



C.M.A.No.2901 of 2015 and
Cross Obj.No.26 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2022

CORAM

THE HON'BLE **MRS. JUSTICE J.NISHA BANU**

C.M.A.No.2901 of 2015 and
Cross Objection No.26 of 2022

C.M.A.No.2901 of 2015

Royal Sundaram Alliance Ins.Co., Ltd.,
T.V.S.Co-operative Stores Building,
37, Krishna Rao Tank Street,
Madurai 625 001.

... Appellant

VS.

1.Velmurugan
2.G.Maheswaran
3.The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam Division)
Periya Milagu Parai,
Trichy.

... Respondents

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act,1988, to set aside the award and Decree made in M.C.O.P.No.31 of 2011 dated 15.10.2015 on the file of the Motor Accident Claims Tribunal, (Sub Court) Ariyalur.



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For Appellant : Mr.R.Vinoth for
M/s.Elveera Ravindran

For R1 : Mr.S.Kamadevan

For R3 : M/s.D.Venkatachalam

Cross Obj.No.26 of 2022

Velmurugan

.. Appellant

VS.

1. Royal Sundaram Alliance Ins.Co., Ltd.,
T.V.S.Co-operative Stores Building,
87, Krishna Rao Tank Street,
Madurai 625 001.

2.G.Maheswaran
3.The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam Division)
Periya Milagu Parai,
Trichy.

.. Respondents

Prayer: Cross-Objection filed under Order XLI, Rule 22 of C.P.C.,
praying that the compensation awarded by the lower Court at
Rs.5,00,000/- is to be enhanced to Rs.9,00,000/-.



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For Cross-Objector : Mr.S.Kamadevan
For R1 : Mr.R.Vinoth for
M/s.Elveera Ravindran
For R3 : M/s.D.Venkatachalam

COMMON JUDGMENT

The Civil Miscellaneous Appeal has been filed by the Insurance Company against the award dated 15.10.2015 made in M.C.O.P.No.31 of 2011 on the file of the Motor Accident Claims Tribunal, (Sub Court) Ariyalur.

2. The Cross-Objection has been filed by the claimant seeking enhancement of compensation granted by the Tribunal in the award dated 15.10.2015 made in M.C.O.P.No.31 of 2011 on the file of the Motor Accident Claims Tribunal, (Sub Court) Ariyalur.

3. Both the appeal and the cross-objection are disposed of by this common judgment.



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4. The parties are referred to as per their respective ranks in the claim petition, for the sake of convenience.

5. The appellant-Insurance Company is the second respondent in M.C.O.P.No.31 of 2011 on the file of the Motor Accident Claims Tribunal (Sub Court) Ariyalur. The claimant/cross objector filed the above claim petition claiming a sum of Rs.9,00,000/- as compensation for the injuries sustained by him in the accident that took place on 03.10.2010.

6. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the said vehicle to pay a sum of Rs.5,00,000/- as compensation to the claimant/cross objector.



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7. Against the said award dated 03.10.2010 made in M.C.O.P.No.31 of 2011, the second respondent - Insurance Company has filed the present appeal. Not being satisfied with the amount awarded by the Tribunal, the claimant has filed the Cross-Appeal seeking enhancement of compensation awarded by the Tribunal.

8. The learned counsel appearing for the second respondent- Insurance Company contended that the claimant has taken treatment in the hospital as in-patient from 03.10.2010 to 09.11.2010 in Government Medical College Hospital and thereafter the claimant has taken treatment from 10.12.2010 in Stanley Hospital, Chennai. His second finger of right hand was amputated through surgery. The claimant has not produced any material to show that he was continuously taking treatment. The Tribunal has erred in fixing the multiplier method and also erroneously granted exorbitant amounts under the heads of loss of earning power attendant charges, extra nourishment and transport. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award passed by the Tribunal.



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9. Per contra, the learned counsel appearing for the claimant/cross objector contended that the Tribunal has not properly appreciated the nature of injuries sustained by the claimant and evidence of P.W.3/Doctor. The Tribunal erred in awarding much lesser amount for the loss of income, nutrition and transportation charges. Further, the Tribunal ought to have awarded towards future prospects and medical expenses and prayed for enhancement of compensation.

10. Heard the learned counsel appearing for the Insurance Company as well as the learned counsel appearing for the claimant-cross objector and perused the entire materials on record.

11. From the materials available on record, it is seen that the claimant in the accident has sustained fracture of humerus on his right hand and radius and ulna on his right hand wrist and his second finger of right hand removed through surgery. Claimant as P.W.1 and P.W.3/Doctor deposed about the nature of injuries sustained by the claimant. P.W.3/Doctor assessed that the claimant suffered 75% disability. The Tribunal considering the materials on record and evidence



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of P.W.3/Doctor, applied the multiplier method. The claimant has proved that he suffered functional disability and he is totally disabled and lost his earning capacity and could not do any work as he was doing earlier. The claimant has taken treatment in the hospital as in-patient from 03.10.2010 to 09.11.2010 in Government Medical College Hospital, Tanjore. Taking into consideration all the above, The Tribunal awarded Rs.4,86,000/- towards permanent disability; Rs.5,000/- towards loss of income during treatment period; Rs.4,500/- towards transport expenses and Rs.4,500/- towards extra nourishment.

12. In my considered opinion, the award of the Tribunal is just and reasonable and I am not inclined to interfere with the order and therefore the appeal filed by the Insurance Company fails.

13. However, considering the age of the claimant and the nature of injuries suffered, since no compensation is granted under the head 'pain and suffering', I am inclined to award a sum of Rs.50,000/- towards pain and suffering.



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14. Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.5,00,000/- to Rs.5,50,000/-.

15. By an order dated 11.03.2016, this Court directed the Insurance Company to deposit the entire award amount and granted an order of interim stay in C.M.A.No.2901 of 2015 with regard to 30% of the award amount.

16. The appellant-Insurance Company in C.M.A.No.2901 of 2015, is directed to deposit the enhanced award amount i.e. Rs.50,000/- (Rupees Fifty thousand only) along with interest at the rate of 7.5% p.a.from the date of claim petition till the date of realisation within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the cross objector /claimant in Cross Obj.No.26 of 2022 is permitted to withdraw the entire balance award amount along with interest and cost.

17. In the result, C.M.A.No.2901 of 2015 stands dismissed.



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Cross Obj.No.26 of 2022 stands partly allowed. No costs.

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Index : Yes/No
Internet : Yes / No
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To:-

The Motor Accident Claims Tribunal
(Sub Court) Ariyalur.

J.NISHA BANU,J.



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