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CMA NO.3241 OF 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 22 / 03 / 2024

JUDGMENT DELIVERED ON: 08 / 04 / 2024

CORAM:

**THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

CMA NO.3241 OF 2021

AND

CMP NO.18454 OF 2021 IN CMA NO.3241 OF 2021

AND

CROS.OBJ.NO.15 OF 2023

CMA NO.3241 OF 2021

M/s.The IFFCO-TOKIO General
Insurance Company Limited
No.43/3, First Floor, 100 Feet Road,
Mudaliarpeta,
Pondichery – 605 004.

... Appellant
II Respondent

Vs.

1.U.Murukaiah

... I Respondent /
Petitioner

2.S.R.Kuppusamy

... II Respondent /
I Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Final Award dated 28th April, 2021, passed in MCOP.No.874 of 2016 by the Motor Accidents Claims Tribunal (Special Subordinate Court) Cuddalore.



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For Appellant : Mr.J.Michael Visuvasam
For Respondent-1 : Mr.A.G.F.Terry Chella Raja
For Respondent-2 : No appearance

CROS.OBJ.NO.15 OF 2023

U.Murukaiah ... Cross Appellant /
1st Respondent

Vs.

1.M/s.The IFFCO-TOKIO General
Insurance Company Limited
No.43/3, First Floor, 100 Feet Road,
Mudaliarpeth, Pondicherry – 605 004. ... 1st Respondent/
Appellant

2.Kuppusamy ... 2nd Respondent /
2nd Respondent

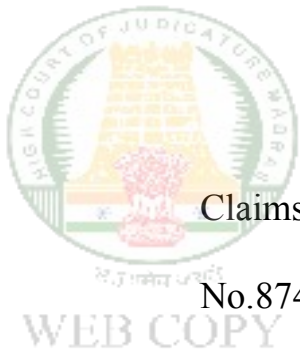
PRAYER : Cross Objections filed under Order 41 Rule 22 of Code of Civil Procedure, against the Award dated 28th April, 2021, passed in MCOP.No.874 of 2016 by the Motor Accident Claims Tribunal (Special Subordinate Court) Cuddalore.

For Cross Appellant : Mr.A.G.F.Terry Chella Raja
For Respondent-1 : Mr.J.Michael Visuvasam
For Respondent-2 : No appearance

COMMON JUDGMENT

R.SAKTHIVEL, J.

This Civil Miscellaneous Appeal and Cross Objections are at the instance of the insurance company / 2nd respondent and the petitioner respectively. In both, the challenge is to the Award of the Motor Accidents



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Claims Tribunal, Special Subordinate Court, Cuddalore, made in MCOP

No.874 of 2016 dated April 28th, 2021.

2.For the sake of convenience, henceforth, the parties will be referred to as per their array in the original petition.

Petitioner's Case

3.According to the petitioner, on July 13th, 2014 at around 12.00 noon, he was riding his motorcycle bearing Registration No.TN-31-AT-0194 on the left most side on the Jahir Ussain Road at Neyveli. While so, the first respondent's vehicle bearing Registration No.TN-31-AP-9813, traveling in the same direction at a very high speed in a rash and negligent manner, collided with the petitioner's motorcycle. As a result of the impact, the petitioner was thrown out of his motorcycle, sustained grievous injuries and multiple fractures all over his body and head. Immediately, the petitioner was rushed to Government NLC Hospital, Neyveli and then transferred to MIOT Hospital, Chennai and then to Bone and Joint Clinic, Virudhachalam and then to Abirami Hospital, Cuddalore for advanced treatment. The petitioner was aged 49 years at the time of accident. The petitioner attributes negligence on the



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part of the rider of the motorcycle bearing Registration No.TN-31-AP-9813, and contends that the same is the cause of the accident. Further contends that, the petitioner as Executive Engineer at Neyveli Lignite Corporation Limited (NLC), Neyveli was earning Rs.97,711/- per month; that he became permanently disabled due to the accident. He not able to work and earn as he used to; that he lost his scope for promotion; that he was transferred from production unit to service unit and thus he was deprived of all allowances meant for production unit; that the NLC settled major part of the medical bills on recovery basis; and that his wife, who was employed as a teacher, had to resign to look after him. On account of the above reasons, the petitioner sought for compensation of Rs.75,00,000/- (Rupees Seventy Five Lakhs Only).

First Respondent's Case

4.First Respondent denied the accident and contended that the rider of his vehicle had a valid license and that if at all any claim is allowed, it has to be against the second respondent as the vehicle was insured with the second respondent.



