small Causes Court, Chennai.



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

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.3305
+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.2893

C.M.A.Nos.2206 of 2013 and 2494 of 2014
and
M.P.No.1 of 2013

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NSK 29/03/2022