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C.M.A.No.3652 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.3652 of 2014
and
Cross Objection No.56 of 2015
and
M.P.No.1 of 2014

C.M.A.No.3652 of 2014:

Shriram General Insurance Co., Ltd.,
No.66, Thirumala Pillai Road,
City Centre Complex II Floor,
T.Nagar, Chennai-17.

... Appellant/2nd respondent

Vs.

1. S. Samson

... Respondent/Petitioner

2. S. Manikandan

... Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 20.08.2014 made in M.C.O.P.No.3203 of 2012 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr. S. Dhakshinamoorthy
For R1 : Mr. K. Suryanarayanan
For R2 : Dispensed with



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Cross Objection No:56 of 2015:

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S. Samson

... 1st Respondent/Cross Objector

vs.

1. Shriram General Insurance Co., Ltd.,
No.66, Thirumalai Pillai Road,
City Centre Complex II Floor,
T.Nagar, Chennai-600 017.

... Appellant/1st Respondent

2. S. Manikandan

...2nd Respondent/2nd Respondent

Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure, 1908 against the Judgment and decree dated 20.08.2014 made in M.C.O.P.No.3203 of 2012 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Cross Objector : Mr. K. Suryanarayanan

For R1 : Mr. S. Dhakshinamoorthy

COMMON JUDGMENT

The Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the quantum of compensation granted to the claimant as per the award in M.C.O.P.No.3203 of 2012, dated 20.08.2014, on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai, whereby, the Tribunal has awarded a sum of



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Rs.3,50,400/- as compensation along with interest at the rate of 7.5% per annum for the injuries sustained by the claimant. The claimants raised Cross-Objection for enhancement of compensation awarded in the above M.C.O.P.No.3203 of 2012.

2. The parties are referred to hereunder according to status and ranking before the Tribunal.

3. The case of the claimant is that on 11.06.2012 at about 6.00 p.m., While he was riding his motor-cycle bearing Registration No.TN 09 AT 2121 from West to East on Medavakkam Main Road from Selaiyur-Velacherry, near Vellakal Bus Stop, a mini lorry bearing Registration No.TN 22 BP 8856 came behind the motor-cycle in a rash and negligent manner, hit on the motor-cycle, in which, the claimant sustained grievous injuries. He filed Claim Petition before the Tribunal claiming compensation of Rs.7,00,000/- for the injuries sustained by him from the respondents.

4. Before the Tribunal, the first respondent, who is the owner of the offending vehicle remained ex-parte and has not contested the claim.



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5. The second respondent-insurer of the lorry filed counter and contented that the driver of the lorry was not holding Transport Vehicle Endorsement, no permit was issued to the said vehicle and also Fitness Certificate was not obtained from the Competent Authority. The said accident was not intimated to the insurer and that the accident occurred, due to the negligent act of the claimant. The petitioner has to prove the age, avocation and income and also the place, date and time of accident, nature of injuries sustained, period of treatment given, expenses incurred and disability suffered by him. In any event, the compensation claimed before the Tribunal is on the higher side. Hence, prays to dismiss the claim petition.

6. Before the Tribunal, on the side of the claimant P.W.1 and P.W.2 were examined and Exs.P1 to P17 were marked. On the side of the respondents no oral and documentary evidence marked.

7. The Tribunal after considering the evidence placed on record in point No.1, has held that the accident occurred due to the rash and



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negligent driving of the driver-cum-owner of the first respondent vehicle and in Point No.3, after assessing the injuries sustained by the claimant, the Tribunal has awarded a sum of Rs.3,50,400/- as compensation and in point No.2, the Tribunal has held that the second respondent is initially pay the compensation to the claimant and then recover the same from the first respondent who is the owner-cum-driver of the offending vehicle.

8. Aggrieved over the quantum of compensation awarded by the Tribunal, the Insurance Company has filed this present Civil Miscellaneous Appeal.

9. The learned counsel for the appellant-Insurance Company contended that the Tribunal has erred in adopting multiplier method in awarding compensation. The Tribunal has also granted loss of earning capacity by adopting two methods one is by adopting multiplier method as well as adopting percentage method i.e., granting Rs.2,000/- per percentage of injury and both the heads are given together and prays to reduce the quantum fixed by the Tribunal.



10. Per Contra, the learned counsel for the first respondent/claimant has submitted that the Tribunal even though adopting multiplier method, the notional income fixed as well as the compensation amount awarded under other heads is on lower side and prays to enhance the same.

