

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 01.03.2016

CORAM

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

C.M.A. NO. 1821/2015 & MP.No.1/2015

M/s.National Insurance Co Ltd  
Divisional Office-II,  
Ramakrishna Road, Salem-7. .. Appellant/Respondent II

- Vs -

1.Subramani rep.by next friend/  
guardian and wife Rajamani .. R1/Claimant  
2.Sivakumar .. R2/Respondent No.1

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in MCOP No.1358/2007 on 07.03.2015 on the file of the learned Special Sub Judge, No.1, Motor Accident Claims Tribunal, Salem.

For Appellant : Mr.J.Chandran

For Respondents : Mr. S.P.Yuvaraj for R1  
R2 - Service Awaited

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the 1<sup>st</sup> respondent/claimant.

2. The appellant/Insurance Company filed the appeal challenging the award dated 07.03.2015, passed by the Motor Accident Claims Tribunal (Special Sub Judge No.2), Salem, made in MCOP No.1358/2007.

3. It is a case of injury. On 22.06.2007, when the claimant/injured Subramani, aged 42 years, a owner-cum-driver of tractor, was riding his Bajaj Motor Cycle bearing Regn. No.TN-63-Z-2361 and proceeding in the Salem-Attur Main Road, a TVS Suzuki Max 100R motor-cycle belonging to the 2<sup>nd</sup> respondent herein, bearing Regn. No.TN-36-D-1515, driven in a rash and

negligent manner, dashed the Bajaj Motor Cycle driven by the claimant/injured in the opposite direction due to which the injured was thrown away and sustained grievous injuries all over the body. He was taken to the Government Hospital, Attur and subsequently, to SPPM Hospital, Salem and was admitted as an in-patient. A case was registered against the driver of TVS Suzuki Motor Cycle in Cr.No.803/2007 u/s.279 and 337 IPC.

4. The injured/claimant, who was earning a sum of Rs.10,000/- , has filed the claim petition before the Court below through his wife, as he was in the coma state in pursuance of the accident, claiming a sum of Rs.25,00,000/= as compensation.

5. In support of the claim, the wife of the injured/claimant was examined as P.W.1. P.W.2-Dr.Shankarlal, was examined to speak about the disability of the injured ; besides examining P.Ws.3 and 4 and Exs.P-1 to P-11 and Exs.X1 to X8 were marked, the details of which are as follows:-

|         |                                          |
|---------|------------------------------------------|
| Ex.P-1  | - Copy of FIR in Cr.No.803/2007 Attur PS |
| Ex.P-2  | - Copy of MVI Report [TN-36-D-1515]      |
| Ex.P-3  | - Copy of MVI Report [TN-63-Z-2631]      |
| Ex.P-4  | - Copy of Charge Sheet                   |
| Ex.P-5  | - Copy of Judgment in CC.No.327/2007     |
| Ex.P-6  | - Discharge Summary                      |
| Ex.P-7  | - Copy of Wound Certificate              |
| Ex.P-8  | - CT Scan Report                         |
| Ex.P-9  | - Medical Bills                          |
| Ex.P-10 | - Copy of Driving License [Petitioner]   |
| Ex.P-11 | - Photographs                            |
| Ex.X-1  | - Disability Certificate                 |
| Ex.X-2  | - MRI Scan Film                          |
| Ex.X-3  | - MRI Scan Report                        |
| Ex.X-4  | - MRI Scan Bill                          |
| Ex.X-5  | - Authorisation Letter                   |
| Ex.X-6  | - Copy of Driving License [Petitioner]   |
| Ex.X-7  | - Report showing cost of surgery         |
| Ex.X-8  | - Report from RTO with MVI Reports       |

6. On the side of the respondents, one Selvakumar was examined as R.W.1 ; Rukmanikannan was examined as R.W.2 and L.K.Premkumar was examined as R.W.3 and Exs.R-1 to R-6 were marked, the details of which are as follows:-

|        |   |                                                             |
|--------|---|-------------------------------------------------------------|
| Ex.R-1 | - | Copy of Driving License [1 <sup>st</sup> respondent driver] |
| Ex.R-2 | - | Copy of Insurance Policy                                    |
| Ex.R-3 | - | Copy of notice to 1 <sup>st</sup> respondent                |
| Ex.R-4 | - | Copy of notice to 1 <sup>st</sup> respondent driver         |
| Ex.R-5 | - | Returned Acknowledgment Card                                |
| Ex.R-6 | - | Returned Acknowledgment Card                                |

