



C.M.A.No.3783 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.3783 of 2019

and

Cros.Obj.No.11 of 2021

and

C.M.P.No.21794 of 2019

C.M.A.No.3783 of 2019

The New India Assurance Co. Ltd.,
D.No.1360, Amman Complex,
E.P.N.Road, Erode.

... Appellant/Third
Respondent

Vs.

1.P.Senthilkumar

... First Respondent / Petitioner

2.M.Rangasamy (*ex-parte*)

[R2 set ex-parte vide order dt.19.06.2023 made in
C.M.A.No.3783 of 2019 & C.M.P.No.21794 of 2019]

... Second Respondent / First Respondent

3.R.Paramasivam (died)

[no steps need to be taken as per the memo dated
19.06.2023 and vide ourt order dated 19.06.2023
made in C.M.A.No.3783 of 2019 and
C.M.P.No.21794 of 2019]

... Third Respondent / Second
Respondent



C.M.A.No.3783 of 2019

Cros.Obj.No.11 of 2021
in C.M.A.No.3783 of 2019

P.Senthilkumar

... Cross Objector

Vs.

1.The New India Assurance Co. Ltd.,
D.No.1360, Amman Complex,
E.P.N.Road, Erode.

2.M.Rangasamy
3.R.Paramasivam

... Respondents

Prayer in C.M.A.No.3783 of 2019 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgement and decree dated 28.01.2013 passed in M.C.O.P.No.253 of 2009 on the file of III Additional District and Sessions Court cum Motor Accidents Claims Tribunal, Erode at Gopichettipalayam.

Prayer in Cros.Obj.No.11 of 2021 : Cross Objection filed under Order 41 Rule 22 of the Civil Procedure Code against the decree and judgement in M.C.O.P.No.253 of 2009 dated 28.01.2013 on the file of MACT/III Additional District and Sessions Court, Erode at Gopichettipalayam.

C.M.A.No.3783 of 2019

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : Mr.Ma.Pa.Thangavel [R1]
ex-parte vide order dt.
19.06.2023 [R2]
Died [R3]



C.M.A.No.3783 of 2019

Cros.Obj.No.11 of 2021

For Cross Objector : Mr.Ma.Pa.Thangavel

For Respondents : Mr.S.Dhakshnamoorthy
[R1]

ex-parte vide order dt.

19.06.2023 [R2]

Died [R3]

COMMON JUDGEMENT

The Insurance Company has filed this appeal challenging the award passed by the III Additional District and Sessions Court cum Motor Accidents Claims Tribunal, Erode at Gopichettipalayam in M.C.O.P.No.253 of 2009 dated 28.01.2013 on the ground of liability.

2. The Cross Objection has been filed by the claimant seeking an enhancement of the compensation and challenging the contributory negligence fixed against the claimant.

3. The facts in brief are as follows :-

On 19.03.2009 at about 9.45 a.m., when the petitioner was riding his motorcycle bearing Reg.No.TN 36 S 9963, the first respondent



C.M.A.No.3783 of 2019

WEB COPY

suddenly moved the 407 van in a rash and negligent manner, due to which, the van hit against the petitioner, thereby, he sustained grievous injuries on the left knee, head and injuries on the left elbow, right knee and injuries all over the body. Hence, he filed a claim petition claiming a sum of Rs.6,00,000/- for the injuries sustained by him.

4. Before the Tribunal, the claimant examined three witnesses viz., P.W.1 to P.W.3 and marked 16 documents viz., Ex.P.1 to Ex.P.16. On the side of the Insurance Company, they have examined two witnesses viz., R.W.1 and R.W.2. After adjudication, the Tribunal awarded a sum of Rs.3,95,142/- by fixing 30% negligence on the claimant and 70% negligence on the Insurance Company. Aggrieved by the same, the Insurance Company has filed the appeal and the claimant has filed the cross objection.

5. The learned counsel appearing for appellant/New India Assurance Co. Ltd. submitted that the insured vehicle was parked on the left side of the road and it is the claimant who had driven his motorcycle and dashed against the parked vehicle, thereby, he sustained injuries.



C.M.A.No.3783 of 2019

However, the Tribunal had fastened only 30% negligence on the part of the claimant, which is unsustainable. He further submitted that, without any documents, the independent doctor had assessed the disability at 50%, which is on the higher side. Accordingly, he prays for allowing the appeal and dismissal of the cross objection.

