



WEB COPY



C.M.A.Nos.2636 and 2637 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 26.06.2023

Pronounced On : 18.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal Nos.2636 and 2637 of 2014
and
Miscellaneous Petition Nos.1 & 1 of 2014

C.M.A.No.2636 of 2014:

M/s. Oriental Insurance Company Limited,
Oriental House,
No.216, Prakasam Salai,
Chennai – 600 108.

...Appellant/2nd respondent

Vs.

1. K. Latha
2. M. Harikrishnan
[R2 remained ex-parte before Tribunal.
Hence notice to R2 dispensed with]

.... Respondent/Petitioner

.... Respondent/Respondent

C.M.A.No.2637 of 2014:

M/s. Oriental Insurance Company Limited,
Oriental House,
No.216, Prakasam Salai,
Chennai – 600 108

.... Appellant / 2nd Respondent

Vs.

1. T. Balamurugan
Respondent/Petitioner

....

2. M. Harikrishnan
[R2 remained ex-parte before Tribunal.

.... Respondent/Respondent



Hence notice to R2 dispensed with]
Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Common Award and decree made in M.C.O.P.Nos.3750 and 3765 of 2011 respectively, dated 12.02.2014 passed by the Motor Accident Claims Tribunal, V Judge, Small Causes Court, Chennai.

For Appellant in both CMAs : Mr. D. Bhaskaran
For R1 in both CMAs : Mr. N. M. Muthurajan
For R2 in both CMAs : Dispensed with

COMMON JUDGMENT

C.M.A.No.2636 of 2014 filed by the Insurance Company challenging the quantum of compensation awarded in M.C.O.P.No.3750 of 2011, dated 12.02.2014, on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai.

2. C.M.A.No.2637 of 2014 filed by the Insurance Company challenging the quantum of compensation awarded in M.C.O.P.No.3765 of 2011, dated 12.02.2014, on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai.

3. The parties are referred to herein according to the status and



ranking before the Tribunal.

WEB COPY

4. The brief facts of the case of the claimants in both cases is as follows:

The petitioner in M.C.O.P.No.3765 of 2011 was driving a car bearing Registration No.TN 10 U 9078 along with other claimant in M.C.O.P.No.3750 of 2011 and two others as passengers on 01.04.2011 at about 15.30 hours, while the vehicle reached near Phthirapuram in the National Highway, a lorry bearing Registration No.TN 58 U 3281, which was going ahead on the car, suddenly stopped in the middle of the road in rash and negligent manner, without any indication. Due to this negligent act, the car was collided with the rear side of the lorry and the passengers including the driver of the car sustained injuries and they have filed separate Claim Petitions claiming compensation of Rs.20 lakhs and 12 lakhs respectively.

5. The first respondent is the owner of the lorry remained ex-parte and has not contested the claim.

6. The second respondent-Insurance Company of lorry filed



counter and contended that the driver of the lorry was proceeding in a normal speed in the Highway, but the driver of the car came in the high speed in rash and negligent manner, dashed against the rear side of the lorry, which itself is sufficient to prove the fact that the driver of the car is responsible for the accident and the claim made by the parties is also on the higher side and prays to dismiss the Claim Petitions.

7. Totally four persons were injured in this accident and they have separately filed claim petitions and all the claim petitions were tried together and common evidence was recorded in M.C.O.P.No.3750 of 2011.

8. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.7 were examined and Exs.P1 to P35 were marked. On the side of the respondents, no oral or documentary evidence were marked.

9. Based on the evidence placed on record, the Tribunal in Point Nos.1 and 2 has held that the driver of the lorry is responsible for the accident and the first and second respondents are liable to pay the compensation. In point No.3, the Tribunal has quantified the compensation for the claimant in M.C.O.P.No.3750 of 2011(Latha) and awarded



compensation on the following heads:

“For loss of earning for 1 ½ months a sum of Rs.45,936/-; For Transportation a sum of Rs.5,000/-; For Extra Nourishment a sum of Rs.5,000/-; For Damage to Clothes a sum of Rs.1,000/-; For Attender Charges a sum of Rs.5,000/-; For Medical Expenses a sum of Rs.53,895/-; For Facial Disfigurement a sum of Rs.25,000/-; For Pain and Sufferings a sum of Rs.1,00,000/-; For loss of amenities a sum of Rs.50,000/- and for Loss of Earning Power a sum of Rs.12,49,459/-. In all a total sum of Rs.15,40,290/- rounded off @ Rs.15,40,300/-.”

