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CMA No.3469 of 2017 and Cros.Obj.No.44 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2022

CORAM:

THE HON'BLE Ms. JUSTICE P.T.ASHA

CMA No.3469 of 2017

and

C.M.P.No.22037 of 2017 and Cros.Obj.44 of 2020

C.M.A.No.3469 of 2017

M/s.Iffco Tokio General Insurance Company Ltd.,
No.128, Habibulla Road,
2nd and 3rd Floor,
T.Nagar, Chennai 600 017
Respondent

... Appellant /2nd

versus

1. S.Elumalai ...1st Respondent/Claimant

2. Arumugam ...2nd Respondent/1st respondent

Cross Objection No.44 of 2020
in C.M.A.No.3469 of 2017

Elumalai

... Cross Appellant

-vs-

1.M/s.Iffco Tokio General Insurance Company Ltd.,
No.128, Habibulla Road,
2nd and 3rd Floor,
T.Nagar, Chennai 600 017

2. Arumugam

...Respondents



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Prayer in CMA No.3469 of 2017 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree made in M.C.O.P.No.982 of 2013 dated 22.12.2016 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

Prayer in Cross Objection No.44 of 2020: Cross Objection filed under Order 41 Rule 22 of C.P.C praying to enhance the Award dated 22.12.2016 made in M.C.O.P.No.982 of 2013 on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai.

For Appellant in C.M.A.No.3469
of 2017 & respondent-1 in Cross : M/s.Harini
Objection No.44 of 2020 for M/s.M.B.Gopalan Associates

For respondent-1 in C.M.A.No.3469
of 2017 & Cross Objectors in
Cross Objection No.44 of 2020 : Ms.A.Subadra

For Respondent-2
in C.M.A.No.3469 of 2017 : Served-No Appearance

COMMON JUDGMENT

The Insurance Company has filed the Civil Miscellaneous Appeal, challenging the adoption of a multiplier method to grant compensation to the first respondent /claimant without there being an evidence to show that the claimant had sustained a functional disability. The first respondent/claimant has filed cross objections seeking enhancement of the compensation.



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2. The brief facts are as follows:-

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The first respondent had filed M.C.O.P.No.982 of 2013 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai seeking compensation of a sum of Rs.20,00,000/- for the injuries sustained by him in a road accident. It was his case that on 15.01.2013 at about 4.00 p.m., when he was riding his two wheeler bearing Registration No.TN-19Y-7213 on the ECR, a Toyoto Innova Car, bearing Registration No.PY 02 M 9696 driven by its driver in a rash and negligent manner, hit the two wheeler, as a result of which, the claimant has sustained multiple injuries all over his body. The above accident had occurred only account of the rash and negligent driving of the driver of the Innova Car. The first respondent as the owner of the vehicle and the second respondent as the insurer are jointly and severally liable to pay the compensation.

3. The owner of the vehicle remained absent. The Insurance Company has entered appearance and filed a counter, *inter alia*, denying the accident, the negligence on the part of the first respondent's driver and also contending that the first respondent had also contributed the accident. The Tribunal has held negligence only on the part of the driver



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of the Tata Innova Car thereby making the Insurance Company liable to pay the said compensation and relying upon the evidence of P.W2-Doctor had awarded a compensation of Rs.5,06,340/-.

4. The Tribunal below relying upon the evidence of P.W2, Ex.P3-Discharge Summary and Ex.P14-Disability Certificate held that the first respondent had sustained a permanent disability and although P.W2 had assessed the disability at 65%, the Tribunal had only taken the functional disability at 25% and thereafter, taking into consideration the age of the claimant, assessed the loss of future earning capacity at Rs.3,36,000/- (Rs.8,000 x 12 x 14 x 25%). The Tribunal had fixed the monthly income at a sum of Rs.8,000/-.

5. The Insurance Company is aggrieved by the fact that though the first respondent has not suffered any disablement, the adoption of the multiplier method and the compensation awarded to him under this head is totally without any basis and the Tribunal ought to have fixed the compensation on a percentage basis adopting the judgment of the Hon'ble Supreme Court reported in ***2011 ACJ 1/Raj Kumar -vs- Ajay Kumar and another***].



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6. The learned counsel for the appellant-Insurance Company would submit that the adoption of the multiplier method was totally erroneous, since the claimant has not submitted that he has sustained any set back in his earning capacity or that he was continuously undergoing treatment, thereby he is unable to work. The learned counsel would submit that though the first respondent had pleaded that he is a lorry driver and owning 4 vehicles, no proof whatsoever of same has been produced for the same before this Court.

