

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2016

CORAM

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

C.M.A.No.2750 of 2014 &
M.P.No.1 of 2014

M/s.New India Assurance Co. Ltd.,
Divisional Office,
No.45, Moore Street,
Chennai-600 001.

... Appellant/2nd Respondent

vs.

1.Mr.K.Babu

... 1st respondent / Petitioner

2.Mr.S.Premkumar

... 2nd respondent /
1st respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 28.03.2014 passed in M.C.O.P.No.1271 of 2013 on the file of the Motor Accidents Claims Tribunal (Small Causes Court - II Judge) at Chennai.

For Appellant : Mr.J.Chandran

For Respondents: Mr.D.Ravichandar for R1

JUDGMENT

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

The appellant/Insurer s on appeal challenging the award dated 28.03.2014 passed in M.C.O.P.No.1271 of 2013 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

2. It is a case of injury. On 25.05.2012, at about 10.30 a.m., when the petitioner was riding his motorcycle bearing registration No.TN-25-BF-4102 from Cheyyar to Kanchipuram, near Forech Company, Mangal, the bus, belonging to the second respondent, bearing registration No.TN-25-S-0999, coming in the opposite direction, driven by its driver in a rash and negligent

manner, hit against the motorcycle and as a result of the same, the claimant K.Babu sustained grievous injuries. Immediately, the claimant was admitted in Kanchipuram Government Hospital and thereafter for better treatment he was referred to MIOT Hospital, where, he was inpatient from 25.05.2012 to 12.06.2012 and again from 12.06.2012 to 10.07.2012 and after discharge, he has been taking Outpatient treatment from the same hospital. During his stay at the hospital, due to the said accident, his leg was amputated. Hence, the claimant claimed compensation in a sum of Rs.20.00 lakhs.

3. According to the claimant, he was working as Assistant General Manager, Lotus Company SIPCOT, Mangal, Cheyyar Taluk and was earning a sum of Rs.55,000/- per month. In support of the claim, the claimant examined himself as P.W.1 and Dr.N.Saichandran, who issued the disability certificate to the claimant, was examined as P.W.2 and Ex.P-1 to Ex.P-15 were marked, the details of which are as follows:-

Ex.No.	Details
P-1	Copy of FIR in Cr.No.318/2012 registered at Dusi Police Station
P-2	Discharge Summary
P-3	Wound Certificate
P-4	Discharge Summary
P-5	Discharge Summary
P-6	Medical bills
P-7	Invoice and cash receipts issued by Endolite
P-8	Copy of Diplom Certificate
P-9	Promotion letter dated 01.10.2011
P-10	Pay bills
P-11	Copy of driving licence of the petitioner
P-12	Photo of the petitioner
P-13	Handicapped Certificate
P-14	Disability Certificate
P-15	Photo of the petitioner

4. On behalf of the appellant/Insurance Company, neither any witness was examined nor any documents were marked.

5. The Tribunal based on the oral evidence of the witnesses, and the F.I.R. came to conclusion that the accident had happened due to the rash and negligent driving by the driver of the bus. Accordingly, the Tribunal fixed the negligence on the part of

the driver of the bus and consequently fixed the liability on the appellant/Insurance Company to pay the compensation. In all the Tribunal awarded a sum of Rs.47,21,580/- as compensation with interest at 7.5% per annum as under :-

Sl.No.	Head	Amount granted by the Tribunal
1.	Transportation	Rs. 10,000.00
2.	Extra Nourishment	Rs. 25,000.00
3.	Medical Expenses	Rs. 10,50,390.00
4.	Mental agony to the petitioner	Rs. 50,000.00
5.	Pain and suffering	Rs. 50,000.00
6.	Loss of earning capacity	Rs. 35,36,190.00
	Total	Rs.47,21,580.00

6. Aggrieved by the said award, the appellant/Insurance company is before this Court by filing the present appeal.

7. With regard to the finding of negligence on the part of the driver of the bus, learned counsel appearing for the appellant has no serious objection. Further, no material has also been placed before this Court to come to a different conclusion than the one arrived at by the Tribunal. However, objection is raised by the learned counsel appearing for the appellant/Insurance company that the loss of income arrived at by the Tribunal is on the higher side. Learned counsel appearing for the appellant/insurance company also submits that even as per the medical bills, the expenses incurred by the claimant is only, Rs.9,50,390/-, however, the Tribunal has erroneously awarded a sum of Rs.10,50,390/-, which is not sustainable.

