

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.07.2015

Date of verdict: 22.07.2015

Coram:

The Hon'ble Mr.Justice V.RAMASUBRAMANIAN
and
The Hon'ble Mr.Justice T.MATHIVANAN

Civil Miscellaneous Appeal No.3248 of 2014
and
M.P.No.1 of 2014 and M.P.No.1 of 2015
and
Cross Objection No.53 of 2015

C.M.A.No.3248 of 2014

National Insurance Co., Ltd.,
No.751, Anna Salai,
Chennai - 2.

.. Appellant/
2nd Respondent

1.Kumar

vs

.. 1st Respondent/
Petitioner

2.K.Krishnakumar

.. 2nd Respondent/
1st Respondent

Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 16.12.2013 and made in MC.O.P.No.460 of 2011 on the file of the Motor Accidents Claims Tribunal (Court of Small Causes), No.II, Chennai.

Cross Objection No.53 of 2015

1.Kumar

.. Cross Objector/
1st Respondent

vs

National Insurance Co., Ltd.,
No.751, Anna Salai,
Chennai - 2.

.. 1st Respondent/
Appellant

2.K.Krishnakumar

.. 2nd Respondent/
2nd Respondent

Prayer : Cross Objection is filed under Order 41 Rule 22 of the Code of Civil Procedure against the award and decree dated 16.12.2013 and made in MC.O.P.No.460 of 2011 on the file of the Motor Accidents Claims Tribunal (Court of Small Causes No.II), Chennai.

For Appellant ... Mr.S.Arun Kumar
in C.M.A and
for 1st respondent
in Cross Objection
For 1st
Respondent ... Mr.V.Velu
in C.M.A and
for Cross Objector
in Cross Objection

COMMON JUDGMENT

T.MATHIVANAN, J

Challenge is made in this Civil Miscellaneous Appeal to the award dated 16.12.2013 and made in the Motor Accident Claim Petition in M.C.O.P.No.460 of 2011 on the file of the Motor Accidents Claims Tribunal, (Court of Small Causes No.II) Chennai.

2. The National Insurance Company Limited, who is the second respondent in the claim petition, is the appellant herein, whereas the first respondent herein is the claimant and the second petitioner is the owner of the offending vehicle, who remained ex-parte before the Tribunal as he has not chosen to contest the claim.

3. Heard Mr.S.Arun Kumar, learned counsel appearing for the appellant Insurance Company and Mr.V.Velu, learned counsel appearing for the first respondent/claimant/cross objector.

4. It is manifested from the records that the first respondent/claimant has filed a claim petition in M.C.O.P.No.460 of 2011 on the file of the Motor Accidents Claims Tribunal (Court of Small Causes No.II, Chennai) claiming a sum of Rs.30,00,000/- towards compensation for the grievous injuries sustained by him in

the road traffic accident, said to have taken place on 19.11.2010 at about 09.45 hours involving the lorry bearing Registration No.TN-02-R-8012 belonging to the second respondent herein and was insured with the appellant Insurance Company at the relevant period.

5. The appellant Insurance Company alone has contested the claim of the first respondent/claimant. The first respondent/claimant, in order to substantiate his claim, has examined himself as P.W.1 and two Doctors as P.W.2 and P.W.3 respectively. During the course of their examination, Exs.P.1 to P.24 were marked. On the other hand, one Mr.Viswanathan, Inspector of Income Tax Department was examined as R.W.1 and during the course of his examination, Exs.R.1 to R.4 were marked. On evaluating the evidences of both oral and documentary, the Motor Accidents Claims Tribunal has proceeded to award a sum of Rs.28,33,379/- as compensation.

6. Being aggrieved by the award, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal. On the other hand, having been not satisfied with the award of the Tribunal, the first respondent/claimant has filed the Cross Objection No.53 of 2015.

7. With the common issue is involved in both the appeal and the cross objection, they both were consolidated together heard jointly and disposed of in this common judgment.

