IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.04.2016
DELIVERED ON : 12.04.2016

CORAM:

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

Civil Miscellaneous Appeal No.3119 of 2014

M/s.New India Assurance Co. Ltd.,
No.45, Moore Street,
V Floor, Chennai 600 001. ... Appellant/RespodnentII

vs.

1. Karthick ...1st Respondent/Petitioner
2. P.Srinivasa Rao ...2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 10.12.2013 passed in M.C.O.P.No.4691 of 2012 on the file of the Motor Accidents Claims Tribunal (Small Causes Court, V Judge), Chennai.

For Appellant : Mr.J.Chandran
For 1st Respondent : Mr.K.Suryanarayanan

J U D G M E N T

S.VAIDYANATHAN,J.

Challenging the judgment and decree dated 10.12.2013 passed by the Motor Accidents Claims Tribunal (Small Causes Court, V Judge), Chennai in M.C.O.P.No.4691 of 2012, the appellant Insurance Company has come up with this appeal.

2. The claimant in this case is the injured. On 16.09.2012, about 11.30 hours, when the claimant/1st respondent herein was riding his motor cycle bearing Registration No.TN-03-C-3201 along with one G.Saravanan as a pillion rider, on Konnur High Road, opposite to Door No.111, Hall Baraccah Chicken, Mutton Centre, Otteri, Chennai-12 from west to east direction, a Lorry bearing Registration No.AP-16-TY-4199 came from the same direction in a rash and negligent manner and dashed against the motor cycle, thereby, both the claimant and the pillion rider sustained grievous injuries. Alleging that the owner and insurer of the Lorry are jointly and severally liable to pay

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compensation, the claimant Karthik, in his claim petition sought a sum of Rs.6,00,000/- as compensation.

3. The appellant Insurance Company resisted the claim petition contending that there was gross and total negligence on the part of the claimant, who rode the motor cycle.

4. Before the Tribunal, on behalf of the claimant, the claimant was examined as P.W.1; the pillion rider of the motor cycle, viz. Mr.G.Saravanan was examined as P.W.2; Dr.N.Saichandran was examined as P.W.3; one Mr.H.Md.Azizullah was examined as P.W.4 and Exs.P1 to P21 and P24 to P30 were marked. Details of the Exhibits would run thus:

Ex.P1	Copy of F.I.R.
Ex.P2	Copy of Rough Sketch
Ex.P3	AR Copy (O.P.No.4691/2012)
Ex.P4	Discharge Summary
Ex.P5	Discharge Summary
Ex.P6	Discharge Summary
Ex.P7	Discharge Summary
Ex.P8	Discharge Summary
Ex.P9	Discharge Summary
Ex.P10	Discharge Summary
Ex.P11	Discharge Summary
Ex.P12	Discharge Summary
Ex.P13	Discharge Summary
Ex.P14	Discharge Summary
Ex.P15	Discharge Summary
Ex.P16	Medical Bills
Ex.P17	Photographs
Ex.P18	Appointment letter, confirmation letter and copy of identity card
Ex.P19	Pay slip
Ex.P20	Copy of Driving Licence of the claimant
Ex.P21	Transport Bills
Ex.P24	Disability Certificate
Ex.P25	X-ray film
Ex.P26	X-ray Report
Ex.P27	Copy of identity card of P.W.4

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Ex.P28	Petitioner's appointment order
Ex.P29	Pay slip for the month of July 2012
Ex.P30	Relieving order

On behalf of the Insurance Company, no witness was examined and no document was marked.

5. The Tribunal, taking note of the oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving of the driver of the Lorry bearing Registration No.AP-16-TY-4199 and fixed the liability to compensate the claimant, on the Insurance Company. Taking into account the avocation and income of the injured claimant, the Tribunal awarded a sum of Rs.44,75,000/- as compensation payable to the claimant with interest at 7.5% per annum. The details of the award passed by the Tribunal under different heads, are tabulated below:

S.No.	Heads	Compensation awarded by the Tribunal
1	Loss of income for 6 months	Rs. 79,512/-
2	Transportation charges	Rs. 6,800/-
3	Extra nourishment	Rs. 20,000/-
4	Loss of Marriage prospects	Rs. 1,50,000/-
5	Medical expenses	Rs. 9,81,197/-
6	Attender charges	Rs. 25,000/-
7	Pain and suffering	Rs. 2,00,000/-
8	Loss of amenities	Rs. 1,50,000/-
9	Loss of earning power	Rs. 28,62,432/-
	Total	Rs. 44,74,941/- rounded off to Rs.44,75,000/-

Challenging their liability to compensate the claimant as also the quantum of compensation awarded by the Tribunal, the appellant/Insurance Company is before this Court.

