

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.01.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A. No.62 of 2016
and C.M.P. No.498 of 2016

The Divisional Manager,
M.s.National Insurance Co. Ltd.,
DO 110 JN Street,
Puducherry - 605 001. .. Appellant/Respondent

versus

1.Gunasekaran

2.D.Muthukumar .. Respondents /Petitioner and
first respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 14.07.2015 made in M.C.O.P. No.2286 of 2013 on the file of the Motor Accidents Claims Tribunal, (1st Additional Subordinate Judge), Cuddalore.

For appellant : Mr. J.Chandran

For respondents: Mr.R.Sreedhar for R1

JUDGMENT

The appeal is preferred by the Insurance Company/appellant against the judgment and decree dated 14.07.2015 made in M.C.O.P. No.2286 of 2013 on the file of the Motor Accidents Claims Tribunal, (1st Additional Subordinate Judge), Cuddalore.

2. Background facts in a nutshell are as follows:

On 30.05.2013 at about 13.30 hours, while the injured/claimant was riding the Hero Honda Splendor Motor cycle bearing Registration No.TN-31-AE-7182 from West to East with a pillion rider, keeping extreme left of Pannai Kuchipalayam to Thiruvandhipuram Road, when the vehicle was nearing Iyyanarkoil, the second respondent's Tata Ace Goods vehicle bearing registration No.TN-31-H-3331 came in a rash and negligent manner and dashed against the claimant's motor cycle, as a result, he sustained fracture and multiple grievous injuries. After taking first aid treatment in Government Hospital, Cuddalore, he was admitted in Be Well Hospital, Puducherry for further treatment as an in-patient and took treatment from 30.05.2013 to 15.06.2013. On 30.05.2013, an operation was also done on his right leg and right clavicle. He was later treated in other

private hospitals also. The claimant claimed a sum of Rs.12,00,000/- towards compensation. The appellant-Insurance Company resisted the said claim.

3. After considering the oral and documentary evidence, the Tribunal held that the accident occurred only due to the rash and negligent driving of the driver of the second respondent's vehicle and awarded a compensation of Rs.7,22,100/- with interest at 7.5% per annum, to be payable by the Insurance Company, from the date of petition. Aggrieved by that award, the appellant-Insurance Company has filed the present appeal.

4. Learned counsel appearing for the appellant-Insurance Company questioned only the quantum of compensation awarded by the Tribunal and contended that the amount awarded by the Tribunal is excessive, exorbitant, without basis and justification and that therefore, the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

5. Learned counsel appearing for the first respondent/claimant submitted that the Tribunal had considered all the relevant materials and evidence on record and came to the right conclusion and awarded a just, fair and reasonable compensation. Hence, the order of the Tribunal is in accordance with law and the same has to be confirmed.

6. Heard both the learned counsel and perused the materials available on record.

7. At the time of accident, the claimant was aged about 29 years. He was a Mason Maistry and also deriving income at Rs.15,000/- per month. P.W.1-claimant stated in his evidence that while he was riding the Hero Honda Splendor Motor cycle, when the vehicle was nearing Iyyanarkoil, the second respondent's Tata Ace Goods vehicle came in a rash and negligent manner and dashed against the claimant's motor cycle, as a result, he sustained fracture and multiple grievous injuries and after first aid treatment in Government Head Quarters Hospital, Cuddalore, he was admitted in Be Well Hospital, Puducherry for further treatment as an in-patient from 30.05.2013 to 15.06.2013 and that on 30.05.2013 an operation was also done on his right leg and right clavicle. He was later treated in other private hospitals also. Immediately, a complaint was lodged before the SHO, Nellikuppam Police Station and a case in Crime No.374 of 2013 was also registered as against the driver of the vehicle under Sections 272 and 337 IPC. Due to comminuted/compound fracture in right leg-both bones, fracture of right clavicle, head injury, injury on hip and chest and multiple injuries all over the body, he could not do any of his work as he did before the accident. He suffered great pain and he could not stand, sit

and walk and he could not use his right hand and the movements are restricted. PW3/Dr.Venugopal, who examined the claimant and issued Ex.P19/Disability Certificate, has assessed the disability at 70%. Therefore, the Tribunal, after considering the above oral and documentary evidence, has awarded a sum of Rs.1,40,000/- (2000x70%) at the rate of Rs.2,000/- per percentage of disability. This Court is inclined to confirm the same as it is. After considering the nature of injuries sustained by the claimant, the Tribunal awarded a sum of Rs.10,000 towards Transportation charges, Rs.10,000/- towards Extra Nourishment, Rs.2,000/- towards damage to clothing and article, Rs.2,450/- towards attendant charges, Rs.2,82,650/- towards medical expenses, as per Ex.P15/medical bills and a sum of Rs.40,000/- towards pain and sufferings. This Court finds it reasonable to confirm the same under the aforementioned heads and the same is hereby confirmed. This Court finds it reasonable to award Rs.50,000/- towards loss of amenities, instead of Rs.70,000/- and a sum of Rs.50,000/- is awarded towards future medical expenses, as against the sum of Rs.95,000/- awarded by the Tribunal. As the Tribunal has awarded a sum of Rs.1,40,000/- towards permanent disability, the sum of Rs.70,000/- in respect of permanent discomfort is not in accordance with law and the same is hereby set aside. Accordingly, the award of the Tribunal is modified and the claimant is entitled to the total compensation of Rs.5,87,100/- as detailed below:-

Loss of income due to disability	Rs.1,40,000/-
Transportation charges	Rs. 10,000/-
Extra Nourishment	Rs. 10,000/-
Damage to clothing and article	Rs. 2,000/-
Attendant charges	Rs. 2,450/-
Medical expenses	Rs.2,82,650/-
Future medical expenses	Rs. 50,000/-
Pain and sufferings	Rs. 40,000/-
Loss of amenities	Rs. 50,000/-
Total	Rs.5,87,100/-

Therefore, the claimant is entitled to the modified compensation of Rs.5,87,100/- with interest at the rate of 7.5% per annum, from the date of petition till the date of payment.

8.Since the learned counsel for the appellant submitted that the appellant has deposited Rs.25,000/- towards statutory deposit, the balance amount is directed to be deposited along with interest, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is for the claimant to move a petition before the Tribunal for withdrawing the said amount.

9.With the above modification in the award of the Tribunal,
the Civil Miscellaneous Appeal is disposed of. No costs.
Consequently, connected CMP. is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vga

To

Motor Accidents Claims Tribunal,
(1st Additional Subordinate Judge), Cuddalore.

+1cc to Mr.R. Sreedhar, Advocate, S.R.No.3404

+1cc to Mr.J. Chandran, Advocate, S.R.No.3566

CRK(CO)
EU(06/06/2016)

C.M.A. No.62 of 2016

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