11. I have considered the rival submissions of both sides and also perused the records available.

12. The Tribunal has quantified the compensation for permanent disability based on the evidence of P.W.2-Dr.N.Saichandran, who was assessed the disability at 40%. The claimant sustained following injuries as per Ex.P.17-Disability Certificate.

“The movements of the right shoulder joint reduced and restricted by 30 degrees, the petitioner also sustained head injury on the right side of the head, thereby, he has giddiness and headache and during the course of treatment, the patient had urinary problem, for which, he had treated.”

13. After appreciating the evidence of the Doctor-P.W.2, the Tribunal has fixed the disability as 35% which is partial permanent disability and fixed a sum of Rs.2,000/- per percentage and accordingly



awarded Rs.70,000/- under the head disability. Subsequently, the Tribunal has granted compensation under the head loss of earning capacity. The Tribunal has based on the evidence of P.W.2-Doctor, considering the nature and avocation of the claimant, arrived its satisfaction that 10% of earning capacity of the claimant and adopted multiplier method and granted a sum of Rs.92,400/- as compensation under the head loss of earning power.

14. In this case, the petitioner was working in Accounts Department and earning a sum of Rs.7,300/- per month and in support of the same, Ex.P9-Salary Certificate was also marked before the Tribunal. The Tribunal after appreciating the evidentiary value of Ex.P9-Salary Certificate and the Tribunal has not accepted the income claimed by the claimant. Thereafter, notionally fixed a sum of Rs.7,000/- per month. After analysing the injuries sustained i.e., fracture of right clavicle, right shoulder joint, which resulted restricted movement of right hand by 30 degrees, the loss of earning capacity was fixed as 10%. Thereafter, the compensation quantified under multiplier method. This Court is of the view, that since the injured is not the manual worker, nature of injuries would not affect the avocation of the claimant, adopting multiplier method is unwarranted. However, since



the injured sustained partial permanent disability, I am inclined to confirm the compensation awarded under the head of disability. Accordingly, this Court is inclined to set aside the granting of compensation under the head loss of earning power and confirms the awarding a sum of Rs.70,000/- [2000 x 35] under the head disability.

16. The injured had undergone in-patient treatment from 11.06.2012 to 16.06.2012 for a period of six days, thereafter, he has not undergone in-patient treatment. However, the Tribunal has granted four months income as loss of income during the period of disablement and this Court is unable to accept the compensation for granting four months loss of income and the Tribunal ought to have granted as maximum of one month loss of income and accordingly, the same is modified and awarded a sum of Rs.7,000/- as loss of income during treatment period. As far as the compensation awarded under other heads are concerned, they are just and reasonable and the same is hereby confirmed.

17. Thus, the compensation awarded by the Tribunal is modified as follows:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income during treatment period	Rs.28,000/-	Rs.7,000/-	Reduced
2.	Transportation	Rs.7,000/-	Rs.7,000/-	Confirmed
3.	Extra Nourishment	Rs.7,000/-	Rs.7,000/-	Confirmed
4.	Damages to clothes	Rs.1,000/-	Rs.1,000/-	Confirmed
5.	Medial Expenses	Rs.1,10,000/-	Rs.1,10,000/-	Confirmed
6.	Pain and Sufferings	Rs.35,000/-	Rs.35,000/-	Confirmed
7.	Disability of 35% at the rate of Rs.2,000/- per disability	Rs.70,000/-	Rs.70,000/-	Confirmed
8.	Loss of earning power	Rs.92,400/-	-----	Rejected
	Total	Rs.3,50,400/-	Rs.2,37,000/-	Reduced by Rs.1,13,400/-

18. As far as the Cross Objection for enhancement is concerned, this Court finds that the amounts awarded are excess in two heads as indicated in above table, hence, no need for enhancement. Accordingly, the Cross Objection is dismissed.



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19. In the result, this Civil Miscellaneous Appeal is partly

allowed and the compensation awarded by the Tribunal at Rs.3,50,400/- is hereby reduced to Rs.2,37,000/- [Rupees Two Lakhs and Thirty Seven Thousand 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. 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.3203 of 2012 on the file of the Motor Accidents Claims Tribunal, II Small Causes Judge, Chennai. On such deposit, the claimant is permitted to withdraw the 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 amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant without any formal application. The Appellant-Insurance Company is permitted to withdraw the amount which was lying in the credit of M.C.O.P.No.3203 of 2012, if, any, already deposited. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal. The Cross



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Objection No.56 of 2015 is dismissed. Consequently, the connected miscellaneous petition stands closed.

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The II Small Causes Judge,
Motor Accidents Claims Tribunal,
Chennai.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.

K.RAJASEKAR,J.

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