

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2016

CORAM

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

C.M.A.No.2448 of 2014
and M.P.No.1 of 2014

M/s. Royal Sundaram Alliance Insurance Co. Ltd.,
2nd Floor, K.C. Arcade
No.79/2, Sir Shanmugam Road
(T.V. Samy Road East)
R.S. Puram, Coimbatore - 641 002. ... Appellant/ 3rd Respondent

vs.

1. P. Saravana Kumar
S/o. Ponnusamy
Suriyampalayam, Pethampalayam Post
Kanchikovil Village
Perundurai.1st Respondent/Petitioner
2. M. Periyasamy
S/o. Madasamy
Chinnappa Gounder Street
Chinniampalayam Coimbatore.
3. M. Abdul Nazar
S/o. A.K. Mohamed
No.122/58 Sathyamoorthy Nagar
Street No.3, A.T. Road
Mettupalayam. Respondents 2 & 3/Respondents 1 & 2

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgement and decree dated 31.10.2013 passed in M.C.O.P. No. 120 of 2010 on the file of the Motor Accidents Claims Tribunal, (Subordinate Court), Perundurai.

For Appellant : Mr.N. Vijayaraghavan

For Respondents : Mr. R. Nalliyappan for R1
Notice not ready for R2 & R3

JUDGMENT

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

This Civil Miscellaneous Appeal has been preferred by the Insurance Company, challenging the Judgment and decree of the Motor Accidents Claims Tribunal (Subordinate Court), Perundurai dated 31.10.2013 passed in M.C.O.P. No. 120 of 2010, whereby, the Tribunal has awarded a compensation of Rs.13,00,000/-, together with interest at 7.5% p.a. from the date of the petition till such deposit is made.

2. This is a case of injury. On 06.12.2009, at about 8.50 p.m. when the injured/ claimant P. Saravanakumar, aged about 33 years at the time of accident, working as a Manager in a Tyre Retreating Company, was riding his motorcycle bearing Registration No.TN 37 AC 8601, proceeding along Kovai to Mettupalayam Road, a Lorry bearing Registration No. TN 40 B 1803, insured with the appellant Insurance Company, driven by the 2nd respondent driver, dashed against him. Due to the forceful impact, the claimant sustained severe head fractures and multiple grievous injuries. He was treated in the K.G. Hospital, Kovai from 06.12.2009 to 21.12.2009. The injured filed a claim petition for a compensation of Rs.20,00,000/-.

3. In support of the claim, the claimant was examined as PW.1, Dr. Senthil Kumar was examined as PW2 and Dr. Sekar was examined as PW3. Exs.P-1 to Ex.P.23 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Certified copy of F.I.R
P2	Copy of Observation Mahazar
P3	Copy of Rough Sketch
P4	Certified copy of Motor Vehicle Inspector's Report of TN 40 B 1803
P5	Certified copy of Motor Vehicle Inspector's Report of TN 37 AC 8601
P6	Copy of Wound Certificate
P7	Certified copy of Charge sheet
P8	Copy of report issued by the Inspector, Kovainayakanpalayam
P9	Proof to show that the above documents were received through RTI
P10	Discharge summary issued by K.G. Hospital, Kovai

Ex.No.	Details
P11	Medical bills of K.G. Hospital, Kovai for a sum of Rs.2,92,299/-
P12	Doctor's Prescription
P13	X- Ray
P14	Prescription for future treatment of Rs.2,50,000/- by K.G. Hospital, Kovai
P15	Bill for future treatment of Rs.2,50,000/- by K.G. Hospital, Kovai
P16	Copy of Driving License
P17	Transfer Certificate of the College
P18	B. Com degree Mark Sheet of the claimant
P19	Education Certificate (Metal Working Technology) in Elgi Tyre & Trade Ltd.,
P20	Salary Certificate for Rs.14,000/-
P21	C.T Scan Reports - 2 Nos.
P22	Permanent Disability Certificate
P23	C.T. Scan - 1 No.

No oral or documentary evidence were let in, on behalf of the appellant/third respondent before the Tribunal.

4. The Tribunal based on the oral evidence of the witnesses, and the F.I.R came to the conclusion that the rider of the lorry, riding in a rash and negligent manner and was responsible for the accident and consequently liability was fixed on the appellant Insurance Company, since the lorry was insured with the appellant, to compensate the claimant. On this issue, learned counsel for the appellant has no serious objection with regard to the finding of the Tribunal as no material has been placed to come to a different conclusion from that of the conclusion arrived by the Tribunal.

5. The only contention raised by the learned counsel for the appellant/ Insurance Company is on the quantum of compensation.

