



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.2253 of 2018 and
Cross. Objection No.42 of 2019

The Oriental Insurance Company Ltd.,
Rep. by its Divisional Manager,
Jambu Bala Complex, Arcot Road,
Velloer Town

... Appellant in C.M.A.No.2253of 2018 and
1st respondent in Cross. Obj. No.42 of 2019
Vs.

1.M.Sbbu

...1st Respondent in C.M.A.No.2253of 2018 and
appellant inCross. Obj. No.42 of 2019

2.D.Rajendiran

... 2nd respondent in both C.M.A.No.2253of 2018
and in Cross. Obj. No.42 of 2019

Prayer in CMA No.2253 of 2018: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment passed in MCOP No.616 of 2016 on 26.03.2018 on the file of the I Additional District and Sessions Judge (Motor Accident Claims Tribunal) at Vellore District and pleaded to dismiss the above claim and allow the CMA.

Prayer in Cross. Obj. No.42 of 2019: This Cross Objection is filed under Order 41 Rule 22 of CPC praying to enhance the Award with interest at the rate of 18% per annum.



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For Appellant in CMA No.2253/2018 and
1st respondent in Cross.Obj. No.42/2019 : Mr.J.Chandran

For R1 in CMA No.2253/2018 and
appellant in Cross. Obj. No.42/2019 : Mr.R.Nalliyappan

For R2 in both CMA.No.2253/2018
and in Cross. Obj. No.42/2019 : No Appearance

JUDGMENT

The Civil Miscellaneous Appeal in CMA No.2253 of 2018 is filed by the Insurance Company to set aside the judgment passed in MCOP No.616 of 2016 dated 26.03.2018, on the file of the I Additional District and Sessions Judge (Motor Accident Claims Tribunal) at Vellore District.

2. The Cross. Objection in Cross. Obj. No.42 of 2019 is filed by the claimant for enhancement of compensation.

3. The appeal in CMA No.2253 of 2018 has been filed by the Insurance Company. The 1st respondent is the claimant. The 2nd respondent and the appellant are the owner and insurer of the offending vehicle namely mini van bearing Regn. No.TN-23-BV-4141.

4. The case of the claimant is that on 15.04.2012 at 7.00 a.m.,



while the claimant was riding his two wheeler carrying his friend on the pillion, on the Ussoor to Vellore Road, opposite to the Girls High School, Ussoor, a mini Van bearing Regn. No.TN-23-BV-4141, belongs to the 2nd respondent herein, came in a rash and negligent manner and dashed against the claimant. Due to which, he sustained grievous injuries in his right leg. Immediately, he was taken to the Government Vellore Medical College Hospital and then shifted to the CMC Hospital, Vellore, where he was treated as inpatient. A case was registered against the driver of the Van by the Ariyur Police.

5. The claimant filed a claim petition in MCOP No.616 of 2016 before the I Additional District and Sessions Judge (Motor Accident Claims Tribunal) at Vellore District, claiming compensation of Rs.15,00,000/- for the injuries sustained by him stating that at the time of accident he was aged 32 years and was doing Electrical contract business and was earning more than Rs.25,000/- per month and he was the only bread winner of his family. Due to the accident, he suffered permanent disability and thereby, he was unable to do any work as before the accident.

6. In order to substantiate the claim before the Tribunal, on the



side of the claimant, the claimant himself was examined as P.W.1 and 11 documents were marked as Ex.P.1 to Ex.P.11. On the side of the respondents, 2 witnesses were examined as R.W.1 and R.W.2 and 4 documents were marked as Ex.R1 to Ex.R4.

7. Before the Tribunal, the 1st respondent therein/2nd respondent herein who is the owner of the offending vehicle, remained ex-parte.

8. The Tribunal, after hearing the arguments on either side and considering the materials, awarded compensation of Rs.9,59,200/- and directed the Insurance Company to pay the compensation with interest at 7.5% per annum from the date of filing of the petition (27.10.2012) till the date of deposit, excluding the default period if any.

9. The Insurance Company has filed the present Civil Miscellaneous Appeal challenging the award passed by the Tribunal and the claimant has filed the Cross Objection for enhancement of compensation. Since both the Civil Miscellaneous Appeal and the Cross Objection are arising out of the same order, they both are taken together.



