

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.02.2016

C O R A M

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.1 of 2014
and M.P.No.1 of 2014
and Cross Obj.No.8 of 2016

New India Assurance Co.Ltd
No.45, Moore Street, V Floor
Chennai

...Appellant in CMA.No.1/2014/
2nd Respondent

Vs

1.N.Krishnamurthy
2.S.Sakthivel

... Respondents in CMA.No.1/2014/
Claimant/1st Respondent

Cross Obj.No.8 of 2016

N.Krishnamurthy

.... Cross Objector

Vs

1.The New India Assurance Co Ltd
No.45, Moore Street,V Floor
Chennai-600 001

2.S.Sakthivel

...

Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1989, against the order dated 27th day of August, 2012 made in M.C.O.P.No.4512 of 2007 on the file of Motor Accident Claims Tribunal (III Court of Small Causes) Madras.

Cross Objection filed against the order dated 27th day of August, 2012 made in M.C.O.P.No.4512 of 2007 on the file of Motor Accident Claims Tribunal (III Court of Small Causes) Madras.

For appellant in CMA
and R1 in Cross Objection... Mr.S.Manohar
For respondent in CMA
and Cross-Objector ... Mr.N.M.Muthurajan, for R1

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR, J.)

The New India Assurance Company filed the above appeal challenging the compensation granted by the Tribunal, whereas the claimant, who sustained injury in the Motor Vehicle Accident, filed Cross Objection for enhancement of compensation.

2. It is a case of injury. On 25.04.2007 at 19.45 hours, the claimant was riding Motor Cycle bearing Reg.No.TN-02-T-3214 from Chennai to Vandavasi. While so, near the junction of Malema Koot Road, a Tractor bearing Reg.No.TN-25-A-8480 and Tractor Trailor bearing Reg.No.TN-25-A-2434, which were driven in a rash and negligent manner, came from opposite direction and dashed against the Motor Cycle, resulting in the claimant sustaining serious injuries. Thereafter, the claimant filed claim petition before the Tribunal claiming Rs.35,00,000/-.

3. In support of the claim before the Tribunal, claimant was examined as P.W.1. Dr.K.J.Mathiazhagan was examined as P.W.2. Exs.P.1 to P.17 were marked and the details of which are as follows:-

Ex.P.1	Copy of FIR in Cr.No.29/2007 registered at Vandavasi North Police Station
Ex.P.2	Driving Licence of the petitioner
Ex.P.3	Discharge summary issued by Govt.General Hospital, Chennai.
Ex.P.4	Discharge summary issued by Govt.General Hospital, Chennai.
Ex.P.5	Discharge summary issued by VHS, Chennai.
Ex.P.6	Discharge summary issued by VHS, Chennai.
Ex.P.7	Discharge summary issued by VHS, Chennai.
Ex.P.8	Discharge summary issued by VHS, Chennai.
Ex.P.9	Discharge summary issued by VHS, Chennai.
Ex.P.10	Discharge summary issued by VHS, Chennai.
Ex.P.11	Medical bills for Rs.8,722/-.
Ex.P.12	Pharmacy Bills for Rs.9,671.95ps.

Ex.P.1	Copy of FIR in Cr.No.29/2007 registered at Vandavasi North Police Station
Ex.P.13	Outpatient bills for Rs.4,625/-.
Ex.P.14	Pharmacy Bills for Rs.26,543.26 ps.
Ex.P.15	X-Rays
Ex.P.16	Photos with C.D.
Ex.P.17	Disability Certificate issued by P.W.2

4. On the side of the appellant/New Indis Assurance Company, no one was examined and no document was marked.

5. The Tribunal, on an analysis of evidence and the materials placed before it, held that the accident had occurred solely due to the rash and negligent driving of the driver of the second respondent herein and awarded compensation, fastening liability on the appellant/Insurance Company, to pay compensation to the claimant.

6. The Tribunal based on the evidence of P.W.2-doctor who assessed that the claimant is suffering with partial and permanent disability at 75% and considering that the claimant was a Tiles Mason and earning Rs.400/- per day at the time of accident, awarded the following compensation with interest at the rate of 7.5 % :-

Head	Amount granted by the Tribunal
1.Loss of earning from 25.04.2007 to 24.04.2008 @ Rs.12,000/- per month	Rs.1,44,000/-
2.Transport to Hospital	Rs.25,000/-
3.Extra nourishment	Rs.15,000/-
4.Damage to clothing and cycle	Rs.1,000/-
5.Medical expenses	Rs.50,000/-
6.Future medical expenses	Rs.50,000/-
7.Compensation for attendants	Rs.10,000/-
8.Loss of amenities and expectation of life	Rs.50,000/-
9.Pain and suffering	Rs.50,000/-
10.Permanent disability	Rs.9,79,200/-
Total	Rs.13,74,200/-

7. Aggrieved by the said award, the appeal is filed by the appellant/Insurance Company.

8. We have heard the learned counsel on either side and perused the material papers placed on record.

9. The finding of negligence on the part of the driver of the 2nd respondent herein, who is responsible for the accident and consequential liability fixed on the appellant/Insurance Company to compensate the claimant is not seriously disputed and such finding is confirmed.

