

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29..01..2015

CORAM

THE HON'BLE Mr.JUSTICE V.DHANAPALAN
and
THE HON'BLE Mr.JUSTICE G.CHOCKALINGAM

C.M.A.NO.1274 OF 2012

Branch Office,
National Insurance Co.Ltd.,
Villupuram

...Appellant

Versus

1. S.Rajinikanth
2. Senthil Kumar

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 12.4.2011 and made in M.A.C.T.O.P.No.705 of 2004 on the file of the Motor Accident Claims Tribunal, (Principal Subordinate Court), Villupuram.

For Appellant : Mr.S.Vadivel

For Respondent : Mr.Meganathan
for Mr.R.Nalliyappan for R.1

J U D G M E N T

(Judgment of the Court was delivered by V.DHANAPALAN,J.)

This Civil Miscellaneous Appeal has been directed against the award of the Motor Accident Claims Tribunal (Principal Subordinate Court), Villupuram made in M.A.C.T.O.P.No.705 of 2004 dated 12.4.2011, wherein as against a claim of compensation of Rs.90,00,000/- for the injuries sustained by the 1st respondent/claimant in the accident, a sum of Rs.22,74,331/- has been awarded.

2. Before the trial Court, it is the case of the claimant that on 18.4.2004, when he was proceeding to Chennai to attend cases

before the High Court in a Car and reached the North bye-pass of Maduranthagam lake, a driver of the Tata Sumo bearing Regn.No.32-B-6504 has driven the vehicle in a rash and negligent manner and dashed against partition iron fencing. As a result, the claimant sustained multiple injuries - crush injury with traumatic amputation of left leg, scalp laceration right temporal area, friction abrasion on the postero-medial aspect right leg. After the accident, he was taken to MIOT Hospital, Chennai, where he underwent a major operation and took treatment for more than 3 months. A case was registered by G1 Madurandagam Police Station in Crime No.284/2004 under Sections 279 and 338 IPC against the driver of Tata Sumo. Alleging that the claimant is a practising advocate at Tirukoilur and Villupuram, both in respect of Civil and Criminal cases and was doing wholesale vegetable business before enrollment as an Advocate and even at that time, he was earning more than Rs.30,000/- per month; that the accident took place due to the rash and negligent driving of the driver of TATA SUMO bearing Regn.No.TN 32 B 6504 and the appellant herein, being the insurer and the 2nd respondent, being the owner of the said accident vehicle, are jointly and severally liable to pay the compensation for the injuries sustained by the claimant, the 1st respondent/claimant filed the claim petition.

3. The appellant - Insurance Company resisted the claim by denying the petition averments as to the accident, age and income of the claimant and also contending that the driver of accident vehicle did not have a valid and effective driving licence at the time of accident and the accident vehicle had no proper registration and permit. The claimant has to prove that he was earning Rs.30,000/- per month at the time of accident by the Advocate profession or vegetable business and the disability and loss of earning capacity have to be proved by the claimant. The Insurance Company further contended that the compensation claimed is excessive.

4. Before the Tribunal, on behalf of the claimant, the claimant himself was examined as P.W.1 and Dr.Ravinder, who treated the claimant, was examined as P.W.2 and marked Exs.P.1 to P.11. On behalf of the Insurance Company, the Investigation Officer was examined as R.W.1 and marked Ex.R.1 - Investigation Report. After considering the pleadings on either side and the evidence, both oral and documentary, the Tribunal has arrived at a sum of Rs.7,500/- per month as income of deceased and based on Schedule I to the Workmen's Compensation Act, the loss of earnings was arrived at by the Tribunal at Rs.15,30,000/- (Rs.7500x12x17) by adopting multiplier 17, besides the compensation under other heads. Accordingly, the Tribunal awarded total compensation of Rs.22,74,331/- under the following heads:

Loss of earnings	: Rs. 15,30,000.00
Pain and suffering	: Rs. 50,000.00
Nutrition	: Rs. 15,000.00
Medical Expenses (as per Ex.P.9)	: Rs. 6,08,000.00
Transport Expenses (as per Ex.P.10)	: Rs. 71,331.00

Total	: Rs. 22,74,331.00

Aggrieved by the same, the Insurance Company has preferred this appeal.

5. Learned counsel appearing for the appellant mainly contended that the income of the claimant arrived by the Tribunal at Rs.7,500/- per month to compute the loss of earnings, is not in accordance with law. The compensation awarded for pain and suffering is excessive and the Tribunal ought not to have taken 85% disability for the injury sustained by the claimant.

