

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-10-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

C.M.A. No. 3214 of 2006

and

M.P.No. 1 of 2006

Branch Manager

National Insurance Co., Ltd.,

No.333/1, Sekkalai Road

Karaikudi

.. Appellant/2nd Respondent

Versus

1. P. Natarajan ..Respondent/Petitioner

2. M. Abdullah .. Respondents/1st Respondent

Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 02.02.2006 made in M.C.O.P. No. 578 of 2002 on the file of The Motor Accidents Claims Tribunal, Sub Court, Dharmapuri at Krishnagiri.

For Appellant : Mr. S. Arunkumar

For Respondents : Mr. Devaraj for R1
No appearance for R2

JUDGMENT

The Insurance Company has come forward with this Civil Miscellaneous Appeal questioning the correctness of the award passed by the Tribunal awarding a sum of Rs.6,50,000/- in favour of the claimant/first respondent herein.

2. The first respondent herein has filed MCOP No. 578 of 2002 before the Motor Accident Claims Tribunal, Krishnagiri contending that on 15.11.2001, when the claimant/first respondent herein was proceeding from his native place to his place of work, at about 7.15 hours in the tourist vehicle - Maruti Zen Car bearing Registration No. TN 63 Y 7898, near Kathiravan Shop in Salem to Namakkal Road, two dogs have darted across the road suddenly and in order to avoid hitting the dogs, the driver swerved to the right side of the road and dashed against the platform. In the impact, the claimant sustained facial wounds with laceration involving eye lids on the right side, closed fracture of the maxilla, blunt injury in the chest with lung contusion, closed segmental fracture of the left humerus, blunt injury in the abdomen with laceration of the left liver and major central fracture in the right hip. Immediately after the accident, the claimant was taken to

Aravinth Hospital, Namakkal from where he was shifted to Ganga Medical Centre and Hospital, Coimbatore for better treatment. According to the claimant, he was working as Regional Transport Officer at Sivagangai at the time of accident and he was earning Rs.15,649/- as salary every month. He was admitted as an in-patient for more than a month and he also underwent a surgery. Due to the accident, the claimant could not discharge his official work as before. Therefore, for the injuries sustained in the accident, he claimed compensation of Rs.8,00,000/-. The first in the claim petition, who is the second respondent in this appeal, is the owner of the vehicle and the vehicle was insured with the appellant.

3. The insurance company resisted the claim petition by contending that there is a delay in registering the first information report in this case. Even though the accident allegedly occurred on 15.11.2001 at 7.15 am, one of the pedestrian by name Mani has given the complaint as if he had witnessed the accident and the case was registered on the next day i.e., 16.11.2001 at 3.30 p.m. The car in which the claimant was travelling is a tourist vehicle and the driver has not preferred any complaint. The claimant is bound to prove his age, occupation and the monthly income. In any event, the claim of Rs.8,00,000/- claimed by the claimant is not in consonance with the nature of injuries sustained by him.

4. The Tribunal, on analysis of the oral and documentary evidence, awarded a sum of Rs.6,50,000/- as compensation under the following heads:-

Injuries	: Rs.1,00,000.00
Pain and suffering	: Rs.1,00,000.00
Permanent disability	: Rs.1,00,000.00
Loss of earning capacity	: Rs. 90,000.00
Medical expenses	: Rs.1,00,000.00
Loss of future earning capacity:	Rs. 70,000.00
Extra nourishment	: Rs. 25,000.00
Transportation	: Rs. 25,000.00
Loss of partial income earning:	Rs. 40,000.00

Rs.6,50,000.00

5. The learned counsel appearing for the insurance company would contend that the amount awarded by the Tribunal under various heads are legally not sustainable. The Tribunal has awarded a sum of Rs.1,00,000/- towards injuries, while so, it ought not to have awarded another sum of Rs.1,00,000/- towards permanent disability. The amount awarded under pain and suffering is very high taking note of the nature and extent of the injuries sustained by the claimant. The amount awarded by the Tribunal under various heads are nothing but repetition of amount in different heads. Even though the claimant claims to have sustained multiple injury, there is no record to show that the claimant could not attend to his work as before. The claimant has also not produced any documentary evidence to show that his future prospects to get promotion is affected by

reason of the injuries sustained in the accident. Therefore, the Tribunal ought not to have awarded any amount towards loss of partial earning capacity or future prospects. Therefore, the learned counsel for the appellant prays this Court to set aside the award passed by the Tribunal.

6. On the contrary, the learned counsel for the claimant/first respondent would contend that the Doctor assessed the disability of the claimant at 70% and therefore the trial court ought to have resorted to award compensation by adopting multiplier method. This is more so that the claimant was hospitalised for about a month and underwent surgery. Having regard to the nature and extent of injuries sustained by the claimant, the Tribunal has passed the award which is fair and reasonable.

7. I heard the counsel for both sides and perused the materials placed on record. At the outset, it has to be mentioned that the amount awarded by the Tribunal under various heads are inter-twined and overlapping against each other. The Tribunal has awarded various amount by just changing the nomenclature of the heading under which the amount is awarded. The amount awarded under the heading loss of partial earning and future earning capacity are without any basis.

8. It is seen from the records that the Doctor has assessed the disability of the claimant at 70%. Having regard to the nature of injuries sustained by the claimant and the period of hospitalisation, the disability can at best be assessed at 50%. For 50% disability, even if a sum of Rs.2,000/- is awarded per percentage of disability, the claimant is entitled to a sum of Rs.1,00,000/- towards disability and this amount awarded by the Tribunal is fair and reasonable. However, the sum of Rs.1,00,000/- awarded by the Tribunal under the head permanent disability, apart from the sum of Rs.1,00,000/- towards disability is not proper. Therefore, the sum of Rs.1,00,000/- awarded under the head permanent disability is hereby disallowed.

