

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE V.DHANAPALAN
AND
THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

C.M.A.No.2567 of 2013
and
M.P.No. 1 of 2013.

M/s.National Insurance Co. Ltd.,
I Floor, 135-1, Rose Building,
Main Road, Kovilpatti,
Tuticorin. ... Appellant/3rd Respondent.

vs.

1. Srinivasan 1st Respondent/Claimant
2. Anwar
3. Kannadasan Respondents 2 and 3/
Respondents 1 and 2
4. Ramasamy 4th Respondent/4th Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 16.03.2012 made in M.C.O.P.No.173 of 2010 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge), Tirupur.

For Appellant : Mrs.R.Sreevidhya

For R1 : Mr.Ma.P.Thangavel

R2 to R4 : Not ready in notice

* * * * *

J U D G M E N T

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

Heard Mrs.R.Sreevidhya, learned counsel for the appellant and Mr.P.Thangavel, learned counsel appearing for the 1st respondent.

2. Aggrieved by the award of the Tribunal dated 16.03.2012 made in M.C.O.P.No.173 of 2010 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge), Tirupur, the Insurance Company has filed this appeal challenging the same on the question of quantum.

3. It was the averment of the claimant/1st respondent herein before the Tribunal that on 08.01.2010 about 8.30 a.m., while he was riding his two wheeler bearing Registration No.TN 39 AP 4005 on the extreme left of the road, a lorry bearing Registration No.TN 67 3487 came from behind in a rash and negligent manner, dashed his two wheeler and he fell down and the wheel of the lorry ran over his legs, due to which he sustained grievous injuries. He was immediately taken to Government Hospital, Tirupur for first aid and later to CMC Hospital, Coimbatore and thereafter, he underwent treatment in Ganga Hospital, Coimbatore. According to the claimant, the accident occurred only due to the rash and negligent driving of the Driver of the Lorry belonging to the 3rd respondent herein. As both his legs were amputated and as he sustained multiple injuries all over the body, the claimant sought a sum of Rs.40,00,000/- as compensation from the owner of the alleged vehicle and its Insurer.

4. The Insurance Company resisted the claim petition before the Tribunal denying the age, avocation and income of the claimant as well the nature of injuries sustained by him and the amount spent towards his medical expenses. It further disputed their liability to pay compensation, as the vehicle in question was not insured with the 3rd respondent herein, viz. Kannadasan. It is their further contention that the narration of the accident is distorted and that there was no negligence on the part of the driver of the Lorry.

5. Before the Tribunal, on behalf of the claimant, three witnesses were examined and Exs.A1 to A14 were marked. The claimant, viz. Srinivasan was examined as P.W.1; Dr.Dhanasekar was examined as P.W.2 and one Ramu, employer of the claimant was examined as P.W.3. On the side of the respondents, no witness was examined and no document was marked.

6. The Tribunal, on evaluation of pleadings and evidence found that the accident occurred due to the rash and negligent driving of the driver of the Lorry bearing Registration No.TN 67 3487 and held him responsible for the accident and awarded a sum of Rs.29,45,200/- as compensation with interest at the rate of 7.5% per annum. The compensation awarded by the Tribunal under different heads are as under:

S.No.	Heads	Amount
1	Loss of Income due to 100% permanent disability (Rs.8808 x 12 x 16)	Rs.20,40,000.00
2	Pain and suffering	Rs.2,00,000.00
3	Loss of marital life	Rs.2,00,000.00
4	Loss of amenities	Rs.2,00,000.00
5	Attendant charges	Rs.1,00,000.00
6	Transportation expenses	Rs.2,00,000.00
7	Medical expenses	Rs.5,232.00
	Total	Rs.29,45,232.00

Challenging the said award passed by the Tribunal, the Insurance Company is before this Court by way of this appeal.