6. To controvert the above contentions, the learned counsel for the 1st respondent/claimant would submit that the Tribunal, after taking into account the evidentiary value, both oral and documentary, has come to a clear conclusion and awarded compensation of Rs.22,74,331/- as against the claim of Rs.90,00,000/-. Therefore, there are no warranting circumstances to interfere with the award of the Tribunal.

7. We have heard the learned counsel for the parties and perused the records.

8. The injured claimant himself was examined as P.W.1 besides examining the Doctor as P.W.2 and marked the documents in respect of the liability as to the first information report, wound certificate, discharge summary, motor vehicles Registration Certificate, policy, driving licence and identity card as Exs.P.1 to P.7, besides marking a document issued by the Executive Officer of the Thirukoilur Town Panchayat as Ex.P.8 to prove that the claimant was having a leasehold right of a shop in vacant place in the bus stand of Thirukoilur Town Panchayat and the medical bills as Ex.P.9 series. Whatever charges spent by the claimant towards transport on car and taxi have been marked in Ex.P.10. The Investigation report has been marked as Ex.R.1 on the side of the appellant - Insurance Company before the Tribunal, besides examining the Investigation Officer - Sivakumar as R.W.1.

9. As there is no serious challenge to the liability issue and the learned counsel for the appellant - Insurance Company mainly focused his arguments on the quantum aspect, we would like to examine the factors that were taken into consideration by the Tribunal on the quantum of compensation.

10. In this case, as per the evidence of the Doctor - P.W.2 and the Certificate produced in Ex.P.11, the permanent disability has been arrived at 85%. The 1st respondent/claimant has stated in the petition that he was aged about 28 years and he was hale and healthy and practicing as an advocate at Thirukoilur and Villupuram and he claimed that he was one of the leading lawyer, both in civil and criminal sides in Villupuram District and also doing wholesale vegetable business before the date of his enrollment as an Advocate and even at that time, he was earning Rs.30,000/- per month. In proof of his profession, he has filed document in Ex.P.7 - identity card, which shows the Bar Council Enrollment No.1253 of 2001. As per Ex.P.7, it is proved that the injured was a practising lawyer in Tirukoilur and Villupuram and prior to that, he was doing wholesale vegetable business and claimed that he has earned a sum of Rs.30,000/- per month. The Tribunal, after taking into consideration all the material evidence, had come to a conclusion that he has earned a minimum of Rs.7,500/- per month. Accordingly, applying the principle as per the Workmen's Compensation Act - Schedule I, The Tribunal computed the loss of earnings by taking into consideration the age of the injured at the time of accident as 28 years and that at the time of calculating the compensation, he was 35 years by adopting multiplier 17 and also considering the permanent disability at 85% as per Ex.P.11, computed the loss of earnings at Rs.15,30,000/- ($\text{Rs.7500} \times 12 \times 17$). Further, towards pain and suffering, a reasonable compensation of Rs.50,000/- has been awarded by the Tribunal. The Tribunal also awarded a sum of Rs.15,000/- for nutrition, a sum of Rs.6,08,000/- for medical expenses and Rs.71,331/- for transport expenses as per Ex.P.10. Accordingly a total compensation of Rs.22,74,331/- was awarded by the Tribunal to the claimant.

11. Though the appellant has come out with a plea that the compensation awarded by the Tribunal was excessive and against the law, but considering the principle applied by the Tribunal in arriving at the compensation under the head of 'loss of earnings', taking the income of the claimant as Rs.7,500/- per month for the permanent disability of 85% and applying the 17 multiplier to the age of injured as 28 at the time of accident and 35 years at the time of award, the Tribunal awarded Rs.15,30,000/- towards loss of earnings.

The Tribunal also awarded compensation of a sum of Rs.15,000/- for nutrition, a sum of Rs.6,08,000/- for medical expenses and Rs.71,331/- for transport expenses. In our considered opinion, the award of compensation in every aspect is in accordance with law and the Tribunal duly applied its mind and determined the compensation, which is just and proper. Therefore, there are no warranting circumstances to interfere with such determination made by the Tribunal.

12. Accordingly, we dismiss the appeal, confirming the award dated 12.4.2011 passed by the Motor Accident Claims Tribunal (Principal Subordinate Court), Villupuram in M.A.C.T.O.P.No.705 of 2004. The Tribunal shall pay the 1st respondent-injured claimant the amount of compensation awarded together with interest expeditiously without insisting on any formal petition. However, there is no order as to costs. Consequently, the connected miscellaneous appeal is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

Copy to:

The Presiding Officer,
Motor Accident Claims Tribunal
(Subordinate Judge's Court)
Villupuram.

1CC to Mrs.S.Vadivel, Advocate SR 4504

1CC to Mr.R. Nalliyappan, Advocate SR 4546

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GP (CO)
PSI (21.04.2015)