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Second Respondent's Case

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5.The claim was resisted by the insurance company contending that the accident has happened only due to the negligent act of the petitioner. The petitioner, while riding the two wheeler bearing Registration No.TN-31-AT-0194 suddenly crossed the road and caused accident. Hence, the second respondent / insurance company cannot be mulcted with the liability to pay the entire Award amount. The age and the income particulars were denied and the petitioner was put to strict proof of the same. Accordingly, the respondent / insurance company sought for dismissal of the petition.

6.On the side of the petitioner, petitioner himself was examined as P.W.1 and Ex-P.1 to Ex-P.30 were marked. No oral evidence was adduced on the side of the respondent. Petition copy in MCOP No.3200 of 2014 filed by the petitioner himself for the same accident before the Chief Judicial Magistrate, Cuddalore was marked as Ex-R.1. To be noted, the same was dismissed as not pressed. Disability certificate issued by the Medical Board at Government Headquarters Hospital, Cuddalore was marked as Ex-C.1.



7.The Motor Accidents Claims Tribunal, after hearing both sides and considering the evidence available on record, particularly the First Information Report registered against the first respondent, came to the conclusion that the accident happened due to the negligent riding of the first respondent's driver. Accordingly, fixed negligence on the first respondent's driver. Since the vehicle rode by the first respondent's driver has been insured with the second respondent, the second respondent / insurance company is liable to pay compensation to the petitioner. Further concluded that, at the time of accident, the petitioner was 49 years and was working as an Engineer earning a monthly Net Salary of a sum of Rs.65,540/- (Rupees Sixty Five Thousand Five Hundred and Forty Only). Further, after considering the disability certificate and nature of injuries, the Tribunal has awarded compensation in the following manner:

S.No.	Heading	Amount
1	Loss of Income	Rs.40,89,696.00
2	Pain and Sufferings	Rs.75,000.00
3	Medical expenses	Rs.50,000.00
4	Transport charges	Rs.50,000.00
5	Extra Nourishment	Rs.30,000.00
6	Medical Bills	Rs.18,370.00
7	Toll Plaza charges	Rs.27,000.00
	Total	Rs.43,40,066.00



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8.The Motor Accident Claims Tribunal, after considering the oral and documentary evidence, passed an Award directing the second respondent / insurance company to pay compensation of Rs.43,40,066/- (Rupees Forty Three Lakhs Forty Thousand and Sixty Six Only) with interest at the rate of 7.5% per annum from the date of claim petition till realization.

9.Feeing aggrieved with the said Award, the second respondent / insurance company has preferred this Civil Miscellaneous Appeal under Section 173 of Motor Vehicles Act, 1988.

10.Not satisfied with the quantum of compensation, the petitioner has preferred the Cross Objections under Order 41 Rule 22 of Code of Civil Procedure.

Arguments

11.This Court has heard Mr.J.Michael Visuvasam, learned counsel for the appellant / insurance company and Mr.A.G.F.Terry Chella Raja, learned counsel for the cross appellant / petitioner.



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12.The learned counsel appearing for the appellant / insurance company has submitted that, at the time of accident, the petitioner was employed as an Executive Engineer in 'NLC' and after the accident and due treatment, he continues to be in employment in the said company itself. Hence, the petitioner has no loss of income due to the accident. Further, the disability indicated in the disability certificate is excessive. In short, the learned counsel for the appellant / insurance company has argued that the Tribunal erred in adopting the multiplier method in passing the award. Further, the Tribunal has awarded Rs.50,000/- towards medical expenses and again awarded Rs.18,370/- towards medical bills which is not admissible as per law. Further, the Tribunal awarded a sum of Rs.27,000/- towards toll and transport expenses. In addition to that, the Tribunal awarded a sum of Rs.50,000/- towards transport charges which is also not permissible under law. Accordingly, the learned counsel for the appellant / insurance company has prayed to allow the appeal.

13.The first respondent / petitioner filed Cross Objection. The learned counsel appearing for the first respondent / petitioner submitted that, at the time of accident, the petitioner received a sum of



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Rs.97,710.50/- per month as Gross Salary. However, the Tribunal had taken the net salary of Rs.65,540/- only, for the purpose of computing the loss of income. Further, the Tribunal failed to consider the future prospects of the first respondent. Further, the Tribunal failed to consider loss of allowance and the rejection of petitioner's promotion due to the disability sustained in the accident. Further contended that, the petitioner is still undergoing treatment. Accordingly, the learned counsel for the first respondent / petitioner seeks to enhance the award amount.

