

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 12.12.2023

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

**C.M.A. NO. 644 of 2021
CROSS OBJECTION NO. 64 of 2021
AND C.M.P. NO. 3927 OF 2021**

C.M.A. NO. 1311 of 2020

Cholamandalam Ms General
Insurance Co. Ltd.,
State Bank of Travancore Upstairs,
Rajaji Road, Perambanur,
Salem.

.. Appellant

- Vs -

1. Sakthivel

2. Ganeshram

.. Respondents

CROSS OBJECTION NO. 32 OF 2021

Sakthivel

.. Cross Objector

- Vs -

1.Cholamandalam Ms General
Insurance Co. Ltd.,
State Bank of Travancore Upstairs,
Rajaji Road, Perambanur,
Salem.

2. Ganeshram

.. Respondents

Civil Miscellaneous Appeal filed u/s 173 of the Motor Vehicles Act against the judgment and decree dated 23.10.2019 passed by the Motor Accident Claims Tribunal (Subordinate Judge No.1), Salem, made in MCOP No.2282 of 2016.

Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure to enhance the award amount in the judgment and decree dated 23.10.2019 passed by the Motor Accident Claims Tribunal (Subordinate Judge No.1), Salem, made in MCOP No.2282 of 2016.

For Appellant : Mrs.R.Sree Vidhya in CMA.No.644/2021
Mr.S.P.Yuvaraj for R1 in X. Obj. 64 of 2021

For Respondents : Mr.S.P.Yuvaraj for R1 in CMA 644/2021
R2 – No appearance in both the appeals

Mrs.R.Sree Vidhya for R1
in X. Obj. 64 of 2021

COMMON JUDGMENT

While the appeal has been filed by the insurance company challenging the quantum of compensation awarded by the Tribunal as excessive, the cross objection has been filed by the claimant challenging the inadequate compensation awarded by the Tribunal.

2. On 08.08.2014 , when the injured was riding his motor cycle bearing reg. No.TN 52 Z 1292, the car bearing Regn. No.TN 23 BV 1632 belonging to the second respondent and insured with the appellant insurance company, driven driven by its driver in a rash and negligent manner, dashed against the motor cycle in which the injured claimant was suffered grievous injuries and admitted in hospital. Thereafter, the claimant has filed a claim petition claiming compensation of Rs.10,00,000/- under various heads.

3. Before the Tribunal, in order to prove the case, on the side of the claimant, there are three witness examined and 28 documents were marked. On the side of the respondents, no witness was examined and two documents were marked. The Tribunal, on considering the oral and documentary evidence, awarded a sum of Rs.21,36,600/- under various heads. The quantum of compensation awarded by the Tribunal is under challenge by the Insurance company as well as by the claimant.

4. Learned counsel appearing for the appellant/insurance company submits that the accident had happened only due to the rash and negligent driving of the driver of the car as well as the injured/claimant. The Doctor

assessed the disability at 40% and the Tribunal has erred in fixing the monthly income at Rs.7500/- and awarded a sum of Rs.10,20,600/- towards permanent disability to the claimant, which is excessive. The learned counsel further submitted that the quantum of compensation awarded by the Tribunal in respect of other heads also are higher. is excessive. Further, the medical bills submitted by the claimant is Rs.8,20,000/- but the Tribunal has awarded a sum of Rs.8,65,000/- which warrants interference of this Court. Hence, the learned counsel prays that this Court may interfere with the award and allow this petition.

5. Per contra, learned counsel appearing for the claimant/cross objector contended that the claimant was earning a sum of Rs.10,000/- per month and this Court, without considering the cost of living, the Tribunal has fixed a sum of Rs.7,500/-, which is very low. The other heads awarded by the Tribunal is just and reasonable.

6. This Court gave its anxious consideration to the arguments advanced by the learned counsel appearing on either side and also perused the oral and documentary evidence and the judgment passed by the

Tribunal.

7. A careful perusal of the documents available on record as also the order passed by the Tribunal, the fact remains that the deceased was working as an Engineer. In order to prove his income, the claimant has examined PW2/Manager of the construction company and he deposed that the claimant was receiving the salary of Rs.10,000/- per month. The Tribunal has fixed the monthly salary of Rs.7500/- and applied multiplier of 18 since the age of the claimant is 21 years at the time of the accident. On perusal of the evidence of the PW2, clearly reveals that after the accident, the claimant is working in the said construction company and therefore, there is no loss for the disability sustained by him. Therefore, this Court fixes 15% disability to the claimant and accepted the evidence of PW2 in respect of the salary and calculated the amount towards loss of disability as follows:

$$\text{Rs.10,000/- (salary) X 40\% X 15\% X 12 X 18} = 4,53,600/-$$

8. On perusal of the medical bills, the claimant has spent a sum of Rs.8,20,000/- and the Tribunal has awarded a sum of Rs.8,65,000/- which is

erroneous and this Court is inclined to interfere with the same and fixes a sum of Rs.8,20,000/- towards medical bills.

9. The compensation awarded by the Tribunal is modified as follows:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Pain and sufferings	75,000	75,000
Medical Bills	8,65,000	8,20,000
Transportation	25,000	25,000
Extra nourishment	25,000	25,000
Attender's charges	25,000	25,000
Loss of amenities	1,00,000	1,00,000
Loss of disability	10,20,500	4,53,600
Total	21,36,600/-	15,23,600/-

10. In the result, the civil miscellaneous appeal is allowed and the Cross Objection is dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

11. The appellant/insurance company is directed to deposit the modified award amount as quantified by this Court along with interest at

7.5% p.a., from the date of claim petition till date of deposit, less the amount, if any, already deposited, to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant shall withdraw the same on making an appropriate petition.

12.12.2023

Index : Yes / No

Internet : Yes / No

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To

The Motor Accident Claims Tribunal (Subordinate Judge No.1), Salem.

M.DHANDAPANI, J.

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**C.M.A. NO. 644 of 2021
CROSS OBJECTION NO. 64 of 2021**

12.12.2023