



CMA(MD).No.1204 of 2017
and Cross Objection (MD).No.16 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 05.06.2024

Pronounced on : 10.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1204 of 2017
and
Cros.Obj(MD) No.16 of 2018

C.M.A(MD) No.1204 of 2017:

M/s.Saroja Gas Agency,
Through its Manager,
D.No.11, Padthadi 7th Street,
Madurai -1

... Appellant/1st Respondent

-VS-

1. J.Muthukumar

... 1st Respondent/Petitioner

2. M/s.The New India Assurance Company Limited,
Through its Divisional Manager,
D.No.248-B, Reka Towers,
248-A, Kamarajar Salai,
Madurai - 9

Respondent

... 2nd Respondent/2nd

Cross Objection No.16 of 2018:

J.Muthukumar

...Cross Appellant/1st Respondent

Vs



CMA(MD).No.1204 of 2017
and Cross Objection (MD).No.16 of 2018

1.M/s.Saroja Gas Agency
Through its Manager
D.No.11, Padthadi 7th Street
Madurai -1

....1st Respondent/Appellant

2.M/s.The New India Assurance Co.,Ltd.,
Through its Divisional Manager
D.No.248-B, Reka Towers
Kamarajar Salai
Madurai -9

...2nd Respondent/2nd Respondent

Prayer in CMA: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to set aside the decree and judgment in M.C.O.P.No.831 of 2013 on the file of the Special Subordinate Judge for MCOP cases, Madurai dated 27.06.2016.

Prayer in Cross Objection: Cross Appeal filed under Order 41 Rule 22 of Civil Procedure Code, to set aside the decree and judgment in respect of quantum award amount granted by the Tribunal and order for enhancement of award made in MCOP.No.831 of 2013 on the file of the Special Subordinate Judge for MCOP cases Madurai dated 27.06.2016 and allow the cross appeal in M.C.O.P.No.1204 of 2017.

CMA.No.1204 of 2017

For Appellant : Mr.K.Muralisankar

For Respondents : Mr.A.Liakath Ali – for R1
Mrs.P.Malini – for R2



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For Cross Appellant : Mr.A.Liakath Ali

For Respondents : Mr.K.Muralisankar for R1
Mrs.P.Malini – for R2

COMMON J U D G M E N T

The present Civil Miscellaneous Appeal in C.M.A.(MD) No.1204 of 2017 has been filed by the appellant/first respondent in M.C.O.P.No.831 of 2013, on the file of the learned Special Subordinate Judge for MCOP cases, Madurai, challenging the award, wherein the Insurance Company was directed to satisfy the award and thereafter, recover the same from the owner of the offending vehicle.

2. According to the injured claimant, he travelled as pillion rider in a two wheeler. An LMV van owned by the first respondent in the claim petition and insured with the second respondent in the claim petition came from the rear side and dashed against the two wheeler. Due to the said impact, the claimant sustained serious injuries and he had filed the above said claim petition.

3. The Tribunal, after considering the oral and documentary evidence, had arrived at a finding that the accident had taken place only due to the rash and negligent driving on the part of the driver of the LMV van.



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4. The Insurance Company has contended that the LMV vehicle is a transport vehicle and therefore, for driving the said vehicle, badge is required. Since the driver of the offending vehicle was not having a badge at the relevant point of time, the Insurance Company had contended that there is violation of policy condition. Accepting the said contention, the Tribunal has proceeded to pass an order of pay and recovery, after arriving at quantum of compensation of Rs.14,40,000/-. This award is under challenge in the present appeal filed by the insured person/owner of the offending vehicle.

5. According to the learned counsel appearing for the appellant, admittedly, the offending vehicle is an LMV vehicle. The driver of the said vehicle was holding a valid driving license at the relevant point of time. The only defect was that he was not having a badge for the said vehicle. Relying upon the judgment of the Hon'ble Supreme Court reported in **2017 14 SCC 663 (Mukund Dewangan Vs. Oriental Insurance Company Ltd.,)** wherein the Hon'ble Supreme Court has held that endorsement in respect of the LMV vehicle is not required, in case, a valid driving license is available, he prayed for reversing the portion of the award, which permits the Insurance Company to recover the award amount from the owner of the vehicle.



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6. Per contra, the learned counsel appearing for the Insurance Company had contended that the said judgment has been referred to Larger Bench of Hon'ble Supreme Court and therefore, the said judgment is not applicable. Hence, he prayed for sustaining the award passed by the Tribunal.

7. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

8. As rightly contended by the learned counsel appearing for the appellant the offending vehicle involved in the accident is an L.M.V and the driver of the said vehicle is having valid driving license, except that there is no endorsement made for the transport vehicle. As per the judgment of the Hon'ble Supreme Court reported in **2017 14 SCC 663 (Mukund Dewangan Vs. Oriental Insurance Company Ltd.,)** the endorsement is not required for driving the LMV vehicle. Till the Larger Bench decides the issue, this Court is barred by the said decision. Therefore, this Court follows the said judgment and set aside that portion of the award of the Tribunal, which permits the Insurance Company to recover the award amount from the insured person.



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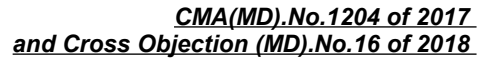
9. In view of the above said deliberations, that portion of the award, which permits the Insurance Company to satisfy the award and thereafter, recover the same from the insured person, is hereby set aside and the award of the Tribunal is directed to be satisfied by the Insurance Company.

