



C.M.A.3237 of 2014 & Cross Obj.63 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 12.12.2022	Pronounced on 03.01.2023
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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3237 of 2014
and
Cross Obj.No.63 of 2015

C.M.A.No.3237 of 2014

The Oriental Insurance Company Limited,
Dwaraka, 2nd Floor, 79, Uttamar Gandhi Salai,
Chennai 34.

... Appellant

Vs.

1.Prabu,
No.47, Lakshmipuram,
Vadapalani,
Chennai 600 026.

2.Sathish,
No.1/460, Arignar Anna Street,
Medavakkam,
Chennai 34.

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Decree and Judgment dated 23.04.2014, made in MCOP.No.2319 of 2010, on the file of the Motor Accident Claims Tribunal (V Court of Small Causes) of



Madras.
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For Appellant : Mr.K.Vinod

For Respondents : Mr.F.Terry Chella Raja (for R1)
for Mr.V.Velu

R2 – Exparte

Cross Obj.No.63 of 2015

Prabu,
No.47, Lakshmipuram,
Vadapalani,
Chennai 600 026.

... Cross Appellant

Vs.

1.The Oriental Insurance Company Limited,
Dwarka, 2nd Floor,
79, Uthamar Gandhi Salai,
Chennai 34.

2.Sathish,
No.1/460, Arignar Anna Street,
Medavakkam,
Chennai 34.

... Respondents

Prayer: Cross Objection filed under Order 41 Rule 22 of CPC, against the
Award dated 23.04.2014, made in MCOP.No.2319 of 2010, on the file of the
Motor Accident Claims Tribunal/V Judge, Court of Small Causes, Chennai.



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For Appellant : Mr.F.Terry Chella Raja
for Mr.V.Velu

For Respondents : Mr.K.Vinod (for R1)

R2 – No appearance

COMMON JUDGMENT

The Appeal has been filed against the Decree and Judgment dated 23.04.2014, made in MCOP.No.2319 of 2010, on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

2.The Insurance Company is the Appellant herein, challenging the award passed in MCOP.No.2319 of 2010, dated 23.04.2014, on the file of the Motor Accident Claims Tribunal/V Court of Small Causes, Chennai. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.The Insurance Company filed the above Appeal on the point of quantum and liability and Cross Objection was filed on the point of quantum.



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4.During the trial, on the side of the claim Petitioner, PW1 & PW2 were examined, Ex.P1 to Ex.P.25 were marked and on the side of the Respondents, none was examined and no documents were marked.

5.Heard the learned counsel for the Insurance Company and learned counsel for the claim Petitioner.

6.The claim Petitioner filed MCOP.No.2319 of 2010, seeking compensation for the injuries sustained by him in a road traffic accident on 23.09.2009. In the counter affidavit filed before the trial Court, the Insurance Company raised a plea that there is a delay of 5 months in filing the FIR and stated that the factum of the accident has to be disbelieved. The trial Court has rejected the said contention and held that on combined reading of PW1 coupled with Ex.P.1 and Ex.P.2, the accident was taken place on 23.09.2009 and further held that the vehicle involved in the accident was insured with the Insurance Company/Appellant herein. The Insurance Company took a plea that there is a delay in filing the FIR, the Tribunal has rightly said that in the absence of any evidence to substantiate the plea, the delay in FIR cannot be a ground, since



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PW1 and his wife are in the hospital during the period of surgery and the same created some delay. Hence this Court finds that manner of the accident, rash and negligent driving on the part of the driver of the vehicle, insured with the Insurance Company are proved in the manner known to law and hence, the Insurance Company is jointly and severally liable to pay compensation with the owner of the vehicle.