6. In so far as the income of the claimant is concerned, though it is stated that the claimant was earning a monthly income of Rs.14,000/-, considering the minimum monthly income of a person of aged 34 years during the year 2009, the Tribunal has fixed Rs.8000/- per month. Considering the age of the claimant, nature of injuries sustained by him, multiplier method has been adopted. Considering the nature of injuries sustained,

the metal plates in the femur, the surgery underwent by the claimant, suffering from fits since there are no bones on one side of the head, the Doctor who examined the claimant has assessed the disability at 59.7%, which has also been accepted by the Tribunal as 59%. Hence, the Tribunal proceeded to determine the loss of earning capacity based on the disability assessed at 59%, by adopting multiplier of 16 and granted the compensation as follows:

Sl. No	Head	Amount granted by the Tribunal
1	Loss of income Rs.8000 x 12 x 16x 59%	Rs. 9,06,240/-
2	Pain and Sufferings	Rs. 50,000/-
3	Extra Nourishment	Rs. 25,000/-
4	Transport to Hospital	Rs. 15,000/-
5	Attender Charges	Rs. 10,000/-
6	Loss of amenities	Rs. 10,000/-
7	Medical Expenses	Rs. 2,92,299/-
	Total	Rs.13,08,539/-

The Tribunal awarded compensation in a sum of Rs.13,08,539/- with an interest of 7.5% p.a.

7. Learned counsel for the appellant Insurance Company stated that in this case the quantum of compensation has to be reduced. He further submitted that the disability fixed by the Tribunal is on the higher side since it has not been assessed by the Doctor, who treated the claimant and that only a Neurology Doctor can assess the disability suffered, due to head injuries. It is further submitted that the Tribunal has erred in fixing the income of the claimant at Rs.8000/- without any conclusive and reliable evidence. While there is no proof to show that there is permanent loss of income, the Tribunal ought not to have adopted multiplier method. Moreover, the medical bills produced are not genuine and since it has been exaggerated, the same should not have been accepted by the Tribunal. Hence, pleaded to reduce the quantum of compensation.

8. On the other hand, the learned counsel for the 1st respondent/claimant submitted that the claimant was hale and healthy, working as a Manager in a Tyre Retreating Company, at the time of accident and was earning a sum of Rs.45,000/- per month, salary certificate from the employer has also been produced in the exhibit. Subsequent to the accident, he is unable to work as before, and being a bread winner of the family, his future earnings have been totally lost. Due to the surgeries underwent by the claimant on the head, femur and

legs and the plates inside his body, he has undergone severe pain and sufferings. Considering the age, the grievous nature sustained by the claimant, the Tribunal has granted a fair and reasonable compensation and hence the learned counsel for the 1st respondent/claimant sought for dismissal of the above Civil Miscellaneous Appeal.

9. This Court considered the submissions made on the learned counsel on either side and perused the materials available on record.

10. The factum that the 1st respondent/claimant has undergone severe mental and physical agony, due to the accident, is not in dispute. However, the compensation granted under the heading "loss of income" by fixing the disability at 59% by the Tribunal could be reduced, by re-fixing the same at 35%. However, from the evidences adduced before the trial Court with regard to the injuries sustained, the Tribunal ought to have granted a fair compensation under the headings "Pain and Sufferings". Hence, this Court enhance the compensation awarded under the heading "Pain and Sufferings" to Rs.1,00,000/- instead of Rs.50,000/-. The Tribunal, after conducting a detailed enquiry and perusing the evidences, have granted compensation under the other headings, we confirm the compensation awarded under the other heads.

11. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of income	Rs. 9,06,240/-	Rs. 5,37,600/-
2	Pain and Sufferings	Rs. 50,000/-	Rs. 1,00,000/-
3	Extra Nourishment	Rs. 25,000/-	Rs. 25,000/-
4	Transport to Hospital	Rs. 15,000/-	Rs. 15,000/-
5	Attender Charges	Rs. 10,000/-	Rs. 20,000/-
6	Loss of amenities	Rs. 10,000/-	Rs. 10,000/-
7	Medical Expenses	Rs. 2,92,299/-	Rs. 2,92,399/-
	Total	Rs.13,08,539/-	Rs.9,99,999/-

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

12. Accordingly, the Civil Miscellaneous Appeal is modified as follows:-

(i) The award of the Tribunal is reduced to Rs.9,99,999/- from Rs.13,08,539/-

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

(iii) The appellant/Insurance Company is directed to deposit the entire award amount as ordered by this Court, less the amount already deposited, to the credit of M.C.O.P.No.120 of 2010 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Perundurai, within a period of eight weeks from the date of receipt of a copy of this order.

(v) On such deposit, the claimant is permitted to withdraw the award amount on filing necessary application before the Tribunal.

(vi) Consequently, the connected Miscellaneous Petition is closed. There will be no order as to costs in this appeal.

avr/sl

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1.The Subordinate Court
(The Motor Accidents Claims Tribunal)
Perundurai.

2. The Section Officer,
V.R.Section, High Court,
Madras.

+ 1 cc to M/s.M.B.Gopalan, Advocate SR 14190

rsi(co)
prk29/3

C.M.A.No.2448 of 2014
and
M.P.No.1 of 2014