10. With the above said observation, this Civil Miscellaneous Appeal stands allowed to the extent as stated above.

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11.CMA(MD).No.1204 of 2017 has been filed by the owner of the offending vehicle challenging the order of pay and recovery and also the quantum of compensation fixed by the Tribunal. In the said appeal, the above said cross objection has been filed seeking enhancement of compensation by the injured claimant. This Court has allowed the appeal and set aside the order of pay and recovery and mulcted the liability upon the Insurance Company.

12.In the claim petition, the claimant had contended that he is a caterer and earning a sum of Rs.20,000/- per month. In the accident, his right arm was amputated up to the shoulder level. He had suffered injuries on the left



hip, chest and all over the body. Hence, the claimant had prayed for a sum of Rs.20,00,000/- as compensation.

13. The Tribunal had relied upon Exhibit P6-disability certificate issued by the Government and arrived at a finding that the claimant had suffered 80% permanent disability. The Tribunal had fixed the notional income at Rs.6000/- p.m and after applying multiplier method, had arrived at a compensation of Rs.13,82,400/- under the head of loss of income and under the head of loss of amenities, a sum of Rs.20,000/- has been awarded. Towards loss of pain and suffering, a sum of Rs.10,000/- has been awarded. Towards, extra nourishment, a sum of Rs.5,000/- has been awarded. The present cross objection has been filed by the claimant seeking to enhance the award amount under the above referred heads.

14. According to the learned counsel appearing for the cross appellant/claimant, the notional income has been fixed at Rs.6000/- per month for an accident that has taken place in the year 2013. The Hon'ble Supreme Court had fixed the notional income for a vegetable vendor for an accident that has taken place in the year 2008 at Rs.6500/-. Therefore, higher amount should have been fixed as notional income. He had further contended



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that the claimant had lost his right hand and therefore, the amount awarded under the head of loss of amenities, pain and suffering, extra nourishment should also be enhanced.

15.Per contra, the learned counsel appearing for the Insurance Company had contended that the cross objector, the owner of the offending vehicle had filed the main appeal challenging the liability and therefore, the cross objection filed by the claimant seeking enhancement of compensation is not maintainable.

16.The learned counsel had further contended that when the multiplier method is adopted, the compensation cannot be awarded under the conventional head. She had further pointed out that the claimant had not placed on record for his actual income. The amount awarded by the Tribunal is reasonable and it does not call for any interference by this Court.

17.I have considered the submissions made on either side and perused the material records.

18.Exhibit P6-identity card has been issued by the Government for disabled person. It points out that the claimant had sustained 80% physical



disability. The right hand of the claimant has been amputated up to the shoulder level. Therefore, it is clear that he would not be in a position to perform any work much less the work of caterer. The Tribunal had rightly considered it as a functional disability and adopted multiplier method. The Tribunal had fixed the monthly notional income at Rs.6000/- per month. Considering the fact that the Hon'ble Supreme Court has fixed a sum of Rs.6500/- per month as for the vegetable vendor for an accident that has taken place in the year 2008 in a judgement of the Hon'ble Supreme Court reported in **2014 (2) SCC 735 (Syed Sadiq Etc vs Divisional Manager, United India)**, this Court is of the considered opinion that the notional income of the claimant could be fixed at Rs.10,000/- per month.

19. The claimant being aged 32 years and self-employed, he is entitled to an additional of 40% towards future prospects. Therefore, the monthly notional income could be fixed at Rs.14,000/- [10000+4000 (10000x40%)]. The claimant having lost his right hand, loss of amenities could be enhanced from Rs.20,000/- to Rs.50,000/-. Pain and suffering could be enhanced from Rs.10,000/- to Rs.50,000/-. The compensation under the head of extra nourishment is enhanced from Rs.5000/- to Rs.10,000/-.



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20. Based on the above said deliberations, the compensation amount is

re-assessed as follows:

Loss of earning power Monthly Income : Rs. 10,000/- (+)40% future prospects (Rs.10000x40%) : Rs. 4,000/- ----- Rs. 14,000/- (-) 1/3 rd deducted towards personal exp. (Rs.14,000/- x 1/3 = Rs.4667/-) Rs. 4,667/- ----- Rs.9,333/- Therefore, [Rs.9333/- x 12x16 (multiplier) x80% (disability)]	Rs.14,33,549/-
Loss of income during hospitalization	Rs. 6,000/-
Transportation	Rs. 1,000/-
Extra nourishment	Rs. 10,000/-
Damage to article	Rs. 1,000/-
Medical expenses	Rs. 5,000/-
Attender charges	Rs. 10,000/-
Loss of amenities	Rs. 50,000/-
Pain and suffering	Rs. 50,000/-
Total	Rs. 15,66,549/-
Rounded off	Rs. 15,66,550/-

21. The award of the Tribunal is enhanced from Rs.14,40,400/- to Rs.15,66,550/-. The Insurance Company/ second respondent is directed to deposit the enhanced compensation amount along with accrued interest and costs, deducting the amount already deposited, if any, within a period of 8



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weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant/cross appellant is permitted to withdraw the said amount along with accrued interest and costs.

22. Accordingly, both the Civil Miscellaneous Appeal and the Cross Objection is allowed to the extent as stated above. No costs.

10.06.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi/msa

To

1. The Special Subordinate Judge for MCOP cases,
Madurai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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