



C.M.A.No.2533 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2025

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**C.M.A.No.2533 of 2021
and C.M.P.No.14552 of 2021
and CROS.OBJ.No.19 of 2023**

Prayer in C.M.A.No.2533 of 2021

The Oriental Insurance Company Limited,
Kallakurichi.

... Appellant

Vs.

1.Vijayakumar

2.Mynavathy

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.04.2019 made in M.C.O.P.No.37 of 2013 on the file of the Motor Accidents Claims Tribunal (Subordinate Court), Kallakurichi.



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Prayer in Cross.Obj.No.19 of 2023:

Vijayakumar

... Cross Objector

Vs.

1. The Oriental Insurance Company Limited,
Kallakurichi.

2.Mynavathy

... Respondents

PRAYER : Cross Objection filed under Order XLI Rule 22 of the Code of Civil Procedure, for enhancement of the compensation awarded in the judgment and decree dated 27.04.2019 made in M.C.O.P.No.37 of 2013 on the file of the Motor Accidents Claims Tribunal (Subordinate Court), Kallakurichi.

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For Appellant : Mr.M.Krishnamoorthy

For Respondents : Ms.K.Nithyashree for R1
R2-Ex-parte



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Cross.Obj.No.19 of 2023

For Cross Objector : Ms.K.Nithyashree

For Respondents : Mr.M.Krishnamoorthy for R1

COMMON JUDGMENT

The appellant / Insurance Company, aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, (Subordinate Court), Kallakurichi, in M.C.O.P.No.37 of 2013, dated 27.04.2019, has filed the present appeal.

2. Cross Objection No.19 of 2023 has been filed under Order XLI Rule 22 of CPC seeking enhancement of the compensation granted by the Tribunal vide award dated 27.04.2019 made in M.C.O.P.No.37 of 2013, on the file of the Motor Accident Claims Tribunal, (Subordinate Court), Kallakurichi.



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3. Both the appeal and cross objection arise out of the same accident and hence, they are disposed of by this common judgment.

4. For the sake of convenience, the parties are referred to as per their ranks before the Tribunal.

5. On 20.03.2009, at about 19.30 hours, when the claimant was walking on the left mud portion of Kallakurichi to Ka Mamanandal Road, near Nalla Valliamman rice mill, the vehicle bearing Reg.No.TN 32 R 4553 passenger auto belonging to the first respondent was driven in a rash and negligent manner and dashed against the claimant, due to which, the claimant sustained grievous injuries. Claiming compensation for a sum of Rs.5,00,000/-, the claim petition was filed by the claimant against the respondents, who are the owner and insurer of the auto.



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6. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to rash and negligent driving on the part of the auto. Having rendered such a finding, the Tribunal proceeded to determine the compensation payable at Rs.30,00,000/-. The Tribunal directed the above compensation to be paid by the second respondent with interest at the rate of 7.5% p.a.

7. Questioning the quantum of compensation awarded by the Tribunal, the appellant / Insurance Company has filed the appeal.

8. Not being satisfied with the amount awarded by the Tribunal, the claimant has filed Cross Objection No.19 of 2023 for enhancement of compensation.



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9. Heard Mr.M.Krishnamoorthy, learned counsel for appellant / Insurance Company and Ms.K.Nithyashree, learned counsel for the first respondent / Cross objector.

10. This Court carefully considered the submissions made on either side and the materials available on record.

11. This Court also carefully went through the award passed by the Tribunal.

12. The learned counsel for the appellant / Insurance Company submitted that though the claimant submitted that he sustained 35% disability, due to which, he could not continue his avocation and he was de-promoted and his pay was reduced, the employer was not examined to prove the said fact before the Tribunal. Without examining the employer and ascertaining the income (i.e.,) prior to the accident and after the accident,



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the Tribunal has taken the monthly income of the claimant at Rs.42,783/-.

Hence, this Court may remand the matter back to the Tribunal to ascertain the income of the claimant (i.e.,) prior to the accident and after the accident by examining the employer and to verify the fact as to whether due to medical degradation, the claimant's pay was reduced.

13. The learned counsel appearing for the first respondent submits that in order to prove the income, the claimant has marked the pay slips which were marked as Ex.P9 and Ex.P10. Taking into consideration of the above documents, the Tribunal has fixed the monthly income of the claimant which does not require any interference by this Court and the compensation awarded by the Tribunal under the other heads is also on the lower side. Hence, she prays for dismissal of this appeal.

14. The second respondent remained *ex-parte* before the Tribunal.

15. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent.



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16. It is seen from the records that the accident had taken place on 20.03.2009 and the claimant has not produced any document to prove his monthly income on the date of accident, but has produced the pay slips for the months of August 2010 and December 2012 which were marked as Ex.P9 and Ex.P10, and submitted that due to the accident, he sustained 35% disability and he was de-promoted and his pay was reduced. This fact was not properly adjudicated by the Tribunal and the Tribunal has mechanically taken the monthly income of Rs.42,783/- without examining the employer to ascertain the above fact. Hence, on the sole ground, the award dated 24.07.2019 passed in M.C.O.P.No.37 of 2013 by the Motor Accident Claims Tribunal (Subordinate Court), Kallakurichi, is set aside and the matter is remanded back to the Tribunal and M.C.O.P.No.37 of 2013 is restored on file. The Tribunal is directed to examine the employer to ascertain the fact as to whether due to medical de-gradation, the claimant was de-promoted and his pay was reduced and also ascertain the income of the claimant (i.e.,) prior to the accident and after the accident. The claimant is also at liberty to



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examine his employer and mark the salary slip (i.e.,) prior to the accident and after the accident. The Tribunal is directed to re-deposit the amount deposited by the Insurance Company in an interest yielding fixed deposit and dispose of the case within a period of three months from the date of receipt of a copy of this judgment.

17. Accordingly, this Civil Miscellaneous Appeal is allowed. There shall be no order as to costs. Connected miscellaneous petition is closed.

18. In view of the judgment passed in CM.A.No.2533 of 2021, the Cross Objection No.19 of 2023 stands closed.

23.01.2025

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No
ssb



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To

1.The Motor Accidents Claims Tribunal,
(Subordinate Court), Kallakurichi.

2. The Section Officer,
V.R. Section,
High Court, Chennai.



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M.DHANDAPANI, J.

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