IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18.12.2024
Pronounced on	19.02.2025

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.1305 of 2023
C.M.P.No.13044 of 2023
and
Cros.Obj.No.77 of 2023

C.M.A.No.1305 of 2023

Reliance General Insurance Co. Ltd.,
Represented by its Area Manager (Legal)
Claims Department, 6th Floor,
No.6, Haddows Road,
Nungambakkam, Chennai-6. ... Appellant / 2nd Respondent

-vs-

1. R.Nagappan ... 1st Respondent/Petitioner
2. V.Baskar ... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated April 12, 2022 made in MCOP No.4292 of 2014 on the file of the Motor Accidents Claims Tribunal, Chennai (IV Court of Small Causes, Chennai).

For Appellant : Mr.R.Sunilkumar

For R1 : Mr.Amar Dineshbhai Pandiya

For R2 : No appearance

CROS.OBJ.NO.77 of 2023

R.Nagappan ... Cross Objector / Petitioner

-vs-

1. Reliance General Insurance Co. Ltd.,
   Represented by its Area Manager (Legal)
   Claims Department, 6th Floor,
   No.6, Haddows Road,
   Nungambakkam, Chennai – 6.

2. V.Baskar ... Respondents / Respondents

PRAYER: Cross Objection filed under Order XL Rule 22 of Code of Civil Procedure, 1908 praying for enhancement of compensation awarded vide Award dated April 12, 2022 made in MCOP No.4292 of 2014 on the file of the Motor Accidents Claims Tribunal, Chennai (IV Court of Small Causes, Chennai).

For Cross Objectors : Mr.Amar Dineshbhai Pandiya

For R1 : Mr.R.Sunilkumar

For R2 : No appearance

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COMMON JUDGMENT

R.SAKTHIVEL, J.

Feeling aggrieved by the Award dated April 12, 2022 passed by the 'Motor Accidents Claims Tribunal, Chennai (IV Court of Small Causes, Chennai)' ['Tribunal' for short] in M.C.O.P.No.4292 of 2014, the second respondent therein / Insurance Company has preferred C.M.A.No.1305 of 2023 praying to set aside the Award, while the petitioner therein has preferred Cross Objection No.77 of 2023 praying to enhance the compensation. This Common Judgment will now decide both, the Civil Miscellaneous Appeal and the Cross Objection.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Motor Accident Claim Original Petition.

Petitioner's case:

3. On March 23, 2014 at about 09.00 a.m., while the petitioner was travelling as an occupant in a car bearing Registration No. TN-21-AY-1697 on Chithamoor to Maduranthagam Road near

Nethapakkam Aattai Company, the driver of the car drove it in a rash and negligent manner endangering the public safety, and suddenly applied the brakes. As a result, the car capsized. The petitioner sustained grievous injuries. At the time of accident, the petitioner was aged about 30 years and was a Mason by profession earning a sum of Rs.600/- per day. According to the petitioner, the accident occurred only due to the rash and negligent driving of the driver of the car. The 1st respondent is the owner of the car involved in the accident, while the 2nd respondent is its insurer vide Policy No.C121253231100032 with validly for the period from June 13, 2013 to June 12, 2014 *i.e.,* it was valid on the date of accident. Hence, both the respondents are liable to pay compensation to the petitioner. Accordingly, the petitioner filed the Claim Petition before the Tribunal seeking compensation of Rs.98,00,000/- (Rupees Ninety-Eight Lakhs only) along with interest and costs.

First Respondent :

4. The 1st respondent being the owner of the said car remained absent before Tribunal and therefore, he was called absent and set *ex-parte.*

Second Respondent's case :

5. The second respondent – Insurance Company filed a counter merely denying all the petition averments. The age, income and occupation of the petitioner were denied. It was further denied that the 1st respondent's Driver had a valid driving license and his car was insured with the 2nd respondent at the time of accident. The claim of the petitioner was stoutly opposed as excessive. In short, the Counter is nothing more than a formal denial, seeking dismissal of the Claim Petition.

Tribunal :

6. The instant Claim Petition in M.C.O.P. No.4292 of 2014 was tried jointly with M.C.O.P. Nos.4291 and 4293 of 2014 as they all arise out of one and the same accident. At trial, on the side of the petitioner in the instant Claim Petition, the petitioner himself was examined as P.W.3 and Ex-P.16 to Ex-P.26 were marked. Neither any witness was examined nor any document was marked on the side of the second respondent.

