

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 15.03.2016

CORAM

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

C.M.A. NO.106 OF 2015

&

M.P.Nos.1 and 2 of 2015

M/s.Royal Sundaram Alliance Insurance Co. Ltd.,
No.45 & 46, Peters Road,
Royapettah, Chennai - 600 014. ... Appellant/2nd Respondent

- Vs -

1.Mr.Kanniyappan ... Respondent/Petitioner

2.Mr.Murugesan ... Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act against the Award and decree dated 22.04.2014
passed by the Motor Accident Claims Tribunal (II Court of Small
Causes), Chennai, made in M.C.O.P.No.1092 of 2013.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.G.Anitha - R1
No appearance - /R2

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(DELIVERED BY R.SUDHAKAR, J.)

Heard the learned counsel appearing for the appellant and
the learned counsel appearing for the first respondent/claimant.

2. The appellant/insurer of the vehicle has filed the
appeal challenging the Award dated 22.04.2014 passed by the
Motor Accident Claims Tribunal (II Court of Small Causes),
Chennai, made in M.C.O.P.No.1092 of 2013.

3. It is a case of injury. On 26.04.2012 at 11.15 p.m. when the injured Kanniyappan was walking on the left side of the road, opposite to mini bus stand at Old Washermenpet, a lorry bearing Registration No.TN-20-BF-3485 belonging to the second respondent herein and insured with the appellant came in a rash and negligent manner and dashed against the injured Kanniyappan, as a result, the injured sustained grievous injuries. Hence, the claimant has filed claim petition claiming a sum of Rs.20,00,000/- as compensation. According to the claimant, he was working as painter and was earning a sum of Rs.800/- per day.

4. In support of the claim petition, the injured claimant examined himself as P.W.1 and Dr.N.Saichandran was examined as P.W.2 and Exs.P-1 to P-6 were marked, the details of which are as follows:-

Ex.P-1	Copy of F.I.R. in Cr.No.103/H2/2012 registered at H1-Washermanpet Traffic Investigation
Ex.P-2	Discharge summary
Ex.P-3	Photo with C.D.
Ex.P-4	Copy of charge sheet
Ex.P-5	Copy of Rough Sketch
Ex.P-6	Disability Certificate

5. On the side of the respondents, no witnesses were examined and no documents were marked.

6. The Tribunal based on the oral evidence of witnesses, the F.I.R. and also taking into account the documentary evidence and further there being no satisfactory evidence adduced on behalf of the appellant-Insurance Company to refute the evidence as to the rash and negligent driving of the tipper lorry, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the lorry, and therefore, the liability was fixed on the appellant herein and consequently the appellant was directed to compensate the claimant. Accordingly, the Tribunal awarded compensation under the following heads :-

Transportation	-	Rs. 15,000/-
Extra nourishment	-	Rs. 15,000/-
Damage to clothes	-	Rs. 1,000/-
Medical Expenses	-	Rs. 10,000/-

Attender Charges	-	Rs. 1,00,000/-
Mental Agony to the petitioner	-	Rs. 1,00,000/-
Loss of amenities of life	-	Rs. 1,00,000/-
Loss of Expectation of life	-	Rs. 1,00,000/-
Pain and suffering	-	Rs. 1,50,000/-
Loss of earning capacity	-	Rs.15,18,750/-
Total Compensation	-	Rs.20,59,750/-

7. In all, the Tribunal awarded a compensation of Rs.20,59,750/= with interest at the rate of 7.5% from the date of numbering of the petition i.e., 25.2.2013 till the date of payment/deposit. Aggrieved by the said award, the insurer of the Lorry is before this Court by filing this appeal.

8. Learned counsel appearing for the appellant-Insurance Company submitted that the percentage of disability and future prospects fixed by the Tribunal is on the higher side. Per contra, it is submitted by the learned counsel for the claimant that the Tribunal taking into consideration the nature of injury sustained awarded the amount and therefore, no interference is called for with the well considered finding of the Tribunal.

9. This Court has given its careful consideration to the above contentions advanced by either parties and also perused the materials available on record. Though it is trite law that the income should be arrived at keeping in mind the avocation of the deceased, on a perusal of the order, this Court is of the considered opinion that the multiplier adopted by the Tribunal as per the dictum of the Honourable Apex Court in Sarla Verma - vs. - Delhi Transport Corporation, 2009(2) TNMAC 1 (SC), is correct and hence the same is confirmed.

10. With regard to the contention of the learned counsel appearing for the appellant that monthly income fixed by the Tribunal is on the higher side, it is seen that the Tribunal, after taking into consideration that the avocation of the injured has not been denied by the appellant/Insurance Company, the Tribunal has fixed a notional income of the injured at Rs.7,500/-, which is fair and reasonable. Considering the evidence of P.W.2, the Tribunal has fixed the disability at 75%. Taking note of the avocation of the injured as painter and there is amputation of left leg above knee, the Tribunal has correctly fixed the disability at 75%. However, the future prospects awarded by the Tribunal at 50% is on the higher side and hence, the same is reduced to 30%. Further the amount awarded towards Transport expenses, Extra Nourishment, damage to clothes,

medical expenses and attender charges are fair and reasonable. With regard to the mental agony caused to the injured, the Tribunal awarded a sum of Rs.1,00,000/-, which is on the higher side. Hence, the same is reduced to Rs.50,000/-. The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of expectation. Taking into consideration the age and nature of injury sustained, we feel it is not necessary to award any amount. Hence, the said amount is rejected.

11. Accordingly, the compensation awarded by the Tribunal is modified as hereunder :-

	Compensation awarded by the Tribunal	Compensation awarded by this Court
Transportation	Rs. 15,000/-	Rs. 15,000/-
Extra nourishment	Rs. 15,000/-	Rs. 15,000/-
Damage to clothes	Rs. 1,000/-	Rs. 1,000/-
Medical Expenses	Rs. 10,000/-	Rs. 10,000/-
Attender Charges	Rs. 1,00,000/-	Rs. 50,000/-
Mental Agony to the petitioner	Rs. 1,00,000/-	Rs. 50,000/-
Loss of amenities of life	Rs. 1,00,000/-	Rs. 1,00,000/-
Loss of Expectation of life	Rs. 1,00,000/-	---
Pain and suffering	Rs. 1,50,000/-	Rs. 1,25,000/-
Loss of earning capacity	Rs.15,18,750/- 7,500+3750x12x15x75%	Rs.13,16,250/- 7,500+2250x12x15x75%
Total Compensation	Rs.20,59,750/-	Rs.16,82,250/-

12. There is no serious objection with regard to the interest granted at 7.5% per annum.

13. Accordingly, this Civil Miscellaneous Appeal is partly allowed with the above modification as follows:

(i) The award of the Tribunal granting compensation to the tune of Rs.20,59,750/- is reduced to Rs.16,82,250/-.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) Learned counsel appearing for the appellant/Insurance Company submits that as per the order passed by this Court dated 04.02.2015, directing the appellant/Insurance Company to deposit the entire award amount together with interest, the appellant has deposited the entire award amount.

(iv) The claimant is permitted to withdraw the amount now ordered by this Court along with interest and costs.

(v) The appellant/Insurance Company is entitled to withdraw the balance amount.

(vi) There will be no order as to costs in this appeal.

(vii) Consequently, the miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar
Motor Accidents Claims Tribunal
Small Causes Court, Chennai.

2. The Record Keeper
V.R. Section
High Court, Madras.

+1cc to M/s.M.B.Gopalan, Advocate, S.R.No.17215

C.M.A. NO.106 OF 2015

&
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PPA(CO)
CA(12/05/2016)

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