



Cros. Obj.(MD) No.41 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 30.01.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

Cross Objection(MD) No.41 of 2023

in

CMA(MD) No.1631 of 2007

M.Ramkumar

... Cross Objector/ 1st Respondent

Vs.

1. The Oriental Insurance Co. Ltd.,
Through its Divisional Manager,
Office at No.108, T.P.K. Road,
Madurai

.. 1st Respondent/Appellant

2.Sathees Pandian

.. 2nd Respondent/2nd Respondent

Prayer : This Cross Objection filed under Order XLI Rule 22 r/w.Section 96(1) &(2) of the Code of Civil Procedure against the award and decree dated 22.08.2007 passed in M.C.O.P.No.1705 of 2005 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Madurai for enhancement of compensation.

For Cross objector : Mr.N.C.Ashok Kumar

For R-1 : Mr.A.Ilango

For R2 : No appearance

JUDGMENT

This Cross Objection is filed in Civil Miscellaneous Appeal 1631 of 2007 as against the order passed in M.C.O.P.No.1705 of 2005 dated



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22.08.2007 on the file of the Motor Accident Claims Tribunal /Chief
Judicial Magistrate, Madurai.

2. The brief averments of the case before the Tribunal are as follows:

On 10.07.2005 at about 9.30 am., the first respondent herein was travelling as a pillion rider in the motor cycle bearing Reg. No. TN 59 T 6914. The rider of the motor cycle drove the vehicle in a rash and negligent manner and eventually capsized the vehicle. Due to that accident the claimant sustained grievous injuries and he was immediately taken to Government Hospital, Melur and thereafter he was referred to City Hospital, Madurai for treatment. He filed the claim petition claiming compensation of Rs.5,00,000/-alleging that the rider of the motor cycle caused the accident.

3. To prove the case of the petitioner they have examined P.W.1 to P.W.3 and marked Exs.P.1 to P. 16. On the side of the respondent R.W.1 was examined and Ex.R.1 was marked. After evaluating the oral and documentary evidences adduced on either side, the Tribunal has awarded a sum of Rs. 2,05,880/- with interest @ 7.5% per annum from the date of petition till the realization of the amount.



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4. As against the award passed by the Tribunal the appellant/ second respondent/Insurance company has preferred CMA(MD) No.1631 of 2007. In the above said appeal the present cross objection has been filed by the petitioner/cross objector for enhancement of award amount. The said main appeal was dismissed by this Court on 19.07.2016.

5. The learned counsel appearing for the cross objector would contend that the Tribunal has awarded meagre amount and the petitioner has sustained fracture injuries and permanent disability is 39 %. The Tribunal has awarded only Rs.3000/- for 1% disability and in other heads also awarded meagre amount. The Tribunal ought to have adopted multiplier method for awarding compensation, therefore the award passed by the Tribunal is liable to be enhanced.

6. The learned counsel appearing for the first respondent would contend that already the Tribunal has awarded Rs.3000/- for 1% disability and therefore the respondent has preferred appeal and the same was dismissed by this Court through an order dated 19.07.2016. Now the petitioner has filed this cross objection . Already the Tribunal has passed reasonable award, thereby the present cross objection is liable to be dismissed.



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7. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal the point for determination in this cross objection is :

i) Whether the cross objection is liable to be allowed or not ?

8. In this case there is no dispute with regard to the negligence on the part of the driver of the first respondent. The cross objection being filed by the first respondent only for enhancement of award amount. The Tribunal has awarded a sum of Rs. 2,05,880/-. As against the award passed by the Tribunal the appellant/insurance company has filed main appeal in CMA(MD) No.1631 of 2007 and in that appeal the petitioner has filed this cross objection for enhancement of compensation on various grounds.

9. According to the cross objector/petitioner he sustained grievous injuries and his permanent disability is 39% and thereby the Tribunal ought to have adopted multiplier method, instead awarded Rs.3000/- per 1% disability. To support his contention he relied on the following judgements:

i) Master Mallikarjuan .vs. Divisional Manager, National Insurance Co Ltd & another reported in 2013(2) TNMAC 338 (SC)

ii) Minor Anni Joy Beatrice rep. by her father, natural



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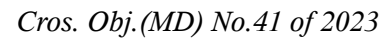
guardan and next friend, Ingarsal Rajanayagam .vs. Benny Anburaj and others reported in 2023 (1) TN MAC 446 (DB)

10. On careful perusal of the above said judgments they will not be applicable to the present facts of the case because the facts in those cases are distinguishable from the present facts of the case. So far as quantum of award amount passed by the Tribunal is concerned, the Tribunal has taken a sum of Rs.3000/- per 1 % disability and thereafter awarded some amount is other heads, which are as follows:

1.	39% permanent disability	Rs.1,17,000/-
2.	Pain and suffering	Rs.15,000/-
3.	Medical Expenses	Rs.73,880/-
4.	Total	Rs.2,05,880/-

11. As far as contention of the petitioner in respect of adopting multiplier method is concerned, there is no any amputation and no any functional disability, thereby it is not appropriate to adopt multiplier method in this case.

12. Considering the disability and nature of injuries this Court is of the opinion that the Tribunal has awarded reasonable amount for permanent disability by awarding a sum of Rs.3000/- for 1% disability and the same is reasonable. Under other heads, the Tribunal has awarded a sum of Rs.15,000/- towards loss of pain and suffering. Considering the



13. Considering the nature of injuries sustained by the injured petitioner, this Court is inclined to modify the compensation and hence the cross objector in Cross Objection(MD) No.41 of 2023 is entitled to compensation as follows:

1.	39% permanent disability	Rs.1,17,000/-
2.	Transport Expenses	Rs.10,000/-
3.	Extra Nourishment	Rs.10,000/-
4.	Attendar charges	Rs.10,000/-
5.	Medical Expenses	Rs.73,880/-
6.	Pain and sufferings	Rs.25,000/-
	Total	Rs.2,45,880/-

14. Hence the petitioner is entitled in total a sum of Rs.2,45,880/- rounded to Rs.2,50,000/- towards compensation.

15. In view of the same, this Cross Objection is partly allowed and the award passed by the Tribunal is modified to the effect that the petitioner is entitled for a sum of Rs.2,50,000/-with interest @ 7.5% per annum and the first respondent /appellant is directed to deposit the entire award amount with interest and costs within a period of two months from



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the date of this order. On such deposit, the cross objector is permitted to withdraw the amount by filing appropriate petition.

30.01.2024

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

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



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P. DHANABAL,J.

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