8. Per contra, learned counsel appearing for the claimant submits that the Tribunal has wrongly deducted income tax at 30%, which is against the decision of the Supreme Court in Vimal Kanwar & Ors. - Vs - Kishore Dan & Ors. (2013 (7) SCC 476). Learned counsel submits that though the Tribunal has relied on the above said decision, however, has erroneously deducted income tax at 30%. He further submits that income tax can at best be deducted at the rate of 10%, the accident having happened in the year 2012 and, accordingly, the award passed by the Tribunal needs to be modified.

9. The Tribunal, fixing the income of the deceased at Rs.56,130/-, however, erroneously fixed income tax at 30%, which is not correct. The Tribunal ought to have deducted tax only at the rate of 10% after allowing the necessary deductions permissible. In such view of the matter, this Court modifies the compensation awarded under the head "Loss of Income" as under :-

Rs.56130 X 12	=	Rs.6,73,560/=
Less : Standard Dedn.	=	Rs.2,00,000/=
Taxable Income	=	Rs.4,73,560/=
Tax on income	=	Rs.64712/=
(2 Lacs - 5 Lacs - 10%		
5 Lacs - 10 Lacs - 20%)		
Surcharge @ 3%	=	Rs.1,941/=
Total	=	Rs.66653/=
Total income per year	=	Rs.6,06,907/=
Loss of income	=	Rs.6,06,907 x 15 x 50%
	=	Rs.45,51,802/=

Accordingly, the compensation under the head 'Loss of Income' is enhanced to Rs.45,51,802/=.

10. Insofar as the compensation awarded under the head 'Medical Expenses', it is evident from the records that a sum of Rs.9,50,390/= has been paid, which is substantiated by medical bills. However, erroneously, the Tribunal has awarded a sum of Rs.10,50,390/=. Accordingly, the amount of compensation awarded under the above head is reduced to Rs.9,50,390/=.

11. Further, it is seen from the award passed by the Tribunal that no amount has been awarded under the head 'Attender Charges'. Definitely the claimant would have incurred all the above charges and post the amputation, definitely extra nourishment is needed. Accordingly, this Court awards a sum of Rs.25,000/= under the head 'Attender Charges'.

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

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1.	Transportation	Rs. 10,000.00	Rs. 10,000.00
2.	Extra Nourishment	Rs. 25,000.00	Rs. 25,000.00
3.	Attender charges	-	Rs. 25,000.00
3.	Medical Expenses	Rs. 10,50,390.00	Rs. 9,50,390.00
4.	Mental agony to the petitioner	Rs. 50,000.00	Rs. 50,000.00
5.	Pain and suffering	Rs. 50,000.00	Rs. 50,000.00

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
6.	Loss of earning capacity	Rs. 35,36,190.00	Rs. 45,51,802.00
	otal	T Rs.47,21,580.00	Rs.56,62,192.00

13. Accordingly, the Civil Miscellaneous Appeal is dismissed modifying the compensation awarded by the Tribunal as above with interest at the rate of 7.5% p.a. from the date of petition till date of deposit. The claimant is directed to pay necessary Court fee immediately. The appellant/Insurance Company is directed to deposit the amount awarded as above, less the amount already deposited, within a period of eight weeks from today along with interests and costs. On such deposit, the claimant is permitted to withdraw the amount as ordered above. However, in the circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The II Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

2.The Record Keeper,
V.R. Section,
High Court, Madras.

+lcc to Mr.J. Chandran, Advocate, S.R.No.20843
+lcc to Mr.D. Ravichandar, Advocate, S.R.No.20631

AD(CO)
EU(05/08/2016)

C.M.A.No.2750 of 2014 &
M.P.No.1 of 2014