

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.7.2015

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA.No.2958 of 2013

Shunmugam rep. by his mother and
Next Friend
Deivanai.

... Appellant/Petitioner

-Versus-

1) Bharathi

2) The Divisional Manager,
Oriental Insurance Company Limited,
No.32/312, Vijaya Lakshmi Complex, Ist Floor,
13th Street, 11th Phase,
Sanduvacharry,
Vellore.

... Respondents/Respondents

This civil Miscellaneous appeal is filed under Section 173 of the Motor Vehicles Act 1988 against the judgment and decree dated 13.04.2013 and made in M.A.C.T.O.P.No.184 of 2012 on the file of the Motor Accident Claims Tribunal, Additional Subordinate Judge, Thiruvannamalai.

For Appellant : Mr.F.Terry Chellaraja
For Respondents : Mr.T.Kumar for R2

J U D G E M E N T

"Life is Cruel than death" which statement is demonstrated by the facts of this case. A person who became vegetable due to head injuries in the accident and lost vision in an eye, is before this Court by way of appeal seeking enhancement of compensation.

2. In the accident occurred on 9.9.2011, the claimant Shunmugam sustained following severe head injuries:

- a) Left frontal and temporal bone compound depressed fracture,
- b) Left temporal extradural hematoma,
- c) Left lateral ventricular bleed cerebral edema and
- d) Dilutional hyponatremia.

Therefore, the claim petition was filed.

3. On contest, the Tribunal found that the claimant was travelling as a pillion rider in the first respondent's Hero Honda Splender Plus two wheeler, which was driven rash and negligently losing control and it dashed against another two wheeler resulting in the accident. The Tribunal awarded a sum of Rs.7,47,600/- towards compensation. The said award is being challenged before this court on questioning the adequacy of the quantum of compensation by the claimants.

4. Heard Mr.F.Terry Chellaraja, learned counsel appearing for the appellant and Mr.T.Kumar, learned counsel appearing for the second respondent and perused the records. Since in the appeal the only question is with regard to quantum of compensation and the insurance company has not filed any appeal, the finding regarding negligence has attained finality. It is evident from the medical records that the claimant sustained severe head injuries and sustained deep cut injuries in cheek, nose and eyebrow. PW4-Doctor had given treatment. PW5-Doctor deposed that the appellant lost vision in the left Eye because of the injuries. Because of 6 inches cavity in the head affecting the functioning of brain, the claimant is unable to speak and he cannot recollect anything. In fact, when he appeared before this Court, he is only able to walk with the help of his age old parents. More over, he has also lost his speech. It is clear that he cannot do anything without assistance of third parties throughout his life time. In other words he has become vegetable.

5. Originally the claimant was admitted in Chengam Government Hospital immediately after the accident and thereafter in CMC Hospital, Vellore. He was operated in the head. Exs.P9 and P10 are discharge summaries, which would prove that he had undergone surgery. Both his legs and hands have been affected due to the head injuries. Therefore, PW5-Doctor determined the disability at 30% and issued Ex.P24 disability certificate. PW6-Doctor, ophthalmologists categorically deposed that the appellant lost vision of the left Eye and determined the disability at 40% as per Ex.P26. From the above, it is clear that the brain of the appellant got damaged, resulting in inability to walk, loss of eye sight in the left eye and loss of speech. Though the Tribunal determined the disability at 80%, the status of the appellant makes it very clear that through out his life time, he cannot do any work and he should be depending upon some one even for his day to day personal works. It is unimaginable that he can do work, especially when he lost his speech and unable to walk properly without walking stick. Therefore, the disability is redetermined at 100% and the loss of earning capacity at 100%.

6. Based on Exs.P9 and P.10, discharge summaries, the Tribunal rightly determined the age of the claimant as 28 years at the time of accident. More over, the appellant's mother alone was examined as PW1, since the claimant is unable to speak. When he appeared before this Court, this court put him some questions and he was unable to understand and reply to the questions put to him except blinking which made the mother accompanying him to shed tears.

7. The monthly income of Rs.10,000/- was claimed as a mason by the claimant. The Hon'ble Supreme Court in Syed Sadiq v. Divisional Manager, United India Insurance Co.Ltd. Reported in 2014 (1) TNMAC 459 (SC) determined the monthly income of a vegetable vendor at Rs.9750/- per month inclusive of future prospects. Following the said judgement, Rs.6500/- is determined as monthly income and adding 50% towards future prospects, Rs.9750/- is determined as loss of monthly earning. Since the appellant is aged about 28 years, as per Sarla Verma and others v. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1 (SC), appropriate multiplier is-17 and the loss of income is calculated as follows:
$$\text{Rs.6500/-} + 50\% \times 12 \times 17 = \text{Rs.19,89,000/-}.$$

8. The claimant continues to take treatment and he has to travel every month from Thiruvannamalai to CMC Hospital, Vellore, which is 100 kilo meters away from Thiruvannamalai for physiotherapy and further treatment including the treatment for urinal problem. Hence, Rs.3000/- awarded towards transportation is negligible and the same is enhanced to Rs.1,00,000/-. Without help of third party, it is impossible for the claimant to do his normal activities. In Kavita vs. Deepak and others reported in 2012 (2) TN MAC 362 (SC) the Hon'ble Supreme Court, for a claimant who is in vegetative status, awarded a sum of Rs.6,00,000/- towards attender charges. Since the claimant is aged about 28 years, his average life time is expected further 25 years. Therefore, the attender's charge is calculated and awarded $\text{Rs.2000} \times 12 \times 25 = \text{Rs.6,00,000/-}$. Since the appellant has to be given treatment regularly, an amount of Rs.1,00,000/- is awarded towards future medical expenses.

