



C.M.A(MD)No.564 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 25.03.2024

CORAM:

THE HON'BLE MR.JUSTICE P. DHANABAL

C.M.A(MD)No.564 of 2015

and

M.P(MD)No.2 of 2015

and

C.M.P(MD)Nos.11300 & 11799 of 2016

and

Cros.Objection(MD)No.54 of 2017

C.M.A(MD)No.564 of 2015:

The New India Assurance Company Limited,
Through its Branch Manager,
248.B, Kamarajar Salai,
Madurai Town, Madurai-625 009,
Madurai District.

... Appellant/2nd Respondent

Vs.

1.Vadivel Murugan

... 1st Respondent/Petitioner

2.Manivasagam

... 2nd Respondent/1st Respondent

*(2nd Respondent ex parte in Tribunal:
Notice dispensed with)*

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree of the Claims Tribunal in M.C.O.P.No.11 of 2009, dated 28.08.2014 on the file



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of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court,
Sivagangai and allow the appeal.

For Appellant : Mr.J.S.Murali

For R-1 : Mr.S.Srinivasa Raghavan
R-2 : Dispensed with

Cros.Objection(MD)No.54 of 2017:

Vadivel Murugan

... Cross Objector

Vs.

1.The New India Assurance Company Limited,
Through its Branch Manager,
No.248-B, Kamarajar Salai,
Madurai Town, Madurai-625 009,
Madurai District.

2.Manivasagam ... Respondents
(*Second respondent ex parte in Tribunal: Notice
dispensed with*)

Prayer : This Cross Objection filed under Order XLI, Rule 22 of the Civil Procedure Code, to enhance the quantum of compensation granted by fair and decretal order, dated 28.08.2014 made in M.C.O.P.No.11 of 2009 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai and allow this cross objection.

For Cross Objector : Mr.S.Srinivasa Raghavan



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For R-1 : Mr.J.S.Murali

R-2 : *Ex parte*

COMMON JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed in M.C.O.P.No.11 of 2009 on the file of the Motor Accident Claims Tribunal Chief Judicial Magistrate, Sivagangai, wherein, the first respondent herein has filed a petition for compensation and the Tribunal has awarded a sum of Rs.12,19,000/- with interest at the rate of 9% per annum from the date of petition till the date of realisation. As against the said order, the second respondent in the main petition (i.e.,) Insurance Company has preferred this appeal. In the said appeal, the first respondent / petitioner claimant has filed cross objection.

2. For the sake of convenience and brevity, the parties herein after will be referred as per their status / ranking in the Tribunal.



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3. The brief facts of the petition filed before the Tribunal are as follows:

On 26.08.2006, when the petitioner was proceeding, his two-wheeler bearing Registration No.TN 63 B 3971 at about 3.30 P.M., a lorry bearing Registration No.TN 65 T 1842 came in a opposite side with rash and negligent manner and dashed against the two-wheeler. Thereby he sustained head injury and also several fracture injuries. He lost his left side eye and he was admitted in the hospital as in patient from 26.08.2006 to 08.09.2006. He was permanently disabled and thereby, he claims compensation.

4. The averments of the counter filed by the second respondent are as follows:

The averments made in the petition are all denied. The accident occurred due to the negligence on the part of the petitioner. The respondent denied the age, income and occupation of the petitioner. The petitioner not sustained any permanent disability. Since the accident took place due to the negligence on the part of the petitioner, the second respondent is not liable to pay any amount to the petitioner.



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5. Before the Tribunal, on the side of the petitioner, he examined P.W.1 to P.W.3 and marked Exhibits P.1 to P.13. On the side of the respondents, no witnesses were examined and not marked any documents.

6. The Tribunal after considering the evidences adduced on both sides, awarded a sum of Rs.12,19,000/- towards compensation and also awarded 9% interest. The said award amount includes the future medical expenses. The second respondent Insurance Company challenged the interest awarded for future medical expenses through this appeal. The first respondent / petitioner in the appeal has filed cross objection. The cross objector during the pendency of the appeal filed petition in C.M.P(MD)No.11300 of 2016 to receive the medical bills expended by him as additional evidence.

7. The learned Counsel appearing for the appellant would contend that the Tribunal has awarded a sum of Rs.7,05,000/- towards future medical expenses and the Tribunal has awarded interest for that amount also and the petitioner is not entitled to the interest for the future medical



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expenses. But the Tribunal failed to consider the same and awarded interest for that amount also. Further, he would contend that the petitioner already awarded future medical expenses, thereby, he is not entitled for enhancement of amount and the Tribunal awarded a fair and just compensation, hence, the cross objection is liable to be dismissed.

8. To support the contention of the learned Counsel for the appellant, he relied judgment in *AIR 1995 SC 755*.

9. The learned Counsel appearing for the respondent in main appeal and the cross objector has argued that the petitioner has sustained grievous injuries and he lost his one eye and the Doctor also given 40% of disability. While so, the Trial Court has taken a sum of Rs.3,000/- as monthly income. The petitioner was earning more than Rs.6,000/- per month and thereby, the award passed by the Tribunal is liable to be enhanced. Further, the Trial Court has not awarded compensation under the heads of transport, loss of income and attendance charges and also awarded only meagre amount under the head of transport charges and also award for future medical expenses, since the respondent / petitioner has to



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spend money for the future medical expenses.