7. The Tribunal, after analysing the oral and documentary evidence adduced before it, held that the accident occurred due to the rash and negligence on the part of first respondent's driver and that first respondent's car was insured with second respondent. Accordingly, the Tribunal partly allowed the Claim Petition, held the 2nd respondent liable to pay compensation to the petitioner and awarded compensation as hereunder:

Sl.No.	Head	Amount
1	Disability	Rs.36,28,800.00
2	Medical Expenses	Rs.24,709.00
3	Future Medical Expenses	Rs.50,000.00
4	Pain and Suffering	Rs.3,00,000.00
5	Loss of Marital Pleasure to Wife	Rs.2,00,000.00
6	Transportation Expenses	Rs.50,000.00
7	Additional Nourishment	Rs.2,00,000.00
8	Damages to Clothes	Rs.1,000.00
9	Attender Charges	Rs.4,00,000.00
10	Loss of Amenities	Rs.2,00,000.00
11	Mental Agony	Rs.2,00,000.00
	Total	Rs.52,54,509.00
	Rounded off	**Rs.52,54,500.00**

8. Feeling aggrieved by the said Award, the second respondent – Insurance Company has preferred the Civil Miscellaneous Appeal.

9. Dissatisfied with the Award amount, the petitioner has preferred the Cross Objection praying to enhance the Award amount.

Arguments :

10. The learned Counsel for the appellant / 2nd respondent – Insurance Company argued that the alleged disability of the petitioner needs to be assessed by the duly constituted Medical Board and the Disability Certificate produced by the petitioner from an individual Doctor is contrary to the statutory requirement. Further, three persons sustained injuries in the same accident. When in a common trial two out of three of the claimants have proved their disability by undergoing assessment before the duly constituted Medical Board, the Tribunal ought to have maintained uniformity by insisting the petitioner also to produce disability certificate issued by a duly constituted Medical Board. The Tribunal grossly erred in relying on the outdated and unapproved assessment to grant a huge amount of compensation of Rs.52,54,500/-. The percentage of disability mentioned in the Disability Certificate *i.e.,* 70% is not in consonance with the injuries suffered by the petitioner. Further, the Tribunal ought not to have adopted multiplier method by accepting the disability certificate in the absence of the certificate issued by the duly constituted Medical Board. The submission of the claimant that the insurance policy is a package policy has been disputed by the learned counsel for the insurance company. Further, the Award amount is excessive and not justifiable. Accordingly, he prayed to allow the Civil Miscellaneous Appeal.

11. Per contra, learned Counsel for the Cross Objector / petitioner submitted that the total compensation awarded *viz*., Rs.52,54,500/- is on the lower side. The Tribunal failed to consider the age of the petitioner at the time of accident and fixed Rs.13,500/- as his monthly income, which is too low and against various reported judgments that laid down the guidelines for fixing notional income. The Tribunal failed to consider the oral and documentary evidence placed before it for awarding just and adequate compensation. In any event, the Award of the Tribunal is palpably low and the same deserves to be enhanced in adequate measure. The petitioner is bedridden now and he cannot move without anyone's help. Accordingly, he prayed to allow the Cross Objection and enhance the compensation.

Discussion :

12. This Court has considered the submissions on either side and perused the materials available on record.

13. There is no dispute with regard to manner of accident that the accident happened due to the rash and negligent driving of the driver of the first respondent's car.

14. Insofar as the contention of the insurance company that the insurance policy is not a package policy is concerned, this Court perused the copy of the insurance policy marked before the Tribunal as Ex-P.3, from which, it is obvious that the occupants of the car are covered by Ex-P.3. The next contention put forth by the insurance company was that the assessment of disability by an individual Doctor was not in consonance with the established norms, and it is not permissible in evidence and therefore, the compensation awarded by the Tribunal to the tune of Rs.52,54,509/- is on the higher side.

