

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.NO.2622 of 2004

United India Insurance Co.,Ltd.,
Thanjavur Division,
rep.by its Divisional Manager.

.. Appellant

Vs.

1.Sridharan
2.Raja
3.Vasundara Devi

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree passed by the Motor Accident Claims Tribunal, (Sub Court) Thiruvavur in M.C.O.P.No.139 of 2002 dated 04.09.2003 for awarding compensation.

For Appellant : Mr.M.B.Raghavan for
Mr.M.B.Gopalan

For 1st Respondent : Mr.Srinath Sridevan

JUDGMENT

This appeal has been preferred by the Insurance Company against the award of Rs.13,99,639/- as compensation for the injuries sustained by the first respondent/claimant, in the accident occurred on 25.05.2002.

2. At best, the 1st respondent/claimant can be called as a dead person living and this case is an example as to how negligence on the part of one human being would cause havoc in the life of an innocent 3rd party.

3. The first respondent/claimant was riding his bicycle on 25.05.2002. At that time, a lorry insured with the appellant insurance company, driven rashly and negligently with greater speed, dashed against the first respondent/claimant causing the accident crushing him under the wheels. As a result, 1st respondent's hip, thighbone, sexual organs, bladder and excretory organs were crushed. There were also other injuries to his body. Therefore, a claim

petition was filed.

4. After contest, the tribunal found that the lorry was driven rash and negligently and fixed the liability on the insurance company. The said award is being challenged before this Court by the appellant/Insurance Company.

5. Heard Mr.M.B.Raghavan, learned counsel appearing for the appellant and Mr.Srinath Sridevan, learned counsel appearing for the first respondent/claimant.

6. Mr.M.B.Raghavan, learned counsel for the appellant would contend that the claimant was earning a sum of Rs.6,000/- in a Fast Food Centre. No material was produced before this Court and the Tribunal fixed the monthly income at Rs.6,000/- p.m. Therefore, he seeks to reduce the monthly income and consequently, the compensation. Secondly, he would submit that the Insurance Policy stands in the name of the third respondent, whereas, the second respondent is the owner of the vehicle and therefore, he challenges the liability fixed on the Insurance company.

7. On the other hand, Mr.Srinath Sridevan, learned counsel appearing for the first respondent/claimant would submit that the claimant is the only son, who was running a Fast Food Centre and earning a sum of Rs.6,000/-p.m. No amount was awarded towards future prospects since he is the only son of the family, no amount was awarded towards marital prospects and even the amount awarded towards attender charges, pain and suffering and replacement of urinary bags are very negligible and therefore, he seeks for enhancement.

8. Heard both the parties and perused the records.

9. Though it is contended by the learned counsel for the appellant that there is no liability on the part of the Insurance Company, as the Insurance policy stands in the name of the third respondent and the second respondent is the owner of the vehicle, the said point is already covered by the decision of the Hon'ble Supreme Court in 2009 1 TNMAC 78 reported in United India Insurance Company v. Santro Devi and therefore, the said contention is not sustainable.

10. The manner of the accident and the negligence is not in dispute. Almost all the parts of the first respondent/claimant's, viz., hip and thigh bones were broken and his sexual organs were destroyed; the urinary tubes and motion tubes got mixed up together making possibility of mixing of urine and motion causing serious problems; because of the injuries, excretory organs are required to be removed and urine bag and rectal bag with tubes which are to be changed every day through out his life. The contention of the claimant is proved by medical records. He was admitted in the Tanjore Government Medical College Hospital on 25.05.2002 and he was treated till 06.06.2002. Since there was no improvement in the

condition, he was treated in a private nursing home till 29.08.2002. Thereafter, he was admitted in a private hospital for Urological treatment in S.P.Nursing Home, Tanjore. A surgery was also done there. He is passing urine and motion only through tubes and bags. Though he was operated thrice, his medical condition is not very stable, especially, the kidney. By destruction of reproductive organs, he is forced to live as a bachelor, contrary to his wishes. He is almost bedridden and he is unable to do any work causing not only mental agony to the claimant but also to his parents who cannot withstand, the suffering being undergone by the claimant. The loss is irreparable, as the claimant is the only son of the family. No amount of compensation would compensate either the claimant nor his parents. The medical records namely, Exs.P.5 to P.32, except Exs.P.28 and P.29 would undoubtedly prove the pathetic and pitiable condition of the claimant. Even though, no amount of compensation would make the claimant alright, in an endeavour to console, comfort and compensate, this Court has to award just compensation.