10. In M.C.O.P.No.3765 of 2011, the Tribunal has awarded compensation on the following heads:

“For loss of earning for one month a sum of Rs.10,000/-; For Transportation a sum of Rs.5,000/-; For Extra Nourishment a sum of Rs.5,000/-; For Damage to Clothes a sum of Rs.1,000/-; For Attender Charges a sum of Rs.5,000/-; For Medical Expenses a sum of Rs.17,308/-; For Facial Disfigurement a sum of Rs.25,000/-; For Pain and Sufferings a sum of Rs.75,000/-; For loss of amenities a sum of Rs.75,000/- and for Loss of Earning Power a sum of Rs.5,10,000/-. In all a total sum of Rs.7,28,308/- rounded off @ Rs.7,28,300/-.”



WEB COPY



C.M.A.Nos.2636 and 2637 of 2014

11. The Tribunal has also awarded compensation to other Claim Petitions i.e., M.C.O.P.No.3774 of 2011 and M.C.O.P.No.3775 of 2011.

12. Aggrieved over the award of compensation and challenging the quantum in M.C.O.P.Nos.3750 & 3765 of 2011, the Insurance Company filed these appeals and they have not filed any appeal against the quantum of compensation awarded in other M.C.O.Ps.

13. Mr. D. Bhaskaran, learned counsel for the appellants in both appeals submitted that the Tribunal has not properly assessed the disability as per the settled preposition of law and wrongly applied multiplier for single fracture suffered by the claimant in M.C.O.P.No.3750 of 2011. The assessment of disability is also on the higher side and the award of compensation under various heads is also very high and the same has to be modified.

14. The learned counsel further submitted that as far as the compensation awarded in M.C.O.P.No.3765 of 2011 is concerned, the injured has sustained only lacerated injury and dislocation of left knee. But the Tribunal has adopted multiplier and graded compensation which is not



sustainable under law and prays to modify the compensation awarded under the head “loss of future earning capacity”. He also submitted that the compensation awarded under other heads are also on the higher side and prays to modify the same.

15. Per Contra, the learned counsel for the claimants in both appeals submitted that the claimants have sustained several grievous injuries and it is not a case of single injury as stated by the Insurance Company. The Discharge Summary and the Disability Certificate produced by the claimants would support the case of the claimants that there is a permanent disability caused on the claimants. After appreciating the medical evidence produced in support of the claimants, the disability has been accepted by the Tribunal and just compensation has been awarded and that there is no need for modification of the award.

16. I have considered the submissions of both sides and also perused the materials placed on record.

17. The claimant-Latha who is aged about 26 years, at the time of accident and she is a Government Servant working as an Assistant



Engineer at Metro Water Planning and Designing Division. Ex.P2 is the Discharge Summary of the claimant-Latha, issued by Sri Ramachandra Medical College and Hospital, Chennai, wherein, it is recorded that she has sustained the following injuries (1) *right parital heamarage contusion*. (2) *left humerous fracture*. (3) *multiple facial laceration*. She was admitted into the Hospital on 02.04.2011 and discharged on 15.04.2011. The following procedure was done to her on 04.04.2011 “*Open reduction and internal fixation with plate osteosynthesis of left humerus with wound debridement of left forehead and chin flap*”. Ex.P4 is the CT Scan Brain Report shows that she had “*focal subarachnoid humerous in right occipital region*”. Ex.P6 is the Doctor Note, shows that she was subsequently attended the review on 01.06.2011. The photographs of the injured was also marked as Ex.P9.

18. Before the Tribunal, based on the above documents P.W.7- Doctor Rajappa, Ophthalmic Surgeon, has assessed the disability of the claimant- Latha as 20%. P.W.6-Dr.K.J.Mathiazhagan, assessed the injuries on facial disfigurement and fixed total disability as 50%. He has assessed the fracture of left arm as 35% and facial disfigurement as 15%. P.W.5-Doctor M.Saravanabavanantham has given Disability Certificate for head injury and



he has assessed the disability on the head injury as 50%. This assessment of disability has been objected by the Insurance Company in the cross examination has stated that the Doctor has not treated the injured. Since there was a subarachnoid humerous, he has assessed the disability and it has been assessed two years after the accident and subsequently this humerous was reduced significantly and at the time of examination by P.W.5-Doctor M.Saravanabavanantham, it is recorded that there was no humerous and there was no fracture.

