

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.2470 of 2015 &
M.P.No.1 of 2015

The New India Assurance Company Limited,
Divisional Office No.29, 2nd Floor,
Ram Complex, Paramathi Road,
Namakkal Town and District. Appellant/2nd Respondent

Vs.

1.Gopal
2.V.Venukumar Respondents/1st Respondent
(R2 called absent and remained exparte
before the Tribunal)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173
of the Motor Vehicles Act, to set-aside the decree and
judgment dated 20.02.2015 passed in M.C.O.P.No.76 of 2014, on
the file of Motor Accidents Claims Tribunal, (Additional
District Judge) Namakkal.

For Appellant : Mr.G.Udaya Sankar

For Respondents : Mr.M.A.P.Thangavel for R1
R2 (Exparte)

J U D G M E N T

The short facts of the case are as follows:-

On 28.11.2013, at about 12.15 p.m., while the
petitioner was walking on the left side of the road towards
Namakkal to Paramathi, near Udayamoorthi School, the hero
honda splendor bike bearing registration No.TN-28-AK-1734
coming from behind him was driven in a rash and negligent
manner and dashed against the petitioner and caused injuries.
Hence, the petitioner has filed the claim against the owner
and insurer of the hero honda splendor bike.

2. The second respondent in his counter has
submitted that the petitioner, without seeing the oncoming
vehicle on the road side, suddenly crossed the road, due to
which the accident had happened. It was submitted that as

per the terms of the insurance policy, the owner of the vehicle had violated the policy conditions. The averments regarding age, status, occupation, monthly income, injury sustained and medical expenditure incurred by the petitioner towards treatment were also denied. It was submitted that the claim was excessive.

3. The Tribunal after considering the averments of both parties had framed two issues. On the side of the claimant, two witnesses were examined and twelve documents were marked. On the side of the second respondent, one witness was examined and one document was marked.

4. The Tribunal after considering the evidence of the witnesses and on perusal of the documentary evidence awarded a sum of Rs.7,38,500/- as compensation with interest at the rate of 7.5% per annum.

5. Aggrieved by the award passed by the Tribunal, the second respondent / Insurance Company has filed the above appeal.

6. The learned counsel Mr.G.Udaya Sankar appearing for the appellant submits that the Tribunal failed to consider that the claimant, due to his negligence had also contributed to the occurrence of the accident. It was submitted that the multiplier method adopted by the Tribunal is not appropriate and that the Tribunal ought to have passed an award under this head only by using percentage method. It was also submitted that the Tribunal failed to consider Ex.A1 which is the copy of the family ration card which depicts the age of the claimant as 65 years in the year 2005 itself and as such, the age of the claimant as on the date of the accident would be 73 years, but the Tribunal has considered the age as 55 years as per petition copy and also as per hospital records, which is incorrect. The correct multiplier would be only '5' instead of '11' as applied. It was also submitted that the awards granted under the head of future medical expenses, pain and suffering, transport expenses, nourishment are excessive. Hence, it was prayed to set-aside the award passed by the Tribunal.

7. The learned counsel Mr.M.A.P.Thangavel appearing for the first respondent / claimant submits that the accident was caused only due to the negligence of the driver of the hero honda splendor. Due to the accident, the petitioner had sustained fracture shaft of femur right side, fracture of both bone of right leg middle third junction, fracture of third, fourth and fifth ribs of right chest wall, abrasion over right hand and right knee and laceration over frontal region as per wound certificate. At the time of accident, the claimant was doing watchman work and earning Rs.8,000/- per month. Due to the accident, the petitioner is unable to do his normal work.

The learned counsel submits that the award passed by the Tribunal is appropriate and therefore, he has prayed to dismiss the appeal.

8. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the typed-set of papers, this Court is of the view that the multiplier method adopted by the Tribunal for assessing amount under the head of loss of earning capacity is incorrect. Further, the award granted under the other heads are also on the lower side. Hence, this Court reassesses the compensation as follows:-

This Court awards Rs.1,16,000/- under the head of loss of earning capacity (58% x Rs.2,000/-); Rs.1,54,152/- is awarded towards medical expenses; Rs.50,000/- is awarded towards pain and suffering; Rs.14,848/- is awarded for nutrition; Rs.15,000/- is awarded for transport; Rs.25,000/- is awarded for attender charges; Rs.25,000/- is awarded for future medical expenses; Rs.2,50,000/- is awarded towards loss of amenities and loss of comfort, especially considering the multiple fracture injuries sustained by the claimant, who is of advanced age. In total, this Court awards Rs.6,50,000/- as compensation to the claimant. As such, this Court scales down the compensation from Rs.7,38,500/- to Rs.6,50,000/-. This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim till date of payment of compensation.

9. This Court directs the appellant / New India Assurance Company Limited to deposit the compensation amount along with interest, as fixed by this Court, after deducting earlier deposits made, within a period of six weeks from the date of receipt of a copy of this order. After such deposit is being made, it is open to the claimant, to withdraw the compensation amount along with interest, as fixed by this Court, after filing a Memo, along with a copy of this order.

10. In the result, the above appeal is partly allowed. Consequently, connected miscellaneous petition is closed. There is no order as to costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To
The Additional District Judge,
Motor Accidents Claims Tribunal,
Namakkal.

tej co
kra, 29.12.2015

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M.P.No.1 of 2015