

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 15.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.M.A.No.719 of 2011

and

M.P.No.1 of 2011 & MP.No.1 of 2015

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

Versus

1.E.Sukumar ... 1st Respondent/Petitioner
2.P.Muthukumar ... 2nd Respondent/1st Respondent

(2nd respondent set-exparte in the lower Court.
Hence, notice to him is dispensed with).

Prayer: Civil Miscellanies Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 18.08.2010 passed in M.C.O.P.No.3917 of 2006 on the file of the Motor Accident Claims Tribunal(IV Court of Small Causes), Chennai.

For Appellant :Mr.R.Sivakumar
For R1 :Mr.S.Gangaram Prasad
R2 :Exparte before Lower Court

JUDGMENT

This appeal has been directed under Section 173 of the Motor Vehicles Act, 1988 as against the award passed by the Tribunal dated 18.08.2010 and made in the claim petition in MCOP No.3917 of 2006 on the ground of negligence and quantum.

2. The appellant/Insurance Company, herein, is the second respondent in the claim petition. The first respondent herein, who has sustained injuries, in a road traffic accident, which is said to have been taken place on 11.07.2006 at about 9.00 a.m., involving a Motor Cycle and a Car bearing Registration No.TN-20-AX-4408, had moved the Motor Accident Claims Tribunal(IV Court of Small Causes), Chennai, claiming a sum of Rs.3,00,000/- towards damages for the injuries sustained by him.

3. The appellant/Insurance Company had contested the claim on the ground that when the rider of the motor cycle, in which the first respondent/claimant was travelling as a pillion rider was trying to over take the vehicle proceeding in front of him, he had dashed against the said vehicle voluntarily and due to this reason, the first respondent had sustained injuries for which, the driver of the first respondent could not be fastened with negligence.

4. According to the appellant/Insurance Company, the rider of the motor cycle alone was the reason for the accident. However, based on the evidences, both oral and documentary available on record, the Tribunal had proceeded to pass an award, granting a sum of Rs.3,30,600/- towards compensation.

5. Having been aggrieved by the award passed by the Tribunal, the appellant/Insurance Company, who is the second respondent in the claim petition stands before this court with this Civil Miscellaneous Appeal.

6. As afore stated, this Appeal is preferred on two grounds: Negligence and Quantum

(a) On the ground of negligence:

Obviously, neither any oral nor any documentary evidence was adduced on behalf of the appellant/Insurance Company. The second respondent herein, who is the owner of the offending vehicle remained ex-parte before the Claims Tribunal. As it transpires from the evidence of PW1, that on 11.07.2006, at about 9.00 a.m., a Car bearing registration No.TN-20-AX-4408 came fast, coupled with rashness and hit against the motor cycle, when the rider of the motor cycle was proceeding at Velachery High Road, near Kamatchi Hospital.

It is significant to note here that the first respondent/claimant was travelling in the said motor cycle as a pillion rider and due to the accident, he had sustained grievous injuries. Based on Ex.P1, the First Information Report as well as the evidence of PW1, the Tribunal had found that the accident was taken place only due to the rashness and negligence on the part of the driver of the car.

The appellant/Insurance Company has not chosen to produce any contra evidence to repudiate the oral evidence of PW1 as well as Ex.P1. Since the owner of the Car bearing Registration No.TN-20-AX-4408 has not contested the claim petition as he remained ex-parte and the appellant/Insurance Company has also failed to produce contra evidence to disprove the case of the claimant, this Court has also endorsed the finding given by the

Claims Tribunal saying that the accident was taken place due to the rashness and negligence on the part of the first respondent's driver.

(b) On the ground of Quantum:

The first respondent/claimant, as determined by the Tribunal was aged about 32 years, at the time of the accident. He had claimed that he was working as a Mason and earning a sum of Rs.7500/- per month. The Tribunal had determined his monthly income @ Rs.4500/-, which does not require any modification.

7. As it is revealed from the records, the first respondent/claimant had suffered with fracture of both bones at right leg M/3, D/3. He had been taking treatment as inpatient at Government Royapettah Hospital from 11.07.2006 to 05.09.2006 and a Surgery was also performed over his right leg on 30.08.2006. As it is revealed from Ex.P3, the First Discharge Summary, issued by the Authority of Government Royapettah Hospital, Chennai, ILIM Nailing was done over his right Tibia with Bone Grafting. Ex.P4, the Second Discharge Summary also discloses that the first respondent/claimant was treated as in-patient at Government Royapettah Hospital, from 22.01.2009 to 11.02.2009. This time also, the first respondent/claimant underwent a Surgery on 30.01.2009, over his right leg, with regard to the Hypertrophic Non Union of Tibia with Insulator Interlocking Nailing of Right Tibia. It is also seen that exchange of Nailing was also performed. With reference to disability, PW2, Dr.Saichandran, was examined. Admittedly, he had not treated the patient. However, for the purpose of assessing the disability suffered by the petitioner, he was examined him and he had assessed the disability @ 50%.