19. The evidence of P.W.6-Dr.K.J.Mathiazhagan, who has issued Disability Certificate for the fracture of humerous bone, he has assessed the fracture as 35% and also 15% for disfigurement whereas, on a perusal of the photographs marked as Ex.P7 shows that there is no such disfigurement.

20. The evidence of P.W.7-Doctor Rajappa, Ophthalmic Surgeon, who has assessed the disability relating to the eyesight of the injured and he has not stated any reduction in the eye vision. He has noted the laceration on the left forehead of the left eyebrow and termed it on disability and stated that 25% disability.



21. The Tribunal after assessing all the evidences placed on record, more particularly, evidences adduced by the Doctors P.W.5 to P.W.7 has held that appropriate disability would be allowed as 20% however, the Tribunal has adopted multiplier in awarding compensation.

22. Ex.P2-Discharge Summary and Ex.P4-CT Scan Report produced on behalf of the claimant-K.Latha shows that, she has suffered fracture on the left humerus bone and also hemorrhage contusion on the parietal. There is no fracture on the head or brain, which would in turn prevents the regular activities of the claimant. However, considering the fact that the claimant is a lady and she has suffered head injury as well as fracture, this would have drastically prevented her ability to lift the weights and doing various other regular activities. While considering the same, this Court is of the view that functional disability would be allowed as 15% and applied multiplier method is the proper method for the injuries sustained by her. Accordingly Rs.9,37,094/- [30,624 /-per month x 12 x 17 x 15%] granted under the head loss of earning power.

23. Since this Court has granted compensation under the head loss of earning capacity based on the functional disability, compensation



awarded under the head loss of amenities is modified and awarded a sum of Rs.20,000/-. Similarly, compensation awarded under the head pain and sufferings is also on the higher side and hence I am inclined to modify the same as Rs.30,000/-. In so far as the compensation awarded under other heads are concerned, the same is just and reasonable and the same is hereby confirmed.

24. Thus, the compensation awarded by the Tribunal to the claimant-K.Latha is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning for 1 ½ months	Rs.45,936/-	Rs.45,936/-	Confirmed
2.	Transportation	Rs.5,000/-	Rs.5,000/-	Confirmed
3.	Extra Nourishment	Rs.5,000/-	Rs.5,000/-	Confirmed
4.	Damage to clothes	Rs.1,000/-	Rs.1,000/-	Confirmed
5.	Attender Charges	Rs.5,000/-	Rs.5,000/-	Confirmed
6.	Medical Expenses	Rs.53,895/-	Rs.53,895/-	Confirmed
7.	Facial Disfigurement	Rs.25,000/-	Rs.25,000/-	Confirmed
8.	Pain and Sufferings	Rs.1,00,000/-	Rs.30,000/-	Reduced
9.	Loss of Amenities	Rs.50,000/-	Rs.20,000/-	Reduced
10.	Loss of Earning Power	Rs.12,49,459/-	Rs.9,37,094 /-	Reduced
	Total	Rs.15,40,290/- @ Rs.15,40,300/-	Rs.11,27,925/-	Reduced by Rs.4,12,375/-



WEB COPY



C.M.A.Nos.2636 and 2637 of 2014

25. In the case of claimant-T.Balamurugan is concerned, in Discharge Summary marked as Ex.P19, wherein, it is recorded that the claimant has sustained *“lacerated injury over left knee with cramp and dislocation of left knee, head injuries and other injuries, for which arithrotomy and wound debridement”* was done. He was treated as in-patient from 02.04.2011 to 08.04.2011. Ex.P18-photographs also produced to show that there is a facial disfigurement. To prove the disability, he has examined P.W.6-Dr.K.J.Mathialagan, who has stated that there is dislocation of left knee and due to the same, he has experienced pain and stiffness in the left knee and the fluctuations is restricted to 0 to 90 degrees and he assessed the disability as 30% partial permanent disability. However, this injury has been considered by this Court as 25% functional permanent disability.