11. The accident occurred on 25.05.2002, he claims to have run Fast Food Centre, earning about Rs.6,000/-. As a owner of the Fast Food Centre, he would easily earned Rs.6,000/- p.m. However, no amount was awarded towards future prospects, as the claimant was aged about 30 years, 50% is required to be added towards future prospects, following the Judgment of Honourable Supreme Court in Sarla Verma and Others vs. Delhi Transport Corporation and another reported in 2009(6) Supreme Court Cases 121 and Santhosh Devi vs. National Insurance Company Limited reported in 2012(6) SCC 421. Based on the evidence of P.W.2, the Tribunal determined the disability at 70%. The said determination cannot be found fault with and the same is confirmed. Hence the loss of income of the victim is determined as follows:

$$\text{Rs.6,000/-} + 50\% \times 70/100 \times 17 = \text{Rs.12,85,200/-}$$

The above calculation is based on the multiplier 17, as per the age of the claimant. The amount spent by the claimant is proved by Exs.P.20 to P.23. The Tribunal awarded only a sum of Rs.1,38,349/- and the amount should be awarded is Rs.2,00,000/-. Therefore, sum of Rs.1,38,349/- awarded is enhanced to Rs.2,00,000/- including the Doctor fee of Rs.48,400/-.

12. Since the claimant was admitted in three hospitals for more than five times and underwent surgery thrice, more amount is awarded towards attender charges and therefore, a sum of Rs.1,00,000/- is awarded. The Tribunal awarded a sum of Rs.75,000/- towards disability and considering the injuries caused to the claimant this Court awards a sum of Rs.1,50,000/- towards disability. A sum of Rs.1,50,000/- towards pain and suffering is very reasonable and the same is hereby confirmed. The very peculiar circumstances of this case, is that he has to necessarily replace the urinary tube and bag every day, failing which, there is chance of getting infection

throughout every day in his life. Therefore, the Tribunal awarded a sum of Rs.28,840/- (Rs.25,000/-+ Rs.3,840/-) towards expenses for replacement of bag and therefore, taking a sum of Rs.6,000/- as monthly expenses incurred for changing tubes and bags for 16 years, (Rs.6,000x 12x17) Rs.12,24,000/- instead of Rs.11,52,000/-. Rs.250/- towards damage to clothes is enhanced to Rs.5000. Sum of Rs.1,00,000/- awards towards future medical expenses is confirmed.

13. As already stated, the claimant is forced to remain as a bachelor because of the destruction of his sexual organs completely depriving to getting married and enjoying the marital life and therefore, a sum of Rs.2,00,000/- is awarded under the said head.

14. Though the appeal has been filed by the appellant/Insurance company, as against the award of a sum of Rs.13,99,639/-, considering the pathetic position of the claimant and disability sustained by the claimant, especially based on the evidence of doctors P.W.2 and P.W.3, this Court, in an endeavour to award just and proper compensation, suo motu enhances the compensation to a sum of Rs.34,50,000/-. This Court has jurisdiction and power to enhance the compensation even in the absence of any appeal or cross appeal, what has to be awarded is only just and adequate compensation and should not be too high or too low. Hence, this Court on re-appreciating the evidence on record and following the Judgment of the Hon'ble Supreme Court in Swaram Singh invoking under Order 41 Rule 33 of C.P.C., enhances the compensation from Rs.13,99,639/- to Rs.35,14,200/- rounded off Rs.35,00,000/- in the appeal filed by the appellant/Insurance company in the following manner:-

Loss of income (Rs.6,000 +50%X70/100X12X17)	Rs. 12,85,200
Medical Expenses	Rs. 2,00,000
Attended Charges	Rs. 2,00,000
Pain and suffering	Rs. 1,50,000
Permanent Disability	Rs. 1,50,000
Expenses for replacement of bag (Ea.6,000/-X12X17)	Rs. 12,24,000
Damage to clothes	Rs. 5,000
Future Medical Expenses	Rs. 1,00,000
Loss of marital prospects	Rs. 2,00,000

Total	Rs. 35,14,200

Rounded of to Rs.35,00,000/-

15. The award of interest at the rate of 7.5% per annum remains un-altered. The first respondent/claimant is directed to deposit an additional court fee within a period of six weeks from the date of receipt of a copy of this order.

16. The appellant/Insurance Company is directed to deposit the entire award amount along with interest and cost, after deducting the the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order. The Insurance Company is also directed to transfer the entire amount to the account of the claimant directly and the details shall be given by the learned counsel for the claimant, within a period of one week from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the entire award amount along with interest and cost.

In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

kkd

To

The Motor Accident Claims Tribunal,
(Sub Court) Thiruvavarur.

1 cc to Mr.Srinath Sridevan, Advocate Sr.No.37810

1 cc to Mr. M.B.Gopalan, Advocate Sr.No. 37928

C.M.A.NO.2622 of 2014

svi(co)

pmk.11.9.2014

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