8. It appears from the materials placed before us that the first respondent/claimant was aged about 29 years at the time of accident, which took place on 19.11.2010 at about 9.45 hours at Mogappair West, Kambar Salai, opposite to Moore Super Market. What the first respondent/claimant would contend is that the lorry bearing Registration No.TN-02-R-8012, which was driven by its driver in a rash and negligent manner had hit against the rear side of his Motorcycle bearing Registration No.TN 02 AF 7412, in which, he was travelling. It is significant to note here that as per the averments made in the claim petition, the lorry was also proceeding on the same direction, when, the first respondent/claimant, was riding his Motorcycle. On account of the accident, the first respondent/claimant had sustained multiple grievous injuries 'viz' Digloving injury on the right anterior abdominal wall and anterior thigh, low rectal injury, fracture of right pubic rami, fracture of sacrum and fracture of the 4th and 5th Proximal phalanx with crush injury on the right hand.

9. Mr.S.Arun Kumar, learned counsel appearing for the appellant Insurance Company has mainly challenged the quantum of compensation awarded by the Tribunal. We have therefore, decided to dispose the appeal as well as the cross objection on the sole ground of quantum.

10. According to the first respondent/claimant, he has been doing the business under the name and style of Sri Annai Traders in manufacturing the plastic doors at No.6/315, Valayapathi Salai, Mogappair East, Chennai 37 and thereby, earning a sum of Rs.5,00,000/- per annum. In his evidence in chief, he has deposed that he had been earning up to Rs.50,000/- per month. In order to prove the income, the first respondent/claimant has chosen to produce Ex.P.4, copy of the Commercial Tax Certificate and Ex.P.15, copy of the PAN Card. Apart from this, he has also marked Ex.P.17, copy of the Bank Statement.

11. On the side of the appellant Insurance Company Ex.R.1 copy of Income Tax Return with Balance Sheet for the assessment year 2009-2010 was marked thorough R.W.1 Inspector, Income Tax Department, Chennai. In addition to this document, Exs.R.2 to R.4, were also marked on behalf of the respondent to disprove the statement of the claimant with regard to his income. Ex.R.2 is the letter dated 01.10.2013, produced by the Income Tax Officer. Ex.R.3 series are the Income Tax particulars for the assessment years 2010-2011, 2011-2012 and 2012-2013. Ex.R.4 series are the Income Tax particulars for the assessment years 2009-2010 to 2012-2013. As per Exs.R.3 and R.4, the annual income of the petitioner for the assessment year 2010-2011 was Rs.1,69,100/-. Therefore, this amount was taken as a base by the Motor Accidents Claims Tribunal to fix the income of the first respondent/claimant.

12. As stated earlier, at the relevant period, the first respondent/claimant was aged about 29 years. P.W.2 - Dr.J.R.R.Thiagarajan and P.W.3 - Dr.N.Saichandran have spoken to about the disability of the claimant. After the examination of the claimant, clinically they have issued the disability certificates under Exs.P.20 and P.21 respectively.

13. In Ex.P.20, P.W.2, Dr.J.R.R.Thiagarajan has stated as under:

"Description of disabilities due to injuries sustained:

Due to loss of muscles and skin and the remaining tissue filerosed difficulty to bend to work. 5%. Disfigurement due to abdominal injury and thighs. 10%. Due to the abdominal muscle in the middle weakened, Inceasional Hernia, Protodues requiring wire mesh repairs. 20%. Due to the rectal injury, pain during defecation and constipation continuous sitting and during vehicles difficult. 25%. Personal life may be affected. Total 60%. Excluding Ortho Disability."

14. On coming to Ex.P.21, P.W.3, Dr.N.Saichandran has stated as under:

"He sustained multiple fractures over the pelvis due to RTA on 19.11.2010. He sustained fracture of Pubic Rami fracture right of the Pelvis and Sacrum bone on the right side of the Pelvis. He was conservatively treated and at present mal union of the all Pelvic bone causing pain, low back ache with restriction of the Pelvis movement in bending and rotation he also had Rectal Injury. Right hand fracture of 4th and 5th finger proximal phalanx bones with crush injury of the muscles. Mal union with scar adherence and right hand grip reduced & restricted by 20 degree for the raw area in the right hand muscle pedicle grafting done. Repeated SSG done. He is not able to stand and walk and do active standing work. His mobility is on wheel chair."