8. However, the Tribunal had found that the disability assessed by PW2 was on the higher side and therefore, the Tribunal had estimated the disability @ 40%. Accordingly, the Tribunal had granted compensation @ Rs.80,000/- calculating the damage @ Rs.2000/- per percentage.

9. The Tribunal, taking into consideration of the length of treatment taken by the first respondent/claimant, had determined the loss of income for 12 months @ Rs.54000/- (4500/- per mensum). Secondly, the Tribunal had also granted a sum of Rs.10,000/- towards Transport expenses and for extra nourishment, the Tribunal had awarded a sum of Rs.10,000/-. Towards Medical expenses, and based on Ex.P7, the Tribunal had granted a sum of Rs.26,600/-. Towards loss of amenities, the Tribunal had allowed a sum of Rs.25000/-. Another sum of Rs.25000/- was also granted under the head of Pain and suffering. Totally, the Tribunal had awarded a sum of Rs.3,30,600/- under the following heads:

(a) loss of earning	Rs. 54,000/-
(b)Transport Expenses	Rs. 10,000/-
(c)Extra Nourishment	Rs. 10,000/-
(d)Medical Expenses	Rs. 26,600/-
(e)Loss of amenities of life	Rs. 25,000/-
(f)Pain and Suffering	Rs. 25,000/-
(g)Permanent disability	Rs. 80,000/-
(h)Loss of earning capacity	Rs.1,00,000/-
Total	Rs.3,30,600/-

10. Mr.R.Sivakumar, learned counsel appearing for the appellant has mainly challenged the compensation granted under the following two heads:

(a)Permanent disability	Rs.80000/-
(b)Loss of earning capacity	Rs.1,00,000/-

With reference to the above, the learned counsel has contended that the award of the Tribunal on the above two heads seems to be dual in nature and as decided by the full bench of this Court in Cholan Roadways Corporation Ltd., Vs. Ahmed Thambi, 2006(2) TN MAC 342 (FB), once the compensation is granted under the head of permanent disability, no compensation could be awarded under the head of loss of earning capacity because both the heads appears to be one and the same.

11. Mr.S.Gangaram Prasad, learned counsel appearing for the first respondent/claimant has contended that as decided by the Apex Court in B.Kothandapani Vs. Tamil Nadu State Transport Corporation Ltd., 2011(2) TN MAC 62(SC) as well as in K.Suresh Vs. New India Assurance Co. Ltd., and another (2012) (2) TN MAC 562 (SC), there was no bar in granting compensation under both the heads of permanent disability as well as the loss of earning capacity.

12. In B. Kothandapani Vs. Tamil Nadu State Transport Corporation Ltd., 2011(2) TN MAC 62(SC), cited supra, the following crucial issue was arisen:

"whether the appellant is entitled to a sum of Rs. 1,00,000/- towards "permanent disability" in addition to the amount awarded under the head "loss of earning capacity"?

13. While speaking on behalf of the Division Bench of the Apex Court, Hon'ble Mr.Justice P.Sathasivam has made reference to Ramesh Chandra vs. Randhir Singh & Ors.(1990) 3 SCC 723 and Cholan Roadways Corporation Ltd., Vs. Ahmed Thambi, 2006(2) TN MAC 342 (FB): 2006 (4) CTC 433 cited supra. With regard to Ramesh Chandra his Lordship, in paragraph Nos.11 & 12, has observed as follows:

Para.11:'' In Ramesh Chandra vs. Randhir Singh & Ors. (1990) 3 SCC 723 while considering award of compensation for permanent disability (right foot amputated) caused by the accident under Section 110-B of the Motor Vehicles Act, 1939 which is similar to Section 168(1) of the Motor Vehicles Act, 1988, this Court upheld the award of compensation under separate head of pain, suffering and loss of enjoyment of life, apart from the head of loss of earnings. The discussion and ultimate conclusion are relevant which reads as under:-