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10. This Court had heard both sides and perused the records. After hearing both sides and perusing the records, the point for determination in this appeal is:

i) Whether the appeal has to be allowed or not?

11. The point for determination in the cross appeal is:

i) Whether the C.M.P(MD)No.11300 of 2016 is to be allowed or not?

ii) Whether the award passed by the Tribunal is liable to be enhanced?

The point in appeal:

12. This appeal has been preferred as against the future medical expenses awarded by the Trial Court and thereafter, the matter was remanded back to the Trial Court for taking evidences in respect of the medical expenses incurred by the respondent / petitioner. Thereafter, the Trial Court has passed an award on the evidence of Doctor and thereby,



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the Trial Court also confirmed that the future medical expenses are necessary and the petitioner also expanded the expenses and also filed separate application under Order 41, Rule 27 of CPC by stating that those documents are necessary to prove the already incurred medical expenses and the same can be decided later in another point. Since the Trial Court itself came to a conclusion after recording the evidences, the learned Counsel for the appellant also fairly conceded that since in the Trial Court, the witness was examined and passed reasoned order and the appeal is only as against the interest awarded for the future medical expenses. They have no objection to dismiss the appeal. Hence, the appeal is liable to be dismissed.

Point No.1 in Cross Objection:

13. The first respondent / petitioner in the appeal has filed cross objection for enhancement of amount and during pendency of the appeal, they filed an application to receive the documents as additional evidence under Order 41, Rule 27 of CPC. Those documents are medical bills expended after the award passed by the Tribunal. The learned Counsel appearing for the petitioner would contend that these documents are



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pertaining to medical bills incurred by the claimant and thereby, those documents are to be received. The learned Counsel appearing for the appellant / second respondent would contend that the Tribunal already awarded future medical expenses and the Doctor was also examined after remand of the case, hence, those documents are not necessary to decide the case, since already Tribunal awarded future medical expenses.

14. On perusal of the records, it is seen that already the matter was remanded back to Trial Court to examine the Doctor for future medical expenses and Doctor was also examined before the Trial Court and he stated about the future medical expenses. Further, these medical bills are already covered with the future medical expenses awarded by the Tribunal. Therefore, the said documents once again cannot be received as evidence, since the Trial Court already decided the issue. Therefore, the documents filed by the petitioner no way helpful to decide the cross objection, hence, the petition is liable to be dismissed. Thus the point is answered.

Point No.2 in cross objection:

15. This cross objection is filed to enhance the compensation



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awarded by the Tribunal. As far as the enhancement of amount is concerned, already the Trial Court adopted the multiplier method but only taken the monthly income of the petitioner as Rs.3,000/-. In this context, the learned Counsel appearing for the cross objector relied a decision of ***New India Assurance Company Vs. Kalpana and Others reported in 2007 (1) CTC 523***, wherein the Hon'ble Supreme Court had taken a sum of Rs.6,000/- for the deceased person for the year of 2006 accident. But in the case on hand, though there is no records, the monthly income taken by the Tribunal is too low and thereby, this Court can increase the monthly income of the petitioner as Rs.6,000/- as decided by the Hon'ble Supreme Court in the said case. Thereby, the award amount would come to a sum of Rs.6,000 X 12 X 17 X 40 / 100. So the petitioner is entitled to a sum of Rs.4,89,000/- towards permanent disability. The Tribunal has awarded a sum of Rs.2,000/- towards transport charges that is too low. Therefore, this Court is inclined to award a sum of Rs.10,000/- towards transport charges. The Trial Court failed to consider the loss of income for the treatment period. The petitioner was admitted in the hospital for more than one year. Thereby, entitled to a sum of Rs.54,000/- towards loss of income. The available evidences shows that the petitioner sustained grievous injuries



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and she also spent for future medical expenses and still she is undergoing treatment. The Tribunal already awarded a sum of Rs.2,44,800/- and the difference amount is Rs.2,44,800/- under the head of disability. In other heads, the difference amount would come to Rs.56,000/-. Therefore, the total difference amount would come to around Rs.3,00,000/-. As discussed above, the cross objector is entitled to the said excess amount. Thus the point is answered.

16. In the result, this Civil Miscellaneous Appeal in C.M.A(MD)No. 564 of 2015 stands dismissed. Cross objection in Cros. Objection (MD)No.54 of 2017 stands partly allowed and the petitioner is entitled to a sum of Rs.3,00,000/- (Rupees Three Lakhs Only). The respondent / insurance company is directed to pay the enhanced amount within two months from the date of this judgment with interest at the rate of 7.5% per annum from the date of appeal till the date of realization. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

25.03.2024



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NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

- 1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate Court,
Sivagangai.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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