7. Per contra, Ms.A.Subadra, learned counsel appearing on behalf of the first respondent/claimant would submit that P.W2 -Doctor has, in very clear terms, opined, as to how the accident and the consequent injuries has impaired the movements of the first respondent/Claimant and that, he is unable to carry on his work as a lorry driver. To prove his avocation, the first respondent has produced the badge, which has been marked as Ex.P11. This would show that the first respondent was employed as a Driver and the injuries sustained by him would definitely cause an impediment for his continuing as a lorry driver.



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8. Heard the learned counsel on either side and perused the materials available on record.

9. The first respondent/claimant has submitted that he had suffered grievous injuries and has not been able to function as before and therefore, the adoption of multiplier method was correct and that the compensation awarded was very low and has to be enhanced.

10. A perusal of Ex.P2-Discharge Summary of Chettinad Medical College and Hospital would indicate that the petitioner has suffered a contusion on his right forehead, abrasions on his chin, laceration on his knee, swelling and tenderness on his left foot. The document would further show that the claimant has got himself discharged against the medical advice. It is seen from a perusal of Ex.P3 that the claimant has got himself admitted at Chettinad Hospital and Research Institute on 16.01.2013, where he stayed for 2 days, on 18.01.2013, he was discharged once again against the medical advice.

11. The main ground, on which, the Tribunal below has granted compensation by adopting the multiplier method is Ex.P14-Disability



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Certificate issued by P.W2-Doctor. However, a perusal of the oral evidence of P.W1, the claimant would indicate that on 12.11.2014, he has renewed his licence for driving passenger vehicles, which clearly shows that he has suffered no functional disability. It is well known that while renewing the licence for heavy vehicles, the Regional Transport Office (RTO) Office would insist on a medical examination and unless the claimant clears it, he would not obtain a renewal of licence. This clearly supports the contention of the appellant - Insurance Company that the adoption of the multiplier method is incorrect. The records would indicate that he would not have gone for work for 6 months. Therefore, under the head of Loss of earnings, the amount would be enhanced by a further sum of Rs.24,000/- adopting the monthly income of Rs.8,000/-, as fixed by the Tribunal below. However, the amount granted under the head of loss of earnings is modified and the compensation is calculated on a percentage basis. The Accident is of the year 2013. A sum of Rs.3,000/- per percentage can be adopted and the percentage of 65% disability as arrived at by P.W2 in Ex.P14 can be adopted, since the Tribunal has not given adequate reasons for reducing the same to 25%. Therefore, the amount under this head would be $\text{Rs.3,000} \times 65\% = 1,95,000/-$.



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12. In view of the above, this Court enhances the compensation payable to the cross objector to **Rs.6,77,340/-** instead of **Rs.5,06,340/-** as detailed hereunder.

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
Transportation, nourishing food and miscellaneous expenditure	50,000	50,000
Medical expenses	9,340	9,340
Attender Charges	12,000	12,000
Loss of earning capacity power	3,36,000	1,95,000 (Reduced)
Loss of earnings during the period of treatment	24,000	48,000 (Enhanced)
Damages for pain, suffering and trauma	50,000	50,000
Loss of Amenities	25,000	25,000
Total	5,06,340	3,89,340

13. In the result, the Cross objection filed by the claimant in Cross Objection No.44 of 2020 is dismissed and the appeal filed by the Insurance Company in C.M.A.No.3469 of 2017 is partly allowed.



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14. The appellant in CMA No.3469 of 2017 as well as the first respondent in Cross Objection No.44 of 2020 is directed to deposit the entire award amount of Rs.3,89,340/- as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P.No.982 of 2013 on the file of the Motor Accident Claims Tribunal (II Court of Small Causes) at Chennai, within a period of eight weeks from the date of receipt of a copy of this Judgment. The cross objector/claimant is directed to pay the Court fee for the compensation amount, if required. The Tribunal below shall not disburse the amount till such time as the certified copy showing proof of payment of Court fee has been produced by the claimant. In other respects, the Award of the Tribunal is hereby confirmed. There shall be no order as to costs in the present appeal. Consequently connected miscellaneous petition is closed.

20.06.2022

Index: Yes/No

Speaking Order/Non-Speaking Order

srn

To



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1. The Motor Accident Claims Tribunal,

II Court of Small Causes, Chennai.

2. The Section Officer,

V.R. Section, High Court of Madras, Chennai - 104.



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P.T.ASHA, J.

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