9. The Tribunal has awarded a sum of Rs.1,00,000/- towards pain and suffering. Having regard to the nature of injuries sustained by the claimant and the period of hospitalisation, I am of the view that the claimant can be awarded a sum of Rs.60,000/- as against Rs.1,00,000/- awarded by the Tribunal.

10. For Medical expenses, the Tribunal has awarded a sum of Rs.1,00,000/- without any medical records. Even though the claimant has filed discharge summary, Ex.P4 and medical bills under Ex.P5, the trial court has not discussed as to what was the total amount spent by the claimant towards medical expenses. Rather, the Tribunal awarded a lumpsum of Rs.1,00,000/- towards medical expenses. Admittedly, the claimant was employed as Regional Transport Officer at the time of accident and as a government servant, he is entitled for medical reimbursement. Taking into account of the above

factors, I am inclined to award a sum of Rs.60,000/- towards medical expenses as against the sum of Rs.1,00,000/- awarded by the Tribunal.

11. Similarly, the Tribunal has awarded a lumpsum of Rs.25,000/- towards transportation expenses without any documentary proof for having spent such a amount. In such event, I am of the view that a sum of Rs.15,000/- could be awarded towards transportation as against Rs.25,000/- awarded by the Tribunal.

12. The Tribunal awarded a sum of Rs.25,000/- towards extra nourishment, which in my opinion is a fair and reasonable compensation having regard to the nature of injuries sustained by the claimant.

13. The Tribunal has not awarded any amount towards attendant charges especially when the claimant sustained injuries on his legs and admitted in the hospital for about a month. Therefore, I award a sum of Rs.15,000/- towards attendant charges in favour of the claimant.

14. In the result, the appeal filed by the Insurance Company is allowed reducing the compensation awarded by the Tribunal from Rs.6,50,000/- to Rs.2,75,000/- as tabulated below:-

Disability	Rs.1,00,000.00
Pain and suffering	Rs. 60,000.00
Medical expenses	Rs. 60,000.00
Transportation expenses	Rs. 15,000.00
Extra Nourishment	Rs. 25,000.00
Attendant charges	Rs. 15,000.00

	Rs.2,75,000.00

15. The Insurance company is directed to deposit the amount as determined in this appeal, if not already deposited, within a period of six weeks from the date of receipt of a copy of this judgment with interest as determined by the Tribunal. It is needless to mention that if there is any excess amount deposited by the insurance company, the same shall be withdrawn with accrued interest. On such deposit, the claimant is also permitted to withdraw the compensation amount. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

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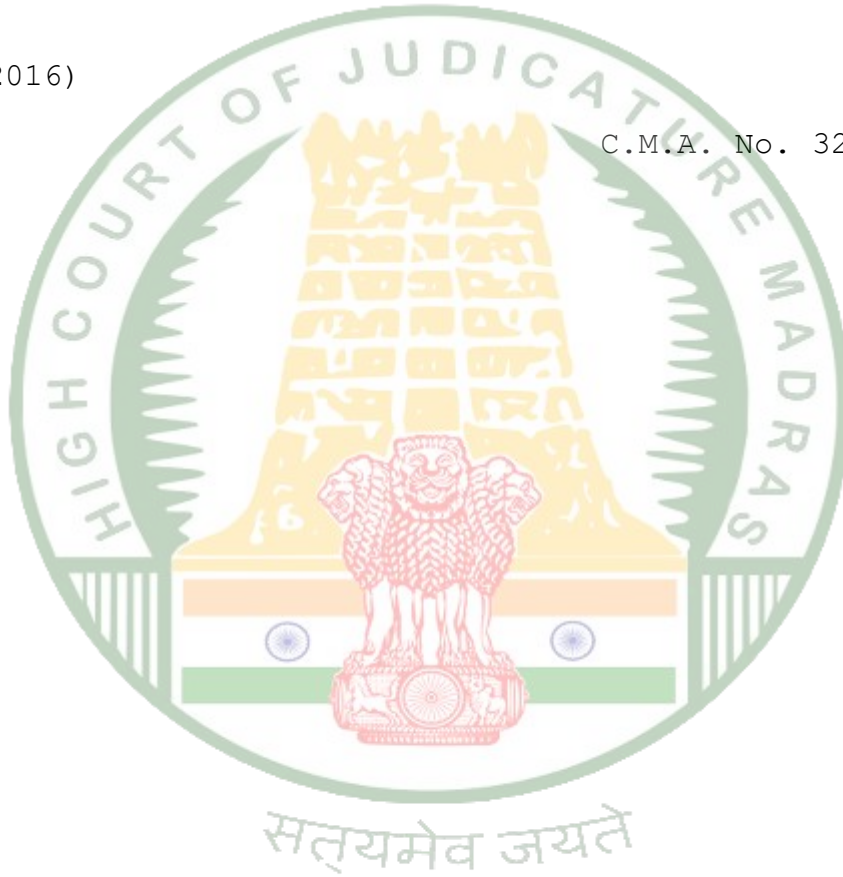
To

The Motor Accidents Claims Tribunal
Sub Court
Dharmapuri at Krishnagiri.

+1cc to Mr. Arunkumar, Advocate, S.R.No.58306
+1cc to Mr.M.Devaraj, Advocate, S.R.No.58266

CNR(CO)
EU(16/03/2016)

C.M.A. No. 3214 of 2006



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