26. Accordingly, loss of earning capacity was granted by adopting multiplier method before the Tribunal. Based on the educational qualifications, the Tribunal has notionally fixed monthly income of Rs.10,000/-. He was working as a deemed labour on HCL Technologies but since he has not produced any evidence to show his employment, the



Tribunal has not accepted the avocation, however, based on the educational qualifications, the notional income has been fixed. The Discharge Summary-Ex.P19 shows that he has been given treatment of “*bony fragment removal*” and no other fracture or any injury is noted. In the Disability Certificate also P.W.6 stated that there was a laceration in the left knee for which, the debridement loose bodies removal treatment has been given. It clearly shows that, this is not a functional disability and the Tribunal has wrongly adopted multiplier and after assessing the disability as 25%.

27. Hence, this Court is of the view that compensation awarded under the head loss of earning power is to be set aside and modified to the effect that for assessing disability by calculating percentage method. Accordingly, Rs.3,000/- is taken as 30% disability and arriving a sum of Rs.90,000/- [3000 x 30%] under the head loss of disability. The compensation awarded under the head pain and sufferings is modified to Rs.30,000/-. The loss of amenities granted by the Tribunal is modified considering the nature of injuries sustained by him as Rs.20,000/-. In as far as the compensation awarded under other heads are concerned the same is hereby confirmed.



28. Thus, the compensation awarded by the Tribunal to the claimant-T.Balamurugan is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning for one month	Rs.10,000/-	Rs.10,000/-	Confirmed
2.	Transportation	Rs.5,000/-	Rs.5,000/-	Confirmed
3.	Extra Nourishment	Rs.5,000/-	Rs.5,000/-	Confirmed
4.	Damage to clothes	Rs.1,000/-	Rs.1,000/-	Confirmed
5.	Attender Charges	Rs.5,000/-	Rs.5,000/-	Confirmed
6.	Medical Expenses	Rs.17,308/-	Rs.17,308/-	Confirmed
7.	Facial Disfigurement	Rs.25,000/-	Rs.25,000/-	Confirmed
8.	Pain and Sufferings	Rs.75,000/-	Rs.30,000/-	Reduced
9.	Loss of Amenities	Rs.75,000/-	Rs.20,000/-	Reduced
10.	Loss of Earning Power/ Loss of disability	Rs.5,10,000/-	Rs.90,000/-	Reduced
	Total	Rs.7,28,308/- @ Rs.7,28,300/-	Rs.2,08,308/-	Reduced by Rs.5,20,000/-

29. In the result,

(i) C.M.A.No.2636 of 2014 is partly allowed. The compensation awarded by the Tribunal at Rs.15,40,300/- is hereby reduced to Rs.11,27,925/-[Rupees Eleven Lakhs Twenty Seven Thousand Nine Hundred and Twenty Five only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit.



WEB COPY



C.M.A.Nos.2636 and 2637 of 2014

(ii) C.M.A.No.2637 of 2014 is partly allowed. The compensation awarded by the Tribunal at Rs.7,28,300/- is hereby reduced to Rs.2,08,308/-[Rupees Two Lakhs Eight Thousand Three Hundred and Eight only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit.

(iii) The appellant-Insurance Company in both M.C.O.Ps is directed to deposit the award amount, now determined by this Court, along with proportionate 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 common judgment, to the credit of M.C.O.P.No.3750 of 2011 and M.C.O.P.No. 3765 of 2011 respectively, on the file of the Motor Accident Claims Tribunal/V Judge, Small Causes Court, Chennai. On such deposit, the claimants in both MCOPs is permitted to withdraw award amount now determined by this Court along with proportionate interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the award amount by directly giving credit to the Savings Bank Account of the claimants. The appellant-Insurance Company is permitted to withdraw the excess amount, which was lying in the credit of M.C.O.P.No.3750 of 2011



C.M.A.Nos.2636 and 2637 of 2014

and M.C.O.P.No. 3765 of 2011 respectively. In other aspects, the award of the Tribunal shall stand confirmed.

(iv) There shall be no order as to costs.

(v) Consequently connected miscellaneous petitions stands closed.

18.08.2023

ssi

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

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

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



WEB COPY



C.M.A.Nos.2636 and 2637 of 2014

K.RAJASEKAR,J.

ssi

C.M.A.Nos.2636 and 2637 of 2014

18.08.2023