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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.M.A.No.2517 of 2018
and
Cross Objection No.71 of 2021
and
C.M.P.No.19190 of 2018

C.M.A.No.2517 of 2018:

The Divisional Manager,
The New India Assurance Co., Ltd.,
Divisional Office,
No.14/7, K.G.Complex Bagalur Road,
Hosur, Krishnagiri District 635 109.

...Appellant/R2

Vs.

1.Ramesh
2.S.Mohan Kumar
[R2 was set ex-parte before the Tribunal.
Hence, notice to R2 dispensed with]

...Petitioner/R1
...R1/R2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 22.06.2018 made in M.C.O.P.No.59 of 2017 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Hosur.

For Appellant : Mr.R.Sivakumar
For R1 : Mr.S.P.Yuvaraj
For R2 : Set ex-parte before the Tribunal

Cross Objection No.71 of 2021:

Ramesh

... Cross Objector/R1

Vs.

1.The Divisional Manager,
The New India Insurance Company Ltd.,
Divisional Office,



No.14/7, K.G.Complex, Bagalur Road,
Hosur, Krishnagiri District - 635 109.

... R1/Appellant

2.S.Mohan Kumar

... R2/R2

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Prayer: This Cross Appeal is filed under Order XXXXI Rule 22 of C.P.C against C.M.A.No.2517 of 2018 which has been filed against the judgment and decree dated 22.06.2018 made in M.C.O.P.No.59 of 2017 on the file of the Motor Accidents Claims Tribunal / Additional District Judge, Krishnagiri.

For Cross Appellant : Mr.S.P.Yuvaraj
For R1 : Mr.R.Sivakumar

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

The second respondent in M.C.O.P.No.59 of 2017, which was pending before the Motor Accidents Claims Tribunal/Additional District Court at Hosur, is the appellant in C.M.A.No.2517 of 2018.

2.The claimant had filed Cross-Objection No.71 of 2021.

3.Heard Mr.R.Sivakumar, learned counsel for the appellant in C.M.A.No.2517 of 2018 and Mr.K.Vinod, learned counsel for the petitioner in Cross Objection No.71 of 2018.

4.Let me refer to the parties as per their ranking in the claim petition in M.C.O.P.No.59 of 2017 as the petitioner and the 2nd respondent.

5.M.C.O.P.No.59 of 2017 had been filed consequent to the injuries suffered by the petitioner in the accident on 14.10.2015, while he was walking on the road in Hosur and Maruthi a Car hit him, which caused injuries.

6.Learned counsel Mr.R.Sivakumar, pointed out that Ex.R1/Accident Register shows that the petitioner had consumed alcohol and that the accident had occurred when he tried to cross the road.

7.However, the fact that the injury was caused only owing to the accident suffered due to the rash and negligent driving of the Maruthi Car has been found as a fact by the Tribunal. Therefore, it is only appropriate that the petitioner is granted compensation and the Insurance Company/2ndrespondent is called upon to pay the compensation.

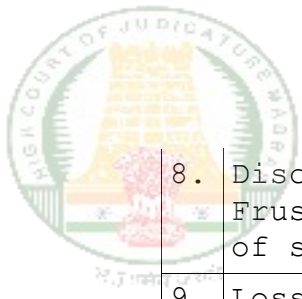


8.The Wound Certificate was marked as Ex.P2 and Discharge summary was marked as Ex.P4 which reveals that the final diagnosis was Type 3B fracture BB right leg pelvic fracture. In the cross objection, photographs have been shown indicating that the petitioner had suffered grievous injury and even till date there is a bend in his right leg between knee and ankle. The disability was determined at 60%. Since it is a permanent disability, the Tribunal adopted the multiplier method and let me not interfere with the same. The monthly income has been determined at Rs.9,000/-. It is seen that in the absence of proof of monthly income, the Tribunal had determined the monthly income at Rs.9,000/- but let me interfere with that by taking into consideration, the nature of injuries suffered and the fact that the petitioner was working in a Granite Company and I would determine Rs.11,000/- per month as the monthly income. The loss of earning power had been given and multiplier method is adopted and fixed by the Tribunal is '15'.

9.But, Mr.Sivakumar, learned counsel for the appellant now insisted that the same is not correct and the correct multiplier applicable should be '14'. I would go with that particular aspect. Let me not interfere with any other aspect.

10.Therefore, the compensation now awarded would be Rs.11,08,800/- [11,000 X 12 X 60 X 14/100]. Loss of Future prospects is calculated at the rate of 25% = Rs.2,77,200/- [11,08,800 X 25%]. Therefore, the compensation is fixed as under:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning power	Rs.9,72,000/-	Rs.11,08,800/-	Enhanced
2.	Medical Expenses	Rs.29,605/-	Rs.29,605/-	Confirmed
3.	Future medical expenses	Rs.20,000/-	Rs.20,000/-	Confirmed
4.	Transportation charges	Rs.15,000/-	Rs.15,000/-	Confirmed
5.	Nutrition charges	Rs.25,000/-	Rs.25,000/-	Confirmed
6.	Attender Charges	Rs.10,000/-	Rs.10,000/-	Confirmed
7.	Pain and Sufferings	Rs.50,000/-	Rs.50,000/-	Confirmed



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8.	Discomfort, Frustration and loss of social enjoyment	Rs.20,000/-	Rs.20,000/-	Confirmed
9.	Loss of Future Prospects	Rs.2,43,000/-	Rs.2,77,200/-	Enhanced
	Total Compensation	Rs.13,84,605/-	Rs.15,55,605/-	Enhanced by Rs.1,71,000/-

11. Accordingly, Civil Miscellaneous Appeal is dismissed and the Cross Objection is allowed. The compensation awarded by the Tribunal at Rs.13,84,605/- is hereby enhanced to Rs.15,55,605/- [Rupees Fifteen Lakhs Fifty Five Thousand Six Hundred and Five only] together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit 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 to the credit of M.C.O.P.No.59 of 2017, on the file of the Motor Accidents Claims Tribunal, Additional District Court, Hosur. On such deposit, the claimant is permitted to withdraw the same after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal. Since, this Court had enhanced the compensation, the claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1. The Additional District Judge,
Motor Accident Claims Tribunal,
Hosur.



2.The Section Officer,
VR Section,
High Court,
Madras.

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+1 CC to Mr.S.P.Yuvaraj, Advocate sr 9574
+1 CC to Mr.R.Sivakumar, Advocate sr 9674.

C.M.A.No.2517 of 2018 and
Cross Objection No.71 of 2021

EV (CO)
SP(19/04/2022)