

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2016

CORAM

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

C.M.A.No.1322 of 2015
and M.P.No.1 of 2015

The New India Assurance Co. Ltd.,
No.45, Moore Street,
Chennai - 600 001. Appellant/2nd Respondent

Vs.

1. Mr.Vijayakumar @ Vijay 1st Respondent/Claimant
2. Mr.K.Raja 2nd Respondent/1st Respondent

APPEAL filed under Section 173 of the Motor Vehicles Act, 1988 against the Award and decree dated 08.10.2014 made in M.C.O.P.No.3142 of 2011 on the file of the Motor Accident Claims Tribunal, (Small Causes Court - VI Judge), Chennai.

For Appellant : Mr.J.Chandran
For Respondents : Mr.V.Velu - R1

J U D G M E N T

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

New India Assurance Company Limited is on appeal challenging the award dated 08.10.2014 made in M.C.O.P.No.3142 of 2011 on the file of the Motor Accident Claims Tribunal, (Small Causes Court - VI Judge), Chennai.

2. It is a case of injury. On 01.03.2011, when the injured Vijaykumar @ Vijay aged 19 years was standing near the vehicle bearing Registration No.TN22-BR-1699 at Chennai to Vellore NH Road, a tipper lorry bearing Registration No.TN 54-B-5263 belonging to the second respondent herein came in a rash and negligent manner and dashed against the injured Vijaykumar @ Vijay, as a result, the injured sustained grievous injuries. Hence, the injured Vijaykumar @ Vijay claimed compensation for a sum of Rs.30.00 lakhs. According to the claimant, he was working as carpenter and was earning a sum of Rs.15,000/- per month.

3. In support of the claim, the injured Vijaykumar @ Vijay was examined as P.W.1; Dr.J.R.R.Thiagarajan, who gave disability certificate to the injured, was examined as P.W.2 and Dr.Rajappa, who also had given disability certificate to the injured, was examined as P.W.3 and Ex.P-1 to Ex.P-13 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Copy of FIR
P2	Medical bills for Rs.75,099/-
P3	Medical bills
P4	Medical bills
P5	Medical bills
P6	Discharge Summary issued by Christian Medical College, Vellore.
P7	Visitor Card
P8	Transportation charges for Rs.27,182/-
P9	Photograph with CD
P10	Disability certificate (PW2)
P11	X-ray
P12	Disability certificate (PW3)
P13	Copy of charge sheet

On behalf of the Insurance Company, one M.Srinivasalu was examined as R.W.1 and Ex.R-1 to Ex.R-3 were marked, the details of which are as follows:-

Ex.No.	Details
R1	Rough sketch
R2	MVI Report (Tipper Lorry)
R3	MVI Report (Bolero Car)

4. The Tribunal based on the oral evidence of the witnesses, and the F.I.R. came to conclusion that the driver of the tipper lorry dashed against the stationed Bolero Car. Hence, due to the rash and negligent driving of the driver of the tipper lorry, the accident had happened. Accordingly, the Tribunal fixed the negligence on the part of the driver of the tipper lorry and consequently fixed the liability on the appellant Insurance Company to pay the compensation, since the vehicle was insured with the appellant.

5. With regard to the negligence issue, learned counsel appearing for the appellant has no serious objection, as no material has been placed to come to a different conclusion from that of the conclusion arrived by the Tribunal.

6. As far as the quantum of compensation, based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of income for 12 months (12 x 10,000/-)	Rs.1,20,000/-
2	Medical Expenses	Rs. 1,25,400/-
3	Transportation	Rs. 27,200/-
4	Extra Nourishment	Rs. 10,000/-
5	Attender Charges	Rs. 10,000/-
6	Damage to Clothes	Rs. 10,000/-
7	Loss of Future Earning Capacity (10,000+50% FP 5000 x 12 x 18 x 50%)	Rs.16,20,000/-
	Total	Rs.19,22,600/-

7. The objection raised by the learned counsel appearing for the appellant/Insurance company is that the loss of income arrived at by the Tribunal is on the higher side. Further, the disability arrived at by the Tribunal is also on the higher side, as the injured is continuing his work after the accident.