"7. With regard to ground XIX covering the question that the sum awarded for pain, suffering and loss of enjoyment of life etc. termed as general damages should be taken to be covered by damages granted for loss of earnings is concerned that too is misplaced and without any basis. The pain and suffering and loss of enjoyment of life which is a resultant and permanent fact occasioned by the nature of injuries received by the claimant and the ordeal he had to undergo. If money be any solace, the grant of Rs.20,000/- to the claimant represents that solace. Money solace is the answer discovered by the Law of Torts. No substitute has yet been found to replace the element of money. This, on the face of it appeals to us as a distinct head, quite apart from the inability to earn livelihood on the basis of incapacity or disability which is quite different. The incapacity or disability to earn a livelihood would have to be viewed not only in praesenti but in futuro on reasonable expectancies and taking into account deprival of earnings of a conceivable period. This head being totally different cannot in our view overlap the grant of compensation under the head of pain, suffering and loss of enjoyment of life. One head relates to the impairment of person's capacity to earn, the other relates to the pain and suffering and loss of enjoyment of life by the person himself. For these reasons, we are of the considered view that the contentions raised by the truck owner appellant in that behalf must be

negatived and we hereby negative them."

Para.12:'' It is true that the compensation for loss of earning power/capacity has to be determined based on various aspects including permanent injury/disability. At the same time, it cannot be construed that compensation cannot be granted for permanent disability of any nature.

For example, take the case of a non-earning member of a family who has been injured in an accident and sustained permanent disability due to amputation of leg or hand, it cannot be construed that no amount needs to be granted for permanent disability. It cannot be disputed that apart from the fact that the permanent disability affects the earning capacity of the person concerned, undoubtedly, one has to forego other personal comforts and even for normal avocation they have to depend on others. In the case on hand, two doctors had explained the nature of injuries, treatment received and the disability suffered due to partial loss of eye-sight and amputation of middle finger in the right hand and we have already adverted to the avocation, namely, at the time of accident, he was working as Foreman in M/s Armstrong Hydraulics Ltd. Taking note of his nature of work, partial loss in the eye sight, loss of middle finger of the right hand, it not only affects his earning capacity but also affects normal avocation and day-to-day work. In such circumstance, we are of the view that the Tribunal was fully justified in granting a sum of Rs.1,50,000/- towards permanent disability.

14. In K.Suresh Vs. New India Assurance Co. Ltd., and another (2012) (2) TN MAC 562 (SC) cited supra, the Hon'ble Justice Mr.Dipak Misra, in paragraph No.2, has observed as under:

Para.2: ''Despite many a pronouncement in the field, it still remains a challenging situation warranting sensitive as well as dispassionate exercise how to determine the incalculable sum in calculable terms of money in cases of personal injuries. In such assessment neither sentiments nor emotions have any role. It has been stated in Davies v. Powell Duffryn Associate Collieries Ltd.[1]

that it is a matter of Pounds, Shillings and Pence. There cannot be actual compensation for anguish of the heart or for mental tribulations. The quintessentiality lies in the pragmatic computation of the loss sustained which has to be in the realm of realistic approximation. Therefore, Section 168 of the Motor Vehicles Act, 1988 (for brevity the Act) stipulates that there should be grant of just compensation. Thus, it becomes a challenge for a court of law to determine just compensation which is neither a bonanza nor a windfall, and simultaneously, should not be a pittance.

Insofar as the above cited case is concerned i.e., K.Suresh Vs. New India Assurance Co. Ltd., and another (2012) (2) TN MAC 562 (SC), the paragraph Nos.5 to 7 are very much relevant with reference to just compensation:

Para.5. While having respect for the conventional determination there has been evolution of a pattern and the same, from time to time, has been kept in accord with the changes in the value of money. Therefore, in the case of Ward v. James, 1965 (1)All ER 563, it has been expressed thus: -

'Although you cannot give a man so gravely injured much for his lost years, you can, however, compensate him for his loss during his shortened span, that is, during his expected years of survival. You can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to a back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet judges and juries have to do the best they can and give him what they think is fair. No wonder they find it well nigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The judges have worked out a pattern, and they keep it in line with the changes in the value of money.'

Para.6:''While assessing the damages there is a command to exclude considerations which are in the realm of speculation or fancy though some guess work or some conjecture to a limited extent is inevitable. That is what has been stated in C.K. Subramania Iyer v. T. Kunhikuttan Nair, AIR 1970 SC 376. Thus, some guess work, some hypothetical considerations and some sympathy come into play but, a significant one, the ultimate determination is to be viewed with some objective standards. To elaborate, neither the tribunal nor a court can take a flight in fancy and award an exorbitant sum, for the concept of conventional sum, fall of money value and reasonableness are to be kept in view. Ergo, in conceptual eventuality just compensation plays a dominant role.''