15. As rightly observed by the Tribunal, no contra evidence was adduced on the part of the appellant to disprove the testimonies of P.W.2 and P.W.3.

16. For the purpose of assessing the quantum of compensation towards partial and permanent disability, as we have stated in the foregoing paragraph, the Tribunal has taken the annual income of the injured at Rs.1,69,100/- based on Exs.R.4 and R.5. Since the injured was aged about 29 years at the time of the accident, the Tribunal has adopted the multiplier of 17 for arriving at the compensation under the head of Loss of earning capacity. Though two Doctors have assessed the disability at 60% and 55% respectively, the Tribunal has chosen the disability assessed by P.W.3-Dr.N.Saichandran at 55% and arrived at Rs.15,81,085/- (Rs.1,69,100/- x 17 x 55%) towards the compensation for Loss of earning capacity. The compensation awarded by the Tribunal under the other heads are as follows:

Sl.No.	Particulars	Amount
1.	Loss income for 9 months	Rs. 1,26,828/-
2.	Transportation	Rs. 20,000/-
3.	Extra Nourishment	Rs. 20,000/-
4.	Damage to clothes	Rs. 1,000/-
5.	Medical Expenses	Rs. 5,84,466/-
6.	Attender Charges	Rs. 1,00,000/-
7.	Mental Agony to the petitioner	Rs. 1,00,000/-
8.	Loss of Amenities of life	Rs. 1,00,000/-

Sl.No.	Particulars	Amount
9.	Pain and Suffering	Rs. 2,00,000/-
	Total Compensation	Rs.12,52,294/-

17. Adding this amount i.e., Rs.12,52,294/- with the compensation of Rs.15,81,085/- under the head of Loss of earning capacity, the total would be Rs.28,33,379/-. Insofar as the compensation awarded by the Tribunal under various head is concerned, Mr.S.Arun Kumar, learned counsel appearing for the appellant Insurance Company has submitted that the Tribunal had specifically awarded a sum of Rs.1,00,000/- towards Loss of Amenities of Life and Rs.2,00,000/- towards Pain and Sufferings. Besides this, the Tribunal had also granted a sum of Rs.15,81,085/- towards the Loss of Earning Capacity. Further, the Tribunal had proceeded to award a sum of Rs.1,00,000/- towards the Attender Charges and another sum of Rs.1,00,000/- towards Mental Agony to the petitioner. Insofar as these two amounts are concerned Mr.S.Arun Kumar, learned counsel for the appellant Insurance Company has raised his objection and urged to delete these two amounts.

18. We have considered the submissions of Mr.S.Arun Kumar.

19. On the other hand, Mr.V.Velu, learned counsel appearing for the first respondent/claimant has submitted that since the first respondent/claimant had suffered with 60% of disability which was partial permanent in nature, the Tribunal had deliberately lost its sight over this aspect and omitted to award any compensation. Further, he has also argued that the first respondent/claimant has been totally suffering with 115% of partial and permanent disability as per the disability certificate issued by P.Ws.2 and 3 vide Exs. P.20 and P.21 and hence, the Tribunal ought to have granted more compensation. and therefore, he has urged to allow the cross objection and enhance the compensation.

20. We have struck a balance between the submissions made by Mr.S.Arun Kumar and Mr.V.Velu learned counsels appearing for the appellant Insurance Company and the first respondent/claimant respectively.

21. Having regard to the related facts and circumstances of the case, we find that the amount of Rs.1,00,000/- awarded under the head "Attender Charges" seems to be in excess and therefore, this could be reduced to Rs.50,000/-. Obviously, the Tribunal has proceeded to award the compensation towards Loss of Earning Capacity, Pain and Suffering and Loss of Amenities of life. Barring these amounts a sum of Rs.1,00,000/- has been specifically awarded under the head of "Mental Agony to the petitioner" which could not

be granted as decided by the Apex Court in JAYAKODI AND OTHERS VS. BRANCH MANAGER, NATIONAL INSURANCE COMPANY AND NOTHER (2010 ACJ 697).

22. Hence, the amount awarded under the head "Mental Agony to the petitioner" could be deleted from the total compensation of Rs.28,33,379/- awarded by the Tribunal.

