



C.M.A.No.2443 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2443 of 2016

and

Cross.Obj.No.45 of 2021

C.M.A.No.2443 of 2016

The Divisional Manager,
Royal Sundaram Alliance Insurance Co.Ltd.,
Subramaniam Building 2nd Floor, No.1, Club
House Road, Anna Salai, Chennai 600 002. ... Appellant/2nd Respondent

Vs

1.Ramalingam ... Respondent/Petitioner

2.S.Kanagaraj ... Respondent/1st Respondent

Cross.Obj.No.45 of 2021
in C.M.A.No.2443 of 2016

Ramalingam ... Cross Objector

Vs.

1.The Divisional Manager,
Royal Sundaram Alliance Insurance Co.Ltd.,
Subramaniam Building 2nd Floor, No.1, Club
House Road, Anna Salai, Chennai 600 002.

2.S.Kanagaraj ... Respondents



C.M.A.No.2443 of 2016

Prayer in CMA: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and Judgment dated 18th day of April, 2016 made in M.C.O.P.No.209 of 2012 on the file of the Motor Accident Claims Tribunal (Court of Chief Judicial Magistrate), Vellore.

Prayer in Cross Objection: Cross Objection filed under Order 41 Rule 22 of the Civil Procedure Code to enhance the award with interest at the rate of 18% per annum and costs.

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For Appellant ... Mr.K.Vinod
For Respondents ... Ms.D.Jeevitha
for M/s.R.Nalliappan [R1]
... Notice not Ready [R2]

Cros.Obj.No.45 of 2021

For Cross Objector ...Ms.D.Jeevitha
for M/s.R.Nalliyappan
For Respondents ...Mr.K.Vinod [R1]



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COMMON JUDGEMENT

Aggrieved by the impugned award dated 18.04.2016 passed by the Motor Accident Claims Tribunal (Court of Chief Judicial Magistrate), Vellore, in M.C.O.P.No.209 of 2012, the Appellant/Insurance Company has filed the present appeal questioning the quantum of compensation awarded by the Tribunal.

2. The Cross Objection has been filed by the claimant seeking enhancement of compensation.

3. On 12.01.2012, when the claimant was riding a two wheeler bearing Reg No.TN-73-B-3557, an auto bearing Reg.No.TN-07-BL-5664 which was driven by its driver in a rash and negligent manner, dashed against the claimant thereby he sustained grievous injuries. Immediately after the accident, the claimant was taken to Government Vellore Medical College Hospital for treatment. Thereafter, he was shifted to Government General Hospital, Chennai for further treatment. Since the claimant was not able to do the regular work after suffering the injuries, the claimant filed a claim petition



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before the Motor Accident Claims Tribunal, Chief Judicial Magistrate in M.C.O.P.No.209 of 2012 claiming compensation of Rs.13,00,000/- towards the injuries sustained by him.

4. Before the Tribunal, the claimant examined himself as P.W.1 and examined the Doctor as P.W.2 and marked Ex.P.1 to Ex.P.11. On the side of the respondents, R.W.1, R.W.2 & R.W.3 were examined and marked Ex.R1 to R8. The Tribunal, on considering the oral and documentary evidence, awarded a sum of Rs.8,56,000/- under various heads. Aggrieved by the quantum of compensation awarded, the Insurance Company has filed the present Appeal.

5. Learned counsel appearing for the Appellant/Insurance Company submitted that the compensation awarded by the Tribunal towards loss of earning capacity and disability is highly excessive and so also the compensation awarded under the other heads, which requires reconsideration. Accordingly, he prayed for allowing this Appeal.



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6. Per contra, learned counsel appearing for the insurance company submitted that the Tribunal, taking into consideration all the relevant documents has rightly fixed the compensation, which does not require any interference. Accordingly, he prayed for dismissal of the appeal.

7. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing for the Appellant/Insurance Company as well as the 1st Respondent/Claimant and perused the materials available on record.