Para.7. ''The conception of just compensation is fundamentally concretized on certain well established principles and accepted legal parameters as well as principles of equity and good conscience. In Yadav Kumar v. Divisional Manager, National Insurance Company Limited and another, 2010 (10) SCC 341, a two-Judge Bench, while dealing with the facet of just compensation, has stated thus: -

''It goes without saying that in matters of determination of compensation both the tribunal and the court are statutorily charged with a responsibility of fixing a just compensation. It is obviously true that determination of just compensation cannot be equated to a bonanza. At the same time the concept of just compensation obviously suggests application of fair and equitable principles and a reasonable approach on the part of the tribunals and the courts. This reasonableness on the part of the tribunal and the court must be on a large peripheral field.''

In Paragraph No.10, his Lordship has observed as under:

Para.10. ''It is noteworthy to state that an adjudicating authority, while determining quantum of compensation, has to keep in view the sufferings of the injured person which would include his inability to lead a full

life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. Hence, while computing compensation the approach of the tribunal or a court has to be broad based. Needless to say, it would involve some guesswork as there cannot be any mathematical exactitude or a precise formula to determine the quantum of compensation. In determination of compensation the fundamental criterion of just compensation should be inhered.''

15. Having gone through the above cited decisions, in its entirety, this Court is of the view that there may not be any impediment in granting compensation under the head of permanent disability, in addition to the amount awarded under the head of loss of earning capacity.

16. Therefore, this Court is of the considered view that granting of a sum of Rs.80,000/- towards permanent disability, which is estimated @ 40% and an another sum of Rs.1,00,000/- towards loss of earning capacity does not require any modification or interference of this Court. Accordingly, the Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is confirmed.

17. The appellant/Insurance Company is directed to deposit the entire award amount with interest @ 7.5%, and costs, less the amount already deposited, if any, to the credit of MCOP No.3917 of 2006, within a period of four weeks, from the date of receipt of a copy of this order. On such deposit being made, the first respondent/claimant is at liberty to withdraw the entire award amount alongwith accrued interest without filing any formal application seeking permission. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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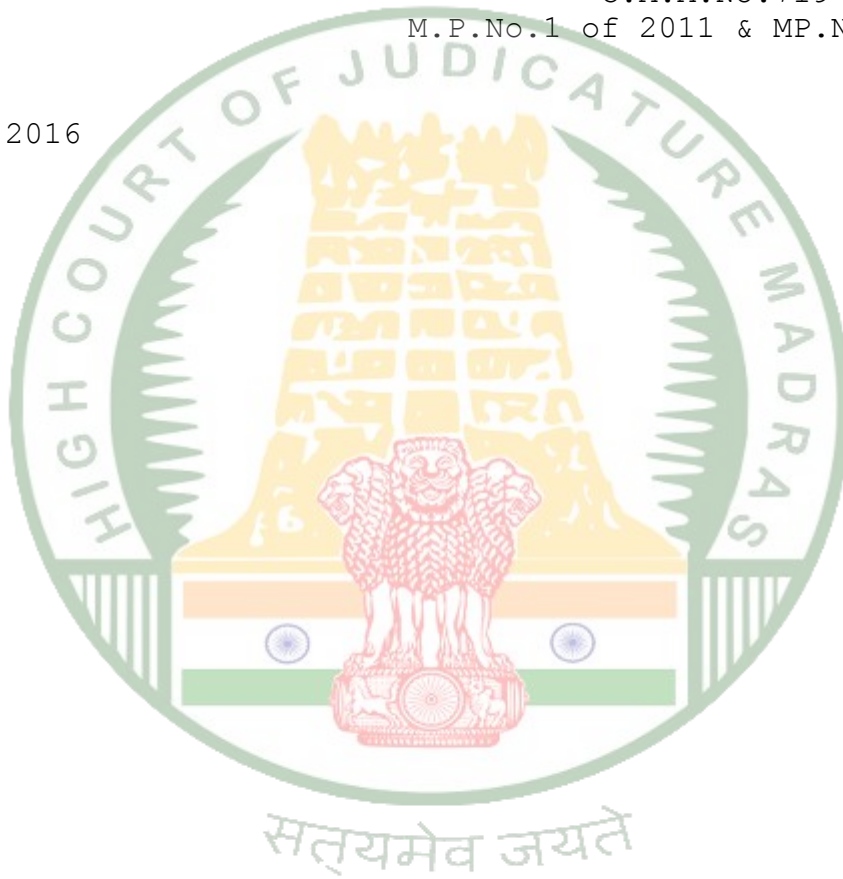
To

1.The Motor Accident Claims Tribunal,
(IV Court of Small Causes),
Chennai.

1 cc to Mr.R.Sivakumar, Advocate, sr.32393
1 cc to Mr.S.Gangaram, Advocate, sr.32890

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