10. The learned counsel for the appellant/Insurance Company contended that the compensation of Rs.9,79,200/- granted towards loss of earning power of the claimant is on the higher side and the same shall be reduced. According to the learned counsel, considering the date of accident viz., 25.04.2007 and occupation of the claimant that is Tiles Mason, he could not have earned Rs.400/- per day and therefore, the monthly income fixing at Rs.12,000/- per month is exorbitant.

11. The learned counsel for the claimant/Cross Objector submitted that the claimant is suffering from 75% partial and permanent disablement and his right leg is completely mutilated and he is unfit for any manual labour. According to the learned counsel, the monthly income of the claimant could further be increased as the present day Tiles Mason earns Rs.800/- per day.

12. The Tribunal in paragraph 11 of the award observed as follows:-

"The Doctor-P.W.2 K.J.Mathiazhagan has deposed that he examined the petitioner clinically and on the basis of Discharge summary, assessed the disability of the petitioner and found it to be 60% partial permanent for fracture of shaft of femur and fracture of both bones in the right leg, fracture of right patella and dislocation of right knee and other injuries. P.W.2 deposed that during the course of treatment several surgeries were conducted on his right leg, implants were fixed for femur and both bones. As they were infected the implants were removed. Now the right patella is removed. The right femur is mal united and is in bent position. Both bones in right leg are drastically malunited. His right knee is completely deformed. There is shortening of right leg by 8 cms. Due to the shortening of

leg and deformity of the knee is dragging his leg while walking and severally limping. He cannot squat or he cannot sit cross legged. He cannot use Indian Toilets. The petitioner was Tiles Mason by profession before the accident. Now due to the disablements he is unfit for any manual work. He cannot do the work of tiles mason. It is supported by Ex.P.17 -Disability Certificate and Ex.P.15 the X-ray Film. On perusal of cross examination of P.W.2, he admits that he did not give treatment to the injured. Though X-ray was taken at present, the report for the same was not filed. Ex.P.16 is the Photos with C.D., which shows the gravity of the injuries sustained by the petitioner in the accident.

Due to the above said reasons, affected his ability and also his earning power. So his earning capacity will be reduced in future. Under such circumstances, this is a fit case for applying multiplier method.

It is reasonable that the disability of 60% assessed by P.W.2 in respect of the injuries caused to the petitioner. But it cannot be assumed that it would be for the whole body disability of the petitioner. If the disability of 60% assessed by P.W.2 is translated into the whole body disability then it cannot exceed more than 40% and so the whole body disability of the petitioner is assessed and fixed at 40%.

Due to the above disability, the petitioner can carry on his avocation as before the accident because of the whole body disability 40% caused to him. Hence it is necessary to award just compensation as per the 2nd schedule. As per the 2nd schedule, the applicable multiplier for the age group of above 30 is 17. Already his monthly income is fixed as Rs.12,000/- per month. Hence $\text{Rs.12,000/-} \times 12 \times 17 \times 40\% = \text{Rs.9,79,200/-}$ is allowed under the head loss of earning power."

13. There is no serious objection in respect of the interest granted at 7.5% per annum and the same is confirmed.

14. There is no oral or documentary evidence to refute the

above factual aspects. Hence, the compensation granted in a sum of rs.9,79,200/- towards permanent disability by applying multiplier method is justified. The compensation granted under the other heads are just and reasonable. Therefore, we feel it appropriate to confirm the award amount granted by the Tribunal.

15. In the result, the Civil Miscellaneous Appeal and the Cross Objection are dismissed. The award of the Tribunal with interest at 7.5% per annum is confirmed. In the order dated 21.02.2014 made in M.P.Nos.1 and 2 of 2014, it was observed that the entire award amount has been deposited and the claimant was permitted to withdraw Rs.7,00,000/-. Hence, the claimant is permitted to withdraw the balance award amount with interest and cost. There will be no order as to costs in the appeal as well as cross objection. Consequently, connected applications are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

nvsri

To
The III Judge,
(Motor Accidents Claims Tribunal)
Court of Small Causes, Madras.

Copy to:
The Section Officer,
VR Section, High Court,
Madras.

1 cc to Mr.S.Manohar, Advocate, sr.12780

C.M.A.No.1 of 2014
and Cross.Obj.8 of 2016

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kra 07.06.2016

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