15. It is worthwhile to refer to the Judgments of this Court in the cases of ***The Oriental Insurance Co.Ltd., Cuddalore -vs- Minor Giridharan rep.by his next friend and mother Lalitha (C.M.A.Nos.2337 of 2015 etc batch) dated March 13, 2020*** and ***G.Arockiya Doss -vs- S.Syed Ibrahim (C.M.A.No.345 of 2022) dated March 31, 2022***, wherein it was held that Disability Certificates should be obtained from the District Medical Boards of Tamil Nadu as per the formats stipulated in the Notification dated 04.01.2018, while assessing the percentage of Permanent Disability of the injured / claimant in the motor accident cases. The District and Subordinate Courts dealing with MCOP cases shall accept only such statutory certificates to fix the percentage of disability.

16. In the given case, the disability certificate was obtained from a Government Doctor assessing the disability at 70%. The Tribunal arrived at a compensation of Rs.36,28,800/- towards disability / loss of income, taking note of 100% functional disability of the petitioner. It is relevant to note that the petitioner was a Mason at the time of accident and he needs a good physical strength to carry out masonry works. Even assuming for the sake of argument that he suffered only 50% permanent disability, he cannot be hired for any masonry works on account of severe injuries and damage by trauma in the spinal cord

17. Though there seems to be some substance in the argument of the learned counsel for the insurance company that the disability certificate was not obtained in a prescribed format from the Medical

Board, when seen in depth, the petitioner cannot do his regular work with the disability sustained by him in the accident. Because of this accident, he suffered Traumatic Paraplegia, which is a permanent disability that occurs due to spinal cord damage by trauma, resulting in loss of movement and sensation in the lower body. He has also become bedridden and is dependent on somebody's assistance, as his lower body has become dysfunctional. Hence, the functional disability drawn by the Tribunal is valid in the eyes of law.

18. Insofar as the compensation awarded under the head 'Loss of Marital Pleasure to wife' is concerned, there is no evidence produced as to whether the petitioner was married or not and therefore, the compensation of Rs.2,00,000/- awarded for the said head is removed. Further, compensation awarded for 'Additional Nourishment' and 'Attender charges' is required to be modified slightly.

19. In fine, the compensation awarded to the petitioner/Cross Objector is hereby reduced to **Rs.47,04,509/-** (rounded off to Rs.47,04,500/-) Accordingly, the petitioner/Cross Objector is entitled to get a compensation of Rs.47,04,500/- (Rupees Forty Seven Lakhs Four Thousand and Five Hundred only). The revised compensation is as detailed below:-

Sl.No.	Head	Amount
1.	Disability	Rs.36,28,800/-
2.	Medical Expenses	Rs.24,709/-
3.	Future Medical Expenses	Rs.50,000/-
4.	Pain and Suffering	Rs.3,00,000/-
5.	Loss of Marital Pleasure to wife	Nil
6.	Transporation Expenses	Rs.50,000/-
7.	Additional Nourishment	Rs.50,000/-
8.	Damages to Clothes	Rs.1,000/-
9.	Attender charges (Lump sum)	Rs.3,00,000/-
10.	Loss of Amenities	Rs.2,00,000/-
11.	Mental Agony	Rs.1,00,000/-
Total		**Rs.47,04,509/-**
Rounded off to		**Rs.47,04,500/-**

20. Therefore, the appellant / Insurance Company is directed to deposit the reduced award amount of **Rs.47,04,500/- (Rupees Forty Seven Lakhs Four Thousand and Five Hundred only)** along 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 M.C.O.P.No.4292 of 2014 on the file of the Motor Accidents Claims Tribunal, Chennai (IV Court of Small Causes, Chennai), less the amount if any already deposited, within a period of eight weeks from the date of receipt of copy of this Judgment. On such deposit being made, the petitioner / Cross Objector is entitled to withdraw the same by filing proper application.

Result :

21. In the result, the C.M.A.No.1305 of 2023 filed by the insurance company is partly allowed. Cross Objection No.77 of 2023 preferred by the Injured is dismissed. In view of the facts and circumstances of this case, there shall be no order as to costs.

[J.N.B., J.] **[R.S.V., J.]**

19.02.2025

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
ar/tk

To

The Motor Accidents Claims Tribunal
(IV Court of Small Causes, Chennai)
Chennai.

J.NISHA BANU, J.

AND

R.SAKTHIVEL, J.

ar/tk

Pre-Delivery Common Judgment made in C.M.A.No.1305 of 2023 and Cros.Obj.No.77 of 2023

19 . 02 . 2025