7. The main thrust of arguments of the learned counsel for the appellant is that the income of the claimant arrived at by the Tribunal is against the settled principles and also the multiplier adopted is not as per the ratio laid down in Sarla Varma's case.

8. Resisting the said submission, learned counsel appearing for the 1st respondent/claimant would contend that the Tribunal has not awarded any amount towards future prospects without taking note of 100% permanent disability sustained by the claimant. He would further contend that the income arrived at by the Tribunal is based on the ratio laid down in the settled legal position.

9. We have given careful consideration to the submissions made by the learned counsel on either side and the materials placed on record.

10. Though the learned counsel for the appellant has raised certain issues as to the liability of the accident, taking note of the evidence vide First Information Report, Motor Vehicles' Inspector's Report, Charge Sheet and Accident Register, the Tribunal has come to a clear conclusion fixing the liability of the accident on the driver of the Lorry and its insurer. Hence, this aspect does not require any interference. The main concern of the learned counsel for the appellant is that the income of the claimant fixed by the Tribunal is not in accordance with law.

11. A perusal of the evidence of P.W.1/claimant would show that he was earning a sum of Rs.15,000/- per month by running a two-wheeler workshop meant for servicing two-wheelers. To prove his avocation, Ex.P10-Member Identity Card issued by Two-wheeler Repair Welfare Association is filed. Further, P.W.3 - one Ramu was examined in proof of the claimant's avocation and salary and he too deposed that the claimant was earning a sum of Rs.15,000/- per month. Taking note of the age of the claimant at the time of accident as 35 years on the basis of Ex.P9-Driving Licence and in view of the evidence of P.W.3 and Ex.P10, the Tribunal fixed the income of the claimant at Rs.10,000/-. Hence, we find no wrong in the income fixed by the Tribunal.

12. Coming to the aspect of fixing of compensation, it is seen that the Tribunal has awarded a sum of Rs.20,40,000/- as compensation for loss of income due to 100% permanent disability, by fixing the multiplier of '17' as per Schedule II of Section 163-A of Motor Vehicles Act. But, in view of the ratio laid down by the Hon'ble Supreme Court in the case of Sarla Verma and Others vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1 (SC), the proper multiplier to be applied to the case of the claimant, who was aged 35 years at the time of accident, is '16'. Accordingly, applying the said multiplier to the present case, the compensation awarded under the head 'loss of income due to 100% permanent disability' is modified from Rs.20,40,000/- to Rs.19,20,000/- (Rs.10,000 x 12 x '16').

13. As regards the compensation awarded towards 'pain and suffering', we do not find any reason to interfere with the same taking note of the pain and suffering the claimant would have undergone due to amputation of both his legs below knee and in view of 100% permanent disability sustained by him. Coming to the compensation awarded under the head 'loss of marital life', amputation of both legs below knee would have certainly caused loss of marital prospects. Therefore, the award under this head is confirmed.

14. With regard to the compensation of a sum of Rs.2,00,000/- awarded towards 'loss of amenities', a sum of Rs.1,00,000/- awarded under the head 'Attendant charges' and a sum of Rs.2,00,000/- awarded towards Transportation expenses, this Court does not find any valid reason to interfere with the same, as the claimant with 100% permanent disability cannot move around without any assistance and hence, they are confirmed. So also, a sum of Rs.5,232/- awarded towards medical expenses is confirmed as there is enough proof vide Ex.P8 - Medical Bills.