8. The factum of the accident is not disputed by the parties and so also the liability. Therefore, this Court is not entering into the said aspect. The only grievance of the claimant is with regard to the quantum of compensation awarded. It is the claim of the Appellant that the compensation awarded under various heads is highly excessive which requires reconsideration.

9. On the question of compensation, this Court has perused the impugned award passed by the Tribunal whereby the Tribunal had fixed the



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notional income at Rs.4,500/- by adding 50% future prospects and has awarded a sum of Rs.6,88,500/-(Rs.6,750/- * 12* 17 * 50%) under the head Loss of earning capacity by adopting multiplier method. However, the Court is ordained with the task of finding out the injuries sustained by the claimant and the toll that the injuries would have on the day to-day functioning of the claimant and the earning that would be curtailed on the basis of the injuries sustained, which would be the basis to adopt multiplier method. A careful perusal of the injuries sustained by the claimant reveal that it would not have a lasting impact on the earning capacity of the claimant, so as to necessitate this Court to adopt multiplier method. Therefore, the adoption of multiplier method by the Tribunal is erroneous.

10. Further, coming to the compensation that could be awarded under the head Loss of earning capacity, on the basis of the deposition of the doctor, P.W.2, this Court is of the opinion that the functional disability could be safely fixed at 60% and accordingly, fixing a sum of Rs.3,000/- per percentage of disability, the compensation payable under the head Loss of Earning Capacity



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is arrived at Rs.1,80,000/- (60 * Rs.3,000/-).

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11. The Tribunal has awarded a sum of Rs.50,000/- towards Pain and suffering; Rs.10,000/- towards Food and extra nourishment; Rs.5,000/- towards Transportation; Rs.2,500/- towards loss of personal belonging; Rs.1,00,000/- towards loss of amenities is just and reasonable. However, no compensation has been awarded under the head loss of income during treatment period. Therefore, this Court awards a sum of Rs.30,000/- under the head 'Loss of Income during the Treatment' for a period of six months, by fixing the monthly income at Rs.5,000/- as no proof of income has been filed. Further, this Court feels that a sum of Rs.1,00,000/- under the head loss amenities is without any basis and therefore, the compensation under the said head cannot be granted and to that extent the compensation awarded under the said head stands deleted.

12. In the above circumstances, the compensation awarded by the Tribunal under the below mentioned heads are modified as under :-



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S.No	Head of Compensation	Amount awarded by Tribunal	Amount awarded by this Court
1.	Pain and suffering	Rs.50,000/-	Rs.50,000/-
2.	Food and extra nourishment	Rs.10,000/-	Rs.10 ,000/-
3.	Transportation	Rs.5,000/-	Rs.5,000/-
3.	For loss towards personal belonging	Rs.2,500/-	Rs.2,500/-
4.	For loss of earning power	Rs.6,88,500/-	Rs.1,80,000/- (60 * Rs.3000/-)
5.	For loss of amenities	Rs.1,00,000/-	-
6.	Loss of Income during treatment period	-	Rs.30,000/- (Rs.5,000/- * 6 months)
	TOTAL	Rs.8,56,000/-	Rs.2,77,500/-

13. Accordingly, the appeal is partly allowed and the impugned award of the Tribunal is modified reducing the compensation amount from **Rs.8,56,000/-** to **Rs.2,77,500/-**. The Appellant-Insurance Company is directed to deposit the modified amount to the credit of M.C.O.P.No.209 of 2012 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is



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directed to transfer the amount directly to the bank account of the 1st

Respondent/claimant through RTGS within a period of two weeks thereafter.

In view of this Court reducing the compensation, the cross objection filed by the claimant deserves to be dismissed. Accordingly, the cross objection No.45 of 2021 stands dismissed. There shall be no order as to costs in the present appeal.

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Index : Yes / No

Speaking Order / Non-speaking order

Neutral Citation Case : Yes / No

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M.DHANDAPANI, J

NHS

To

- 1.The Motor Accident Claims Tribunal,
(Court of Chief Judicial Magistrate), Vellore.
- 2.The Section Officer,
V.R. Section,
High Court, Madras.

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