8. Insofar as the quantum of compensation is concerned, the Tribunal considering the injuries sustained by the injured and the socio-economic living style of the claimant has fixed the income at Rs.10,000/- per month. Further the Tribunal considering the fact that the injured claimant had suffered injuries in his femur and humerus and obtained sufficient treatment, determined the disability at 50%.

9. It is seen that after the accident, the injured Vijayakumar @ Vijay was again admitted on 10.3.2011 in Christian Medical College with a history of vomiting, right ear bleed and bilateral nasal bleed. On examination, it was found that right eye sub-conjunctival hemorrhage was present and right pupil is 4mm sluggishly reacting to light and left pupil is 3mm reacting to light. He was discharged on 12.3.2011. Again he was admitted on 20.4.2011 with a history of right ear discharge on and off for past one and half months associated with tinnitus and ear block in right ear. On examination, it was found that in tympanic membrane, granulations were present. He was discharged on 22.04.2011. These documents were marked as Ex.P.6 before the Tribunal.

10. The above documents show that the injured Vijaykumar @ Vijay suffered traumatic brain injury with right parietal bone fracture and fracture haematoma and treated on three occasions in Christian Medical College, Vellore. Thereafter, on the date of evidence in the year 2013, the doctors have assessed the disability. We find that in the absence of any specific material from a competent hospital to show that there has been degeneration or functional inability, the disability at 50% fixed by the Tribunal is on the higher side. Hence, taking into consideration the disability certificates Ex.P.10 and P.12, the disability of the injured is fixed at 30%. Taking into consideration that the injured had taken treatment for a period of two months and thereafter, there is no record that the injured had taken treatment, the loss of income granted towards 12 months is reduced to a period of 9 months. The monthly income fixed by the Tribunal at Rs.10,000/- is fair and reasonable. It is seen that the Tribunal had not granted any amount towards pain and suffering and the compensation granted on other heads also requires to be modified. Hence, the award granted by the Tribunal is modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of income	Rs.1,20,000/- (12 x 10,000/-)	Rs. 90,000/- (9 x 10,000)
2	Medical Expenses	Rs. 1,25,400/-	Rs.1,25,400/-
3	Transportation	Rs. 27,200/-	Rs.27,200/-
4	Extra Nourishment	Rs. 10,000/-	Rs.50,000/-
5	Attender Charges	Rs. 10,000/-	Rs.25,000/-
6	Damage to Clothes	Rs. 10,000/-	Rs.5,000/-
7	Loss of Future Earning Capacity	Rs.16,20,000/- (10,000+50% FP 5000 x 12 x 18 x 50%)	Rs.9,72,000/- (15,000x12x18x 30%)
8	Pain and suffering	--	Rs.1,00,000/-
	Total	Rs.19,22,600/-	Rs.13,94,600/-

10. There is no serious objection in respect of the interest granted at 7.5% per annum.

11. Accordingly, the Civil Miscellaneous Appeal is partly allowed as follows:-

- (i) The award of the Tribunal granting compensation to the tune of Rs.19,22,600/- is reduced to Rs.13,94,600/-.
- (ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.
- (iii) As per the order dated 29.6.2015 directing the appellant/Insurance Company to deposit 50% of the award, the appellant has deposited the same. Learned counsel appearing for the appellant seeks time to deposit the balance amount ordered by this Court. The appellant/Insurance Company is granted 8 weeks time to deposit the amount ordered by this Court.
- (iv) On such deposit, the claimant is permitted to withdraw the same.
- (v) There will be no order as to costs in this appeal.
- (vi) Consequently, connected miscellaneous petition is closed.

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s/d-
Assistant Registrar(CS-VII)

True Copy

Sub-Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,
(VI Judge, Small Causes Court,) Chennai.
2. The Registrar, Small Causes Court,
Chennai.

+ 1 cc to Mr.J.Chandran, Advocate, SR 15495

+ 1 cc to Mr.V.Velu, Advocate, SR 15515

bvr(co)
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