23. Therefore, we are of the considered view that a sum of Rs.1,50,000/- can be deducted from the total compensation awarded by the Tribunal for the above said reason. After deducting the amount of Rs.1,50,000/- from the total compensation of Rs.28,33,379/-, the balance amount would be at Rs.26,83,379/- which in accordance with our view is reasonable.

24. Keeping in view of the above fact, the appeal preferred by the Insurance Company deserves to be allowed in part and the cross objection filed by the first respondent/claimant is liable to be dismissed.

25. Accordingly, the appeal preferred by the appellant Insurance Company is allowed in part and a sum of Rs.28,33,379/- awarded by the Tribunal is hereby reduced to Rs.26,83,379/- (Rupees Twenty six lakhs eighty three thousand and three hundred and seventy nine only) (Rs.28,33,379-Rs.1,50,000). Thus, the award passed by the Tribunal is modified accordingly. The cross objection filed by the first respondent/claimant is dismissed.

26. The appellant insurance company is directed to deposit the reduced compensation amount, less the amount, if any, already deposited by them, together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, within a period of one month from the date of this judgment, to the credit of the claim petition in M.C.O.P.No.460 of 2011 on the file of the Motor Accidents Claims Tribunal, (Court of Small Causes No.II) Chennai. On such deposit being made, the first respondent/claimant is entitled to withdraw the entire amount, less the amount, if any, already withdrawn by him, without making any formal application. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

cla

To

1. The Motor Accidents Claims Tribunal,
(Court of Small Causes No.2),
Chennai.

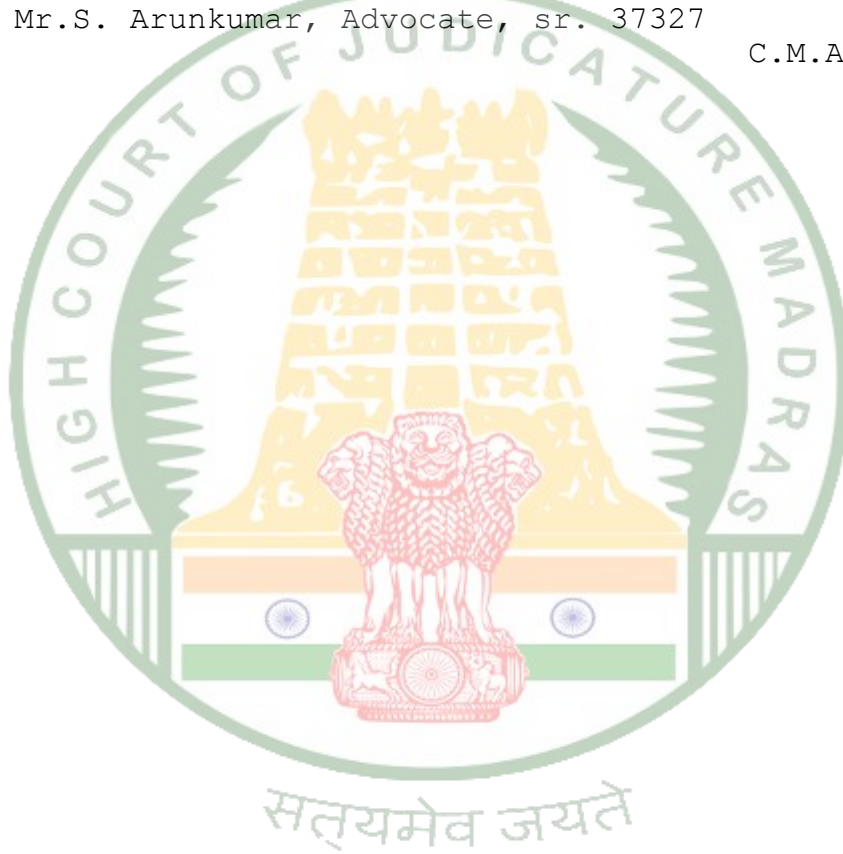
2. The Section Officer
VR Section,
High Court, Madras

1 cc to Mr.V. Velu, Advocate, Sr. 37188

1 cc to Mr.S. Arunkumar, Advocate, sr. 37327

C.M.A.No.3248 of 2014

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