



*C.M.A.(MD)No.1052 of 2017
& Cros. Obj(MD)No.24 of 2018*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.02.2024

Pronounced on : 11.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.1052 of 2017
and
C.M.P.(MD)No.10796 of 2017
and
Cros.Obj.(MD)No.24 of 2018

C.M.A.(MD)No.1052 of 2017

The Manager,
The Oriental Insurance Company Ltd.,
Divisional Office,
Parimalam Complex,
No.11, E.V.N Road, 2nd Floor,
Erode – 638 002.

...Appellant/
Respondent No.3

Vs.

1. M.P.Ganesan

...1st Respondent/
Petitioner

2. K.A.Gowtham

...2nd Respondent/
Respondent No.1

3. K.R.Ashok

...3rd Respondent/
Respondent No.2

(Respondent Nos.2 & 3 given up)



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Cros.Obj.(MD)No.24 of 2018

M.P.Ganesan

...Cross objector/
Petitioner

Vs.

1. The Manager,
The Oriental Insurance Company Ltd.,
Parimalam Complex,
2nd Floor, No.11, E.V.N Road,
Erode – 638 002.

...1st Respondent/
Respondent No.3

2. K.A.Gowtham

...2nd Respondent/
Respondent No.1

3. K.R.Ashok

...3rd Respondent/
Respondent No.2

Prayer in C.M.A.(MD)No.1052 of 2017 : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the order of the Tribunal of MACT cum Principal Sub Court, Karur made in M.C.O.P.No.141 of 2014 dated 13.06.2017 and allow the appeal with costs.

Prayer in Cros.Obj.(MD)No.24 of 2018 : This Cross Objection filed under Order 41 Rule 22 of Civil Procedure Code, to set aside the award passed by the Motor Accidents Claims Tribunal (Principal Subordinate Court), Karur passed in M.C.O.P.No.141 of 2014 dated 13.06.2017 and enhance the award amount in the interest of justice.



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(in C.M.A.(MD)No.1052 of 2017)

For Appellant : Mr.A.Ilango

For R1 : Mr.M.P.Senthil

(in Cros.Obj.(MD)No.24 of 2018)

For Cross-objector : Mr.M.P.Senthil

For R1 : Mr.A.Ilango

COMMON JUDGMENT

The Civil Miscellaneous Appeal and the Cross Objection are directed against the award passed in M.C.O.P.No.141 of 2014 dated 13.06.2017 on the file of the Motor Accident Claims Tribunal/Principal Subordinate Court, Karur.

2. The appellant/insurer, who was made liable to pay compensation of Rs.9,91,753/- (Rupees Nine Lakhs Ninety One Thousand Seven Hundred and Fifty Three only) with interest at 7.5% per annum and costs to the first respondent/claimant for the disability suffered by him, consequent to an accident occurred on 04.12.2013, challenged the quantum of compensation awarded at, by the Tribunal.



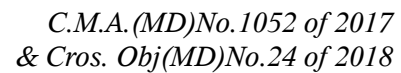
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3. The Cross Objector/claimant, who was awarded with compensation of Rs.9,91,753/- (Rupees Nine Lakhs Ninety One Thousand Seven Hundred and Fifty Three only) with interest at 7.5% per annum and costs for the disability suffered by him, challenged the quantum of compensation awarded at, by the Tribunal and claimed enhancement of the same.

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

5. In the grounds of appeal, the Insurer has raised the grounds that the Tribunal has wrongly fixed the monthly income of the claimant at Rs.25,000/- and excessively awarded Rs.1,20,000/- on the head of loss of income, that the Tribunal, without giving any specific reason, has excessively awarded Rs.2,00,000/- towards pain and suffering, that the Tribunal, without any evidence, has awarded Rs.65,000/- towards future medical expenses and that the Tribunal, without analyzing the genuineness of the medical bills, has excessively awarded Rs.4,96,753/- towards medical expenses.



7. When the appeal as well as the cross objection were taken up for final disposal, the learned counsel appearing for the insurer would submit that the Tribunal, without any evidence and without assigning any proper reasons, has awarded Rs.65,000/- for future medical expenses, Rs.1,20,000/- for loss of income and Rs.2,00,000/- for pain and suffering, but on the other hand, the learned counsel appearing for the claimant would submit that the Tribunal has erred in applying the percentage



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method, that since the claimant has suffered two major bone injuries and underwent three surgeries, the Tribunal ought to have applied the multiplier formula and that the disability fixed at 40% and the amount awarded at Rs.1,00,000/- for the disability compensation is on lower side.