9. Because of the accident the claimant sustained head injury and lost vision. More over, he underwent surgery in the head also. The pain and suffering and mental agony underwent by the claimant cannot be compensated. Hence a sum of Rs.2,00,000/- is awarded towards pain and suffering. Similarly, the appellant is the only son to his parents and he has become a vegetable, which is causing continuous mental agony and suffering every day to his parents and Rs.1,00,000/- is awarded towards mental agony to the parents.

10. The claimant is a bachelor and he is made to remain as bachelor throughout his life time because of the disability sustained. No lady would come forward to marry him because of his vegetative status. The said position is pitiable, pathetic and horrible and therefore, for loss of amenities and marital prospects a sum of Rs.3,00,000/- is awarded. The amount awarded towards extra nourishment by the tribunal is too low and the same is enhanced to Rs.1,50,000/-. The award of the Tribunal is enhanced from Rs.7,47,600/- to Rs.35,39,000/- rounded to Rs.35,40,000/-. The rate of interest at 7.5% per annum awarded by the Tribunal is confirmed. The appeal is allowed with the above enhancement. No costs. Consequently the connected M.P.No.1 of 2014 is closed. The appellant is directed to pay the necessary additional court fee within a period of two weeks from the date of the receipt of a copy of the order.

11. Since the claimant is not normal with loss of speech and vision in the left eye and is unable to do any work, it is appropriate to appoint a guardian now itself. It is suggested by his parents viz. Rajamanickam and Mrs.Deivanai who are present in the Court that after their life time, their elder daughter, B.Jothilakshmi, W/o.Boopathi, aged about 37, Poolajanavalasai, Sernmanaputhur Post, Thirupathur Taluk, Vellore District-635652, who is helping the claimant, can be appointed as guardian. In this regard they also file an affidavit to that effect before this Court. Mrs.B.Jothilakshmi is also present before the Court. Therefore, she is appointed as guardian of the claimant after life time of the appellant's parents. The affidavits filed by the parents and Mrs.Jothilakshmi shall form part of the order.

12. The parents of the claimant filed common affidavit giving their consent for appointment of Mr.B.Jothilakshmi as guardian of the claimant after their life time. The award amount of Rs.35,40,000/- along with entire interest and costs is to be deposited before the Tribunal within four weeks from the date of the receipt of a copy of the order. The appellant is permitted to withdraw Rs.15,00,000/- (Rupees fifteen lakhs only) and the balance amount along with entire interest and costs is directed to be deposited in Bank of India, Melpallipattu Branch, Thiruvannamalai District. The Interest accrued in the said deposit is permitted to be withdrawn once in two months by the parents of the appellant and after their life time, their daughter, Mrs.B.Jothilakshmi, is permitted to withdraw the interest as guardian of the appellant.

(Herein affidavit is enclosed)

vk

s/d-
Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

To

The Motor Accident Claims Tribunal, Additional Subordinate
Judge, Thiruvannamalai

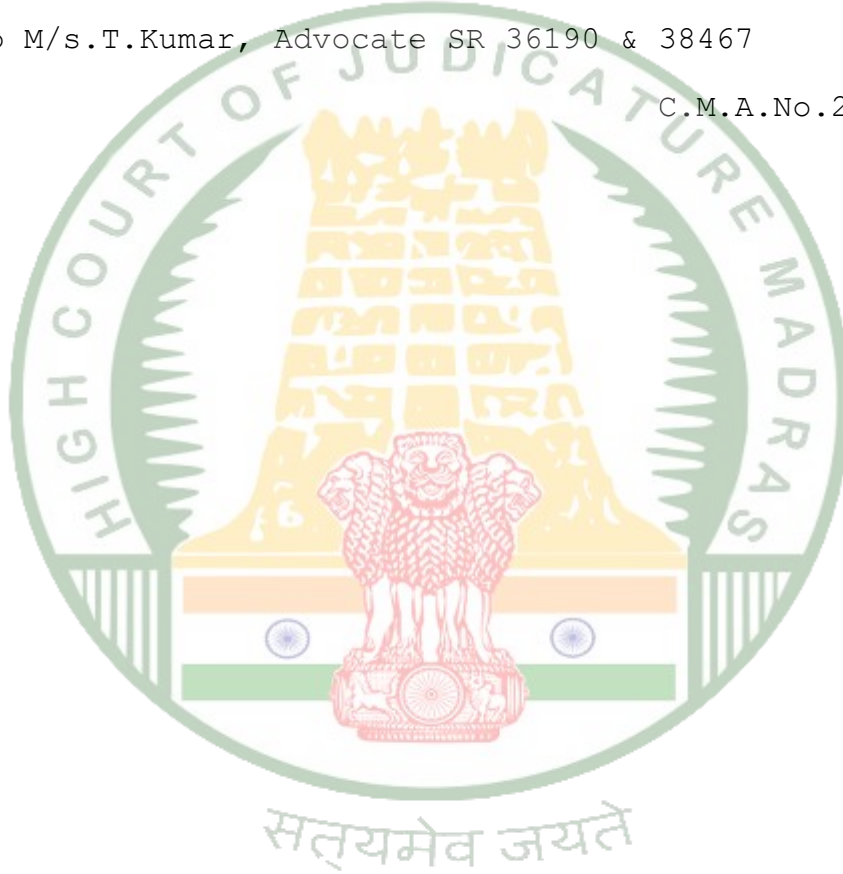
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The Section Officer,
V.R.Section, High Court,
Madras.

+ 1 cc to M/s.M.Malar, Advocate SR 38546

+ 2 ccs to M/s.T.Kumar, Advocate SR 36190 & 38467

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