

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

Civil Miscellaneous Appeal No.712 of 2014  
and M.P.No.1 of 2015 and MP.No.1 of 2014

M/s.National Insurance Co. Ltd.,  
Divisional Office,  
no.74-A, Paramathi Road,  
Namakkal - Town and District. .... Appellant/Respondent-II

vs.

1.Thiru.S.Vignesh .... Respondent-I/Petitioner

2.Thiru.A.Manivannan .... Respondent-II/Respondent-I

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 30.7.2013 passed in M.C.O.P.No.914 of 2011 on the file of the Motor Accidents Claims Tribunal (Additional District Judge), Namakkal District.

For appellant : Mr.J.Chandran  
For respondents : Mr.Ma.P.Thangavel for R1

J U D G M E N T

The National Insurance Company is the appellant in the above appeal challenging the award and decree dated 30.7.2013 passed in M.C.O.P.No.914 of 2011 on the file of the Motor Accidents Claims Tribunal (Additional District Judge), Namakkal.

2. Heard Mr.J.Chandran, learned counsel appearing for the appellant and Mr.Ma.P.Thangavel, learned counsel appearing for respondent No. 1.

3. It is a case of injury. The brief facts of the case are as follows:- The accident in this case happened on 06.03.2011 at 5.00 pm. When the rider of the Hero Honda vehicle was proceeding near Navaladipatti Bhavathiamman Koil, while the injured claimant was pillion rider in a Hero Honda bearing Registration No.TN28/AF-6980, another two wheeler came in a wrong direction. To avoid accident the owner/rider of the Hero Honda vehicle applied sudden brake, as a result, the pillion rider fell down. Due to this accident, the claimant sustained

injuries. After the accident, the injured claimant was admitted in M.M.Hospital, Namakkal, where a surgery was done. The injured claimant, aged 22 years had stated that due to this accident, he was unable to do his normal work. Hence, he claimed compensation of Rs.5.00 lakhs stating that he was working as a driver and earning a sum of Rs.8,000/- per month at the time of accident.

4. The said Original Petition was contested by the appellant herein contending that the accident was caused due to the rash and negligent driving of the driver of the vehicle and that the second respondent herein was not responsible for the accident. The owner of the Hero Hondo vehicle drove the motorcycle rashly and negligently resulting the accident and that the appellant is not liable to pay the compensation.

5. Before the Tribunal, Mr.Vignesh, the claimant, was examined as P.W.1 and Dr.Sivakumar, who treated the claimant was examined as P.W.2. Exs.P-1 to P-8 were marked. On the side of the respondents, no document was filed and no witness was examined.

6. Considering the oral and documentary evidence, the Tribunal granted the following amounts as compensation with 7.5% interest:-

| Sl. No. | Head                            | Amount granted by the Tribunal                 |
|---------|---------------------------------|------------------------------------------------|
| 1       | Loss of income                  | Rs.25,000/-                                    |
| 2       | Transport Expenses              | Rs.10,000/-                                    |
| 3       | Extra Nutrition                 | Rs.20,000/-                                    |
| 4       | Pain and suffering              | Rs.25,000/-                                    |
| 5       | Disability                      | Rs.70,000/-                                    |
| 6       | Loss of income earning capacity | Rs.45,000/-                                    |
| 7       | Medical Expenses                | Rs.42,634/-                                    |
|         | Total                           | Rs.237,634/-<br>( rounded off to Rs.237,600/-) |

7. There is no dispute with regard to the liability of the Insurance company. The only issue raised in this appeal is with regard to the quantum of compensation awarded by the Tribunal. The Tribunal, took note of the nature of injury, which is stated in Issue No.2, wherein it has been clearly stated that there was a surgery done on the right leg; there was skin transplantation and as a result, the disability of the claimant was certified at 35%, supported by Ex.P.8 disability certificate and awarded the compensation mentioned above.

8. The Tribunal taking note of the fact that the claimant has not produced any documents with regard to the income, fixed the loss of income at Rs.25,000/-, which is appropriate. The compensation awarded towards the transport expenses at Rs.10,000/-, pain and suffering at Rs.25,000/- and Rs.70,000/- towards disability are also justified. The Tribunal awarded a sum of Rs.20,000/- towards extra nutrition. For a case of this nature, where there is no fracture, the compensation awarded towards extra nutrition appears to be on the higher side. Hence, the same is reduced to Rs.10,000/-. The Tribunal awarded a sum of 45,000/- towards loss of earning capacity, which is also on the higher side. Hence, the same is reduced to Rs.30,000/-. There is no dispute on the compensation awarded in respect of medical expenses, which is supported by the medical bills.

9. Accordingly, the award of the Tribunal is modified as follows:-

| Sl. No. | Head                     | Amount granted by the Tribunal                    | Amount granted by this Court                       |
|---------|--------------------------|---------------------------------------------------|----------------------------------------------------|
| 1       | Loss of income           | Rs.25,000/-                                       | Rs.25,000/-                                        |
| 2       | Transport Expenses       | Rs.10,000/-                                       | Rs.10,000/-                                        |
| 3       | Nutrition                | Rs.20,000/-                                       | Rs.10,000/-                                        |
| 4       | Pain and suffering       | Rs.25,000/-                                       | Rs.25,000/-                                        |
| 5       | Disability               | Rs.70,000/-                                       | Rs.70,000/-                                        |
| 6       | Loss of earning capacity | Rs.45,000/-                                       | Rs.30,000/-                                        |
| 7       | Medical Expenses         | Rs.42,634/-                                       | Rs.42,634/-                                        |
|         | Total                    | Rs.237,634/-<br>( rounded off to<br>Rs.237,600/-) | Rs.2,12,634/-<br>(rounded off to<br>Rs.2,12,600/-) |

10. There is no dispute in respect of the interest granted by the Tribunal at 7.5% per annum. Accordingly, the same is confirmed.

11. In the result, the Civil Miscellaneous Appeal is allowed in part as follows:-

- (i) The award of the Tribunal is reduced to Rs.2,12,600/- from Rs.2,37,600/-
- (ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

- (iii) It is stated that the appellant had deposited 50% of the award amount as ordered by this Court.
- (iv) The claimant is permitted to withdraw the amount already in deposit.
- (v) Eight weeks time is granted to deposit the balance award amount as ordered by this Court.
- (vi) On such deposit being made, the claimant is permitted to withdraw the award amount as ordered by this Court.
- (vii) There will be no order as to costs in this appeal.
- (viii) Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

To

1. The Additional District Judge,  
(Motor Accidents Claims Tribunal)  
Namakkal.

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

+ 1 cc to Mr. Ma. P. Thangavel, Advocate SR 44987

+ 1 cc to Mr. J. Chandran, Advocate SR 45608

gj(co)  
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and M.P.No.1 of 2015

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