8. No doubt, it is evident from the records that the claimant has suffered the following injuries:

1. Posterior Dislocation Left Hip
2. Closed Comminuted Segmental Fracture Both Bones Left Leg
with Compartment Syndrome
3. PCL Avulsion Injury Left Knee
4. Type 1 Open Distal Radius Dorsal Cortex Chip Fracture

9. It is not in dispute that the claimant, after the accident, was immediately taken to Apollo Hospital, Karur and after first aid treatment, he was taken to Ganga Medical Centre and Hospital Private Limited, Coimbatore and that he was taking inpatient treatment from 04.12.2013 to 23.12.2013. It is also not in dispute that the claimant had undergone three surgeries on 04.12.2013, 11.12.2013 and 13.12.2013. Admittedly, the



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claimant has only examined the medical officer, who has issued the disability certificate and not the medical officer, who had treated the claimant. No doubt, P.W.3-medical officer has deposed on the basis of the medical records available and fixed the disability at 45%, but the Tribunal, by observing that the percentage fixed is excessive, has quantified the disability at 40%. Considering the medical evidence available on record, the decision of the Tribunal in not applying the multiplier formula and in applying the percentage method cannot be found fault with. But at the same time, the Tribunal, without assigning proper reason, has reduced the disability percentage and hence, this Court is inclined to accept the disability fixed by the medical officer-P.W.3. Moreover, the Tribunal has awarded Rs.2,500/- per percentage of disability, but considering the nature of the injuries sustained and consequent disability and the period of accident, this Court is inclined to award Rs.4,000/- per percentage of disability and as such, the claimant is entitled to get Rs.1,80,000/- (Rs.4,000/- x 45) for the disability sustained.

10. Though the claimant has been alleging that he requires of Rs.5 lakhs for hip surgery as advised by the Doctor, admittedly he has not



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produced any medical certificate to substantiate the same. Hence, the amount awarded at Rs.65,000/- towards future medical expenses cannot be found fault with.

11. Considering the nature of the disability sustained and also the period of treatment and other attending circumstances, the amount awarded at Rs.2,00,000/- for pain and suffering and Rs.1,20,000/- for loss of income cannot said to be excessive. But at the same time, the Tribunal has only awarded Rs.10,000/- for extra nutrition and no amount was awarded for attendant charges. Considering the period of treatment and the nature of injuries, this Court is inclined to grant Rs.50,000/- for extra nutrition and Rs.25,000/- for attendant charges.

12. As rightly contended by the learned counsel appearing for the claimant, the Insurer has not specifically disputed the genuineness of the medical bills and the Tribunal, taking note of the bills under Ex.P.7 to Ex.P.10, Ex.P.12, Ex.P.13, Ex.P.21 and Ex.P.23, has awarded Rs.7,500/-, Rs.25,000/- Rs.3,57,781/-, Rs.49,600/- Rs.40,000/-, Rs.4,872/- and Rs.12,000/- respectively. Considering the above, the claimant is entitled to



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get total compensation of Rs.11,36,753/- (Rupees Eleven Lakhs Thirty Six Thousand Seven Hundred and Fifty Three only) and the compensation awarded by the Tribunal is modified as follows:-

S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1.	Disability compensation	1,00,000 (2500 x 40)	1,80,000 (4000 x 45)	Enhanced
2.	Medical Expenses	4,96,753	4,96,753	Confirmed
3.	Future medical expenses	65,000	65,000	Confirmed
4.	Loss of income	1,20,000	1,20,000	Confirmed
5.	Pain and suffering	2,00,000	2,00,000	Confirmed
6.	Extra nutrition	10,000	50,000	Enhanced
7.	Attendant Charges	Nil	25,000	Granted
	Total	9,91,753	11,36,753	Enhanced by Rs.1,45,000/-

13. Considering the other facts and circumstances, this Court, further decides that the parties are to be directed to bear their own costs.



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14. In the result, the Civil Miscellaneous Appeal is dismissed and the Cross Objection is partly allowed and the compensation awarded by the Tribunal at Rs.9,91,753/- (Rupees Nine Lakhs Ninety One Thousand Seven Hundred and Fifty Three only) is hereby enhanced to **Rs.11,36,753/- (Rupees Eleven Lakhs Thirty Six Thousand Seven Hundred and Fifty Three only)**. The respondents in Cros.Obj(MD)No.24 of 2018 are directed to deposit the modified enhanced amount with interest at 7.5% per annum from the date of petition till the date of realization excluding the default period, if any, jointly and severally to the credit of M.C.O.P.No.141 of 2014 on the file of Motor Accident Claims Tribunal/Principal Subordinate Court, Karur, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the cross objector/claimant in Cros.Obj.(MD)No.24 of 2018 is permitted to withdraw the amount together with interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed. The cross objector/claimant in Cros.Obj.(MD)No.24 of 2018 is **directed to pay the court fee** for the



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enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

11.03.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Motor Accident Claims Tribunal /
Principal Subordinate Court, Karur.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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**Pre-Delivery Judgment made in
C.M.A.(MD)No.1052 of 2017
and C.M.P.(MD)No.10796 of 2017
and Cros.Obj.(MD)No.24 of 2018**

Dated : 11.03.2024