15. Accordingly, the award passed by the Tribunal is modified and the new break-up details are as follows:

S.No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or modified
1	Loss of Income due to 100% permanent disability (Rs.8808 x 12 x 16)	Rs.20,40,000.00	Rs.19,20,000.00	Reduced
2	Pain and suffering	Rs. 2,00,000.00	Rs. 2,00,000.00	confirmed
3	Loss of marital life	Rs. 2,00,000.00	Rs. 2,00,000.00	confirmed
4	Loss of amenities	Rs. 2,00,000.00	Rs. 2,00,000.00	confirmed
5	Attendant charges	Rs. 1,00,000.00	Rs. 1,00,000.00	confirmed
6	Transportation expenses	Rs. 2,00,000.00	Rs. 2,00,000.00	confirmed
7	Medical expenses	Rs. 5,232.00	Rs. 5,232.00	confirmed
	Total	Rs.29,45,232.00	Rs.28,25,232.00	Reduced

16. The award of the Tribunal is thus modified and the claimant is entitled to a sum of Rs.28,25,232/- (Rupees Twenty Eight Lakhs Twenty Five Thousand Two Hundred and Thirty Two only) as compensation along with interest at the rate of 7.5% per annum.

17. At the time of admission of the appeal, the appellant Insurance Company was directed to deposit 50% of the award amount together with accrued interest and costs. The appellant/Insurance Company is now directed to deposit the balance award amount as ordered by this Court together with interest and costs and it is open to the 1st respondent/claimant to withdraw the balance amount of compensation.

18. In fine, this Civil Miscellaneous Appeal is allowed with the above modification in the compensation awarded by the Tribunal. No costs. Consequently, connected M.P.No.1 of 2013 is closed.

-s/d-

Assistant Registrar(CO)

Dt:10/2/2015

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Sub-Assistant Registrar

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Principal Subordinate Judge),
Tirupur.

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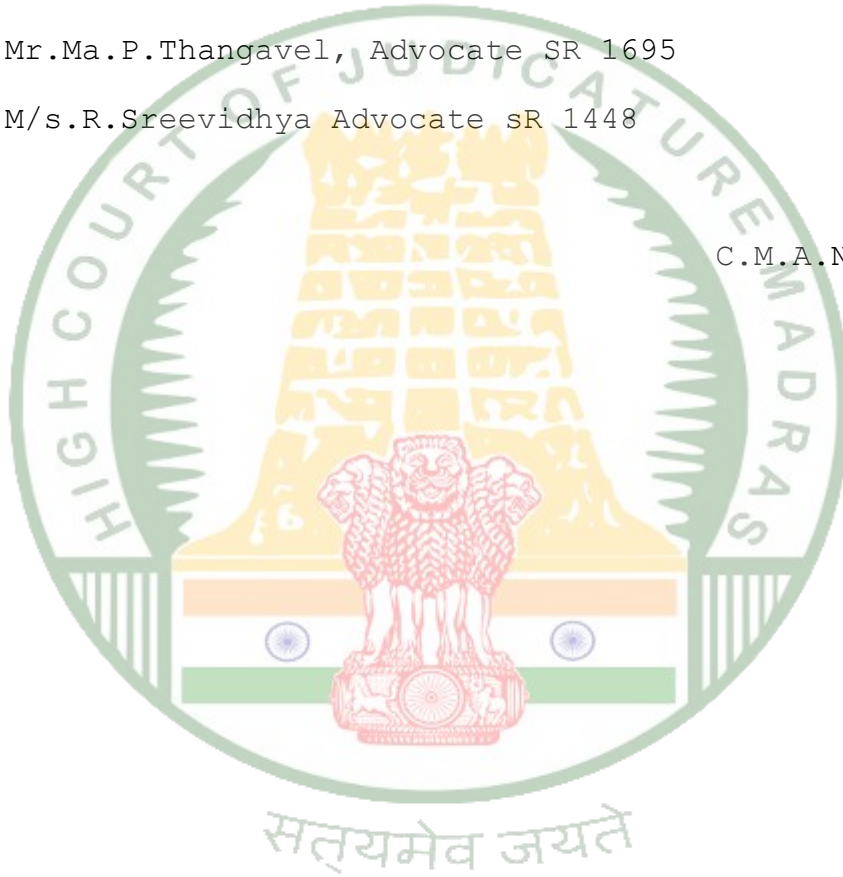
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Judgment in
C.M.A.No.2567 of 2013



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