14.This Court has considered both sides submissions. It is not in dispute that at the time of accident, the first respondent was working as an Executive Engineer in M/s.Neyveli Lignite Corporation Limited and earned monthly Gross salary of Rs.97,711/- and net salary of Rs.65,540/-. Admittedly, after the accident, the first respondent continues to work there as an Engineer and receiving his monthly salary without any reduction. There is no loss of income or loss of salary due to the accident. Further, the District Medical Board assessed the disability at 40%. The disability certificate issued by the Medical Board would show that due to the accident, *the petitioner was unable to move fast / run in the case of fire social unrest; fear of sepsis c implant in situ; difficulty on prolonged standing + sitting and percentage of disability (40% FORTY).*



15.The petitioner is receiving salary every month even after the accident without any reduction. Hence, there is no loss of income caused to the petitioner. Hence, the assessment of loss of income by the Tribunal using the multiplier method is incorrect. The Tribunal ought to have arrived the compensation based on lump sum calculation instead of using the multiplier method for the disability. Hence, this Court is of the considered view that a sum of Rs.5,000/- per percentage of disability would be a reasonable compensation for his disability. Accordingly, this Court modifies the said head at the rate of $\text{Rs.5,000} \times 40 = \text{Rs.2,00,000/-}$ towards disability, which is a reasonable amount.

16.As far as pain and sufferings is concerned, the Tribunal awarded Rs.75,000/-. As per the disability certificate, the petitioner facing difficulty on prolonged standing and sitting. Hence, considering the nature of the injury and the difficulty facing by the petitioner due to the accident, this Court is of the view that a sum of Rs.3,00,000/- would be a reasonable amount for pain and sufferings.

17.The Tribunal awarded a sum of Rs.50,000/- towards medical expenses and Rs.50,000/- for transport charges and Rs.30,000/-



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for extra nourishment and Rs.18,370/- towards medical bills and Rs.27,000/- for toll fee. Considering the nature of injury and the nature of the treatment taken by the petitioner, this Court concludes that a sum of Rs.30,000/- is reasonable amount for extra nourishment. The other heads of amounts awarded are actual expenditure incurred by the petitioner due to the accident.

18.It is submitted that though the petitioner is working in M/s.Neyveli Lignite Corporation Limited, after retirement, he cannot reimburse the entire future medical expenses. This Court is of the view that the above submission is acceptable. Hence, this Court is of the view that a sum of Rs.2,00,000/- shall be awarded towards future medical expenses.

19.Though the petitioner has no loss of income due to the accident, the petitioner losses his quality of life. The Tribunal has not awarded compensation towards loss of amenities to the petitioner. Hence, this Court is of the view that a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) would be a reasonable amount for loss amenities.



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20. Accordingly, the compensation awarded by the Tribunal is

now modified as under:

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S.No.	Heading	Amount now awarded by this Court
1	Compensation for disability (Rs.5,000 X 40)	Rs.2,00,000.00
2	Pain and Sufferings	Rs. 3,00,000.00
3	Medical expenses	Rs. 50,000.00
4	Transport charges	Rs. 50,000.00
5	Extra Nourishment	Rs. 30,000.00
6	Medical Bills (Ex-P.26)	Rs. 18,370.00
7	Toll fee	Rs. 27,000.00
8	Loss of Amenities	Rs. 5,00,000.00
9	Future Medical expenses	Rs. 2,00,000.00
	Total	Rs.13,75,370.00

21. The appellant/insurance company is directed to deposit the modified award amount of **Rs.13,75,370/- (Rupees Thirteen Lakhs Seventy Five Thousand Three Hundred and Seventy Only)** with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP No.874 of 2016 on the file of Motor Accidents Claims Tribunal (Special Subordinate Court) Cuddalore, after deducting the amount, if any, already deposited within a period of



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eight weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent / petitioner is permitted to withdraw the same along with proportionate accrued interest and cost, less the amount already withdrawn, if any.

22.As stated supra, there is no loss of income to the petitioner due to the accident. Hence, the Cross Objection filed by the first respondent / petitioner does not have any merits and accordingly, deserves to be dismissed.

23.In fine, **the Civil Miscellaneous Appeal is partly allowed** as indicated above and **the Cross Objection is dismissed**. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

[R.S.M., J.]

[R.S.V., J.]

08 / 04 / 2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking Order
TK



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R.SUBRAMANIAN, J.

AND

R.SAKTHIVEL, J.

TK

To

The Motor Accidents Claims Tribunal
(Special Subordinate Court)
Cuddalore.

PRE-DELIVERY JUDGMENT MADE IN

CMA NO.3241 OF 2021

08 / 04 / 2024