7. On the point of quantum of compensation heard learned counsel on both sides. PW1 was aged about 23 years. At the time of accident, he was the owner cum driver of Tata Ace vehicle and the Tribunal fixed the monthly income at Rs.6,000/-. The same cannot be termed as exorbitant. From the evidence of PW2/Doctor and documents viz., Ex.P.5, Ex.P.6, Ex.P.7, Ex.P.19, Ex.P.20 & Ex.P.22, which are medical bills and Ex.P.2, Ex.P.3 & Ex.P.4/Discharge summaries, the Petitioner sustained Grade III SC fracture right femur, fracture of 9, 10 ribs left side and was treated as inpatient from 24.09.2009 to 25.02.2010, thereby external fixation with AK cast application was done. Thereafter, he took treatment at Parvathy Hospital as inpatient from 06.07.2011 to 14.07.2011, for the malunited infected supracondylar fracture



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right femur with knee stiffness and treated with ORIF LCP fixation with bone grafting. He was mobilised with non weight bearing and walking with walker support as seen from Ex.P.3 Discharge summary. Once again he was treated in the same hospital as inpatient from 03.08.2011 to 11.08.2011, wherein diagnosed Post LCP fixation right SC fracture right femur with raw area right thigh thereby wound debridement and flap cover right thigh was done as evidenced from Ex.P.4 Discharge summary. Ex.P.10 Photograph shows the gravity of injuries sustained by the Petitioner.

8.PW2/Doctor viz.,Dr.J.R.R.Thiagarajan, would depose that due to the accident, the femur bone on the right thigh was broken and LCB plate was fixed and there is 1.5 inches shortening of length in right leg due to the accident and further there is restriction in knee movement and hence, the disability was assessed as permanent in nature and fixed at 80%. In view of the injury on the left chest region, the claim Petitioner was finding it difficult to breathe. The Tribunal has taken the whole body disability at 35% and the same cannot be termed as excessive as the injured was aged about 23 years and injuries suffered by him restricted him to perform his duty as he has done it before the



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accident. Due to the fracture of right femur, fracture of 9th & 10th left side ribs and external fixation and the prolonged period of treatment taken by the claim Petitioner as inpatient, I find that following the ratio laid down by the Hon'ble Supreme Court in the case of ***Raj Kumar Vs. Ajay Kumar and another*** reported in ***2011 (1) SCC 343***, the multiplier method was rightly adopted by the Tribunal. Future prospects is fixed at 40% following the ratio laid down by the Constitution Bench's judgment of the Honourable Apex Court in the case of ***National Insurance Company Limited V. Pranay Sethi and others***, reported in ***2017 (2) TN MAC 609 (SC)***. Accordingly, the loss of earning power suffered by the claim Petitioner fixed at Rs.6,35,040/-, which is calculated as follows:

$$\text{Rs.6,000/-} + 40 \% \text{ of } 6000 = \text{Rs.8,400/-}$$

$$\text{Rs.8,400/-} \times 12 \times 18 \times 35 \% = \text{Rs.6,35,040/-}$$

9.The loss of amenities does not arise. In this case, Rs.1,00,000/- was awarded by the Tribunal towards loss of amenities. The same is deleted. Rs.1,00,000/- was awarded by the Tribunal towards pain and sufferings, the same is reduced to Rs.50,000/- and compensation awarded towards other heads are just and proper and the same are confirmed and hence, the award passed by



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the Tribunal is partly modified as follows:

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<i>S.No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
1	Loss of income for four months	24000	24000
2	Transportation	5000	5000
3	Extra nourishment	10000	10000
4	Medical expenses	85987	85987
5	Attender charges	5000	5000
6	Loss of marital prospects	50000	50000
7	Pain and sufferings	100000	50000
8	Loss of amenities	100000	0
9	Loss of Earning Power	453600	635040
		833587	865027

In total, the claim Petitioner is entitled to a sum of Rs.8,65,027/- (Rupees eight lakh sixty five thousand and twenty seven only) with interest at the rate of 7.5% per annum from the date of Petition till date of realisation.

10. In fine,

(i) this Civil Miscellaneous Appeal stands dismissed and the Cross Objection stands partly allowed to the extent indicated above. No Costs.

(ii) the Insurance company is directed to deposit the enhanced award amount of



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Rs.8,65,027/-, with interest and costs before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) on such deposit being made, the claim Petitioner is permitted to withdraw the entire enhanced award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) The claim Petitioner is directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

03.01.2023

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

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To

The Presiding Officer,
The Motor Accident Claims Tribunal,
V Court of Small Causes,
Chennai.



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RMT.TEEKAA RAMAN.J,

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Pre-delivery Judgment made in

C.M.A.No.3237 of 2014
and
Cross Obj.No.63 of 2015

Dated: 03.01.2023