6. The learned counsel appearing for the cross objector submitted that the claimant had driven his motorcycle by following all the traffic rules. However, all of a sudden, the insured vehicle suddenly crossed the road, as a result of which, the claimant has lost control of his vehicle, thereby, the accident had happened. Due to the said accident, the claimant sustained multiple grievous injuries. In order to prove the injuries sustained by the claimant, he had marked Ex.P.1 to Ex.P.11. However, without considering the same, the Tribunal had erred in fastening 30% negligence against the claimant, which is not sustainable. Further, he submitted that, as per the decisions of the Hon'ble Apex Court, if the injured person is studying in College, the notional income has to be fixed at Rs.10,000/-, however, the Tribunal has fixed only a sum of Rs.4,500/- as notional income, which is wholly unsustainable.



C.M.A.No.3783 of 2019

Accordingly, he prays for allowing the cross objection and dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the cross objector and perused the materials available on record.

8. Admittedly, the insured vehicle was parked on the left side of the road, which has covered almost 50% of the road and it had caused hindrance to the other persons who were travelling in that road, thereby the accident had happened. The abovesaid findings have been rendered by the Tribunal and the Tribunal, after elaborately considering the issue held that the accident had happened in broad day light, and that too due to the negligence mainly on the part of the offending vehicle. However, equally, the Tribunal had also fixed 30% negligence as against the claimant, which is wholly sustainable, as the same is based on the record and the same cannot be interfered with.

9. Now, coming to the question of quantum of compensation awarded by the Tribunal, though it is the claim of the cross objector that



C.M.A.No.3783 of 2019

WEB COPY

notional income ought to have been fixed at Rs.10,000/-, however, considering the fact that the accident had happened in the year 2009, rightly the Tribunal had fixed the notional income at Rs.4500/-, though the claimant was a student studying in a college. Fixing the said notional income, the Tribunal awarded a sum of Rs.3,06,000/- towards loss of income for the disability sustained by the claimant by adopting the multiplier as 17. However, as rightly pointed out by the appellant, except for the assessment of disability by an independent doctor, the opinion of the Medical Board had not been obtained with regard to the percentage of disability suffered by the claimant. Therefore, the contention of the appellant that the assessment of disability at 50% is on the higher side. Naturally, to fix the disability, this Court has to refer the claimant to the Medical Board. However, considering the fact that the accident had happened in the year 2009 and almost a decade and a half had passed by now, it would not be in the interest of either parties as also in the interest of justice to refer the matter to the Medical Board. Therefore, to render substantial justice to either party, this Court deems that a sum of Rs.2,75,000/- towards loss of income, would be a just and reasonable compensation. Therefore, in the facts and circumstances of the case, the



C.M.A.No.3783 of 2019

Court is inclined to reduce the loss of income from Rs.3,06,000/- to a sum of Rs.2,75,000/-. The compensation awarded by the Tribunal under the other heads are just and reasonable and the same does not require any interference.

10. In view of the above, the compensation awarded by the Tribunal is modified as under :-

<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Loss of income	3,06,000/-	2,75,000/- (reduced)
2	Pain and Suffering	20,000/-	20,000/-
3	Extra nourishment	5,000/-	5,000/-
4	Transportation	5,000/-	5,000/-
5	Damages to clothes	1,000/-	1,000/-
6	Medical expenses	58,142/-	58,142/-
	Total	3,95,142/-	3,64,142/-

11. The appellant in C.M.A.No.3783 of 2019 is directed to deposit 70% of the modified award amount to the credit of M.C.O.P.No.253 of 2009 along with interest at the rate of 7.5% per annum from the date of



C.M.A.No.3783 of 2019

WEB COPY

claim petition till the date of deposit along with 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. The claimant shall forfeit the remaining 30% of the modified award amount due to his own contributory negligence. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the claimant through RTGS within a period of two (2) weeks thereafter.

12. In the result, the civil miscellaneous appeal is partly allowed and the cross objection is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

10.11.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp

To

- 1.The III Additional District and Sessions Court cum Motor Accidents Claims Tribunal, Erode, Gopichettipalayam.
- 2.The Section Officer, V.R.Section, High Court, Madras.



WEB COPY



C.M.A.No.3783 of 2019

M.DHANDAPANI, J.

sp

C.M.A.No.3783 of 2019
and
Cros.Obj.No.11 of 2021
and
C.M.P.No.21794 of 2019

03.10.2023