7. The Tribunal based on the oral evidence of the P.W.1, the F.I.R. and also taking note of the corroborating evidence in the form of Ex.P.3, MVI Report with regard to the injured's Bajaj Motorcycle and the 2<sup>nd</sup> respondent's TVS Suzuki Motorcycle, which has been produced to prove that the motorbike was driven in a rash and negligent manner and also taking into account the documentary evidence and further there being no satisfactory evidence adduced on behalf of the appellant to refute the testimony as to the rash and negligent driving of the motorcycle, came to the conclusion that the accident was caused due to the rash and negligent driving by the rider of the TVS-Suzuki Motorcycle and, therefore, the liability was fixed on the appellant herein, with whom the motorbike was insured and consequently the appellant was directed to compensate the claimant. Accordingly, the Tribunal awarded compensation under the following heads :-

|                                              |   |                |
|----------------------------------------------|---|----------------|
| Pain and suffering                           | - | Rs.1,00,000/-  |
| For Shock and mental agony                   | - | Rs. 25,000/-   |
| Loss of Income during treatment [Rs.6000*10] | - | Rs. 60,000/-   |
| Food and extra nourishment                   | - | Rs. 5,000/-    |
| For Medical Expenses                         | - | Rs.2,34,000/-  |
| For Loss of earning Power                    | - | Rs.10,08,000/- |
| For loss of amenities                        | - | Rs. 2,00,000/- |
| For future treatment skull cover surgery     | - | Rs. 1,25,000/- |
| For attender charges to one person for life  | - | Rs. 1,00,000/- |
| Total Compensation                           | - | Rs.18,57,000/- |

8. In all the Tribunal awarded a compensation of Rs.18,57,000/- with interest at the rate of 7.5% to be paid by the Insurance company from the date of claim petition till date of payment/deposit and to recover the same from the 2<sup>nd</sup> respondent herein, with further direction that the injured/claimant was directed to deposit a sum of Rs.5,00,000/- in a Nationalised Bank for three years and to withdraw the

balance amount with accrued interest. Aggrieved by the said award, the insurer of the vehicle is before this Court by filing this appeal.

9. The only point raised by the learned counsel appearing for the appellant is that the amount of compensation awarded is highly excessive and that the disability assessed by P.W.2-doctor, cannot be sustained as it is not corroborated by any medical evidence. It is also his submission that the amount awarded under the caption "Loss of Amenities" to the tune of Rs.2,00,000/- is also on higher side. Hence, he prays for modification of the Award.

10. This Court has given its careful consideration to the above contentions advanced by either parties. Admittedly, the injured in this case sustained such grievous injuries which pushed him to the stage of coma and he was not in a fit state of mind to depose before the Court below and on his appearance before the Court below, seeing his physical condition, his wife/natural guardian was allowed to depose on his behalf as P.W.1. She has narrated the happening of the accident in a vivid fashion and that upon perusing the Motor Vehicle Inspector's Reports with regard to the condition of the vehicles involved in the accident, the Tribunal has rightly reached to a conclusion that it was the 2<sup>nd</sup> respondent herein who, by his rash and negligent driving, has caused the accident. Taking into consideration the entire gamut of facts and also keeping in mind the fact that the injured sustained grievous injuries all over his body including his skull and went coma stage, this Court is of the considered view that the award of the Tribunal needs no modification, except reducing the amount awarded under the head "Loss of Amenities" from Rs.2,00,000/- to Rs.1,00,000/-. Accordingly, the award of the Tribunal is modified as hereunder :-

|                                                 |   |                |
|-------------------------------------------------|---|----------------|
| Pain and suffering                              | - | Rs.1,00,000/-  |
| For Shock and mental agony                      | - | Rs. 25,000/-   |
| Loss of Income during treatment<br>[Rs.6000*10] | - | Rs. 60,000/-   |
| Food and extra nourishment                      | - | Rs. 5,000/-    |
| For Medical Expenses                            | - | Rs.2,34,000/-  |
| For Loss of earning Power                       | - | Rs.10,08,000/- |
| For loss of amenities                           | - | Rs. 1,00,000/- |
| For future treatment skull cover surgery        | - | Rs. 1,25,000/- |
| For attender charges to one person<br>for life  | - | Rs. 1,00,000/- |
| Total Compensation                              | - | Rs.17,57,000/- |



11. Accordingly, this Civil Miscellaneous Appeal is disposed of and

[i] The award of the Tribunal is reduced to Rs.17,57,000/- from Rs.18,57,000/-.

[ii] The interest granted by the Tribunal at 7.5% per annum is confirmed.

[iii] As per order dated 11.08.2015 made in MP No.1/2015, this Court while granting stay, directed the appellant to deposit entire award amount within six weeks. On such deposit, the claimant was permitted to withdraw 50% of the amount.

[iv] Therefore, claimant is permitted to withdraw the balance award amount as ordered by this Court as above.

[v] The appellant insurance company is at liberty to withdraw the excess amount deposited before the Tribunal.

[vi] The appellant is at liberty to recover the award amount from the 2<sup>nd</sup> respondent herein, the owner of the TVS Suzuki Motorcycle, involved in the accident.

[vii] There will be no order as to costs in this appeal.

[viii] Consequently, connected miscellaneous petition is closed.

s/d-  
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar  
सत्यमेव जयते

sl/p

To

The Special Sub Judge No.1  
(Motor Accident Claims Tribunal)  
Salem.

copy to: The Section Officer VR Section  
High Court Madras

+1 cc to Mr.S.P.Yuvaraj Advocate sr.13162

+1 cc to Mr.J.Chandran Advocate sr.13059

C.M.A. NO.1821/2015

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