10. The learned counsel for the Insurance Company submitted that the quantum fixed by the Tribunal is exorbitant and the Award passed by the Tribunal does not reflect the 'just compensation'. There is no material to show that the claimant has to undergo a further surgery. There is also no material to show that the claimant incurred future medical expenses after filing of the claim petition. Though the Medical Board had fixed the disability at 65%, it is only on the part of the body and it is not for the whole body and if it is converted to the whole body, it would be very less, whereas, the Tribunal went wrong in accepting the permanent disability at 65% as fixed by the Medical Board and also adopted multiplier method. Further, the claimant has not proved that he got total permanent disability and unless he proves the same, he is not entitled for multiplier method for getting the compensation and he can get the compensation only on the percentage method. Further, there is no material to prove the avocation and income of the claimant. However, the Tribunal fixed Rs.6,500/- notionally and therefore, the Award fixed by the Tribunal is on the higher side. Hence, the same is liable to be reduced and the appeal filed by the Insurance Company may be allowed and the Cross Objection filed by the claimant may be dismissed.

11. The learned counsel for the claimant submitted that the



Tribunal failed to consider the future medical expenses and also future prospects. The claimant sustained grievous injuries in the leg and thereby, he was not able to stand and walk and he lost his earning capacity. Even after undergoing a surgery, he could not function as before the accident. Even though the Medical Board itself fixed the disability at 65%, the Tribunal has awarded very minimum compensation towards pain and sufferings. Even the compensation awarded by the Tribunal under the other heads are also on the lower side. Therefore, the compensation awarded by the Tribunal does not reflect the 'just compensation' and it is on the lower side and therefore, the same has to be enhanced. Further, the notional income fixed by the Tribunal is very low. The claimant was doing Electrical contract business and was earning more than what the Tribunal has fixed. Therefore, the same may also be enhanced.



12. Heard both sides and perused the materials available on record.

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13. The accident is not in dispute. The manner of accident is not in dispute. The liability is also not disputed. The only dispute is with regard to the quantum fixed by the Tribunal.

14. Admittedly, the claimant has not produced any material to prove that he was an earning member. Though he has produced the educational qualification certificate, employment of the claimant cannot be ascertained from the educational qualification certificate. Further, though the claimant has stated that he was earning a sum Rs.25,000/- per month, there is evidence or material to prove the same. Therefore, the Tribunal has fixed Rs.6,500/- notionally. This Court does not find any reason to interference with the same.

15. As far as disability is concerned, though the Medical Board fixed the disability at 65%, it is not for the whole body. However, this Court fix disability for the whole body at 35%. Since the claimant was aged 32 years at the time of accident, the multiplier would be '16'. Admittedly, as per the



guidelines of the Hon'ble Supreme Court in the case of *National Insurance Company Limited Vs. Pranay Sethi and Others reported in (2017) 16 SCC*

680, the petitioner is entitled for future prospects of 40%. Accordingly, the amount of Rs.8,11,200/- awarded by the Tribunal towards "loss of earning capacity" is reduced to Rs.6,11,520/- (Rs.6,500/-+40%x12x16x35%).

16. As far as pain and sufferings is concerned, since the claimant has undergone a surgery, a sum of Rs.50,000/- is awarded instead of Rs.25,000/- towards "pain and sufferings".

17. Accordingly, the Award passed by the Tribunal is re-worked as tabulated below;

S. No.	Particulars	Amount Awarded by the Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced or set aside
1.	For loss of earning capacity	Rs.8,11,200/-	Rs.6,11,520/-	Reduced
2.	For Medical Expenses	Rs.98,000/-	Rs.98,000/-	Confirmed
3.	For Pain and Sufferings	Rs.25,000/-	Rs.50,000/-	Enhanced
4	For Extra Nourishment	Rs.10,000/-	Rs.10,000/-	Confirmed
5	For Loss of	Rs.10,000/-	Rs.10,000/-	Confirmed



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	Amenities			
6	For Transport Expenses	Rs.5,000/-	Rs.5,000/-	Confirmed
	Total	Rs.9,59,200/-	Rs.7,84,520/-	Reduced

18. The award passed by the Tribunal is modified by reducing the compensation amount from Rs.9,59,200/- to Rs.7,84,520/-.

19. The appellant/Insurance Company is directed to deposit the reduced award amount of Rs.7,84,520/- to the credit of MCOP No.616 of 2016 on the file of the I Additional District and Sessions Judge (Motor Accident Claims Tribunal) at Vellore District, with interest at 7.5% per annum, from the date of filing of the petition (27.10.2012) till the date of deposit, excluding the default period if any as awarded by the Tribunal, less the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment.



20. On such deposit being made, the Tribunal is directed to calculate the above said compensation, including interest, costs, etc., after adjusting the amount, if any already withdrawn by the claimants, and credit the actual amount, in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others).

21. With the above modification, the Civil Miscellaneous Appeal and the Cross Objection are disposed of. There shall be no order as to costs.

07.09.2023

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



To

C.M.A. No.2253 of 2



1.The I Additional District and Sessions Judge
(Motor Accident Claims Tribunal) at Vellore District

3.The Section Officer,
VR Section, High Court, Madras.



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C.M.A. No.2253 of 2



P.VELMURUGAN. J.

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