6. Learned counsel for the appellant/Insurance Company would strenuously contend that in the absence of any proper evidence in support of the claimant's education, the Tribunal ought not to have accepted the averment of the claimant that he is working as a Customer Care Executive in a Private Company, earning a sum of Rs.13,252/- per month. It is his further contention that the Tribunal erred in awarding a sum of Rs.9,81,197/- towards Medical expenses, without considering the

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discrepancies in the Discharge Summaries and Medical Bills.

7. On the other hand, learned counsel appearing for the 1st respondent/claimant would submit that the compensation awarded by the Tribunal is just and reasonable in view of the grievous injuries sustained by the claimant.

8. Heard the learned counsel on either side and perused the oral and documentary evidence available on record.

9. The appellant/Insurance Company has mainly disputed the quantum of compensation awarded by the Tribunal. In the claim petition, initially, the claimant has sought only Rs.6,00,000/- as compensation for the injuries sustained by him. Later, by filing a Miscellaneous Petition, he has enhanced his claim to Rs.40,00,000/-. Whether the compensation of a sum of Rs.44,75,000/- awarded by the Tribunal under various heads is reasonable or exorbitant is the issue for consideration in this appeal, which can be decided only by fair appreciation of evidence.

10. At the time of accident, on 16.09.2012, the claimant Karthik was aged 19 years, which is evident from the copy of the Driving Licence marked vide Ex.P20, wherein, his date of birth is shown as 01.12.1992. The claimant has also averred in the claim petition that he was working as a Customer Care Executive in M/s.Landmark Pvt. Limited, Nungambakkam, Chennai, earning a sum of Rs.11,000/- per month. In support of his avocation and income, the claimant has filed his Appointment Letter, Confirmation Letter and copy of Identity Card marked vide Ex.P18. He has also marked Pay Slip for March 2012 vide Ex.P19 and Pay Slip for July 2012 vide Ex.P29. The Tribunal, relying upon Ex.P19-Pay Slip for March 2012, fixed the monthly income of the claimant at Rs.13,252/-. On comparison of the Pay Slips for March and July 2012, it is seen that the Gross income of the claimant for March 2012 is higher than what he drew in July 2012, the reason being, in March 2012, the claimant Karthik was paid for Overtime and Holiday Overtime. Since, earnings by working overtime are not permanent, this Court is inclined to take only 50% of the same while calculating the monthly income of the claimant. For the purpose of calculating the monthly income of the claimant, we rely upon the claimant's Pay Slip for July 2012 marked as Ex.P29, which is his last drawn pay.

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Basic Pay	Rs. 4,745.00	
House Rent Allowance	Rs. 2,336.00	
Total (A)		Rs. 7,081.00
Night Stay	Rs. 1,825.00	
Night Allowance	Rs. 200.00	
Total (B)	Rs. 2,025.00	
(C) = 50% of 'B'		Rs. 1,010.00
(A) + (C)		Rs. 8,091.00
Amount rounded off to		Rs. 8,100.00

Thus, the monthly income of the claimant is arrived at a sum of Rs.8,100/-.

11. It is seen from the Discharge Summaries marked vide Exs.P4 to P15 that the claimant sustained crush injury on his right leg and foot, fracture of both bones in the right leg, facial injury, head injury and multiple internal and external injuries all over the body and taking note of the same as also the amputation of his right leg below knee, P.W.3 - Dr.N.Saichandran, assessed the partial permanent disability of the claimant at 70% and issued Disability Certificate vide Ex.P24. On consideration of the records, the Tribunal, while fixing the disability at 70%, however fixed the loss of earning power at 100% on account of the fact that the claimant's leg was amputated and therefore, the earning power was greatly reduced. However, this Court is of the considered view that though his right leg has been amputated and the permanent physical disability of the claimant has been fixed at 70%, the functional disability cannot be fixed at 100%, taking note of the avocation of the claimant. As could be seen from the records, the claimant's avocation does not involve hectic physical work like Electrician, Mechanic, etc. and therefore, his functional disability cannot be fixed at 100%. In the case on hand, the claimant was working as a Customer Care Executive in a Private Company. Accordingly, taking note of the avocation of the claimant, this Court fixes the functional disability of the claimant at 70%. Thus, fixing the monthly income of the claimant at Rs.8,100/-, his functional disability at 70% and applying the multiplier of '18', the compensation towards "loss of earning power" is assessed at Rs.12,24,720/- (Rs.8,100/- x 12 x '18' x 70%).

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12. The Tribunal has awarded a sum of Rs.9,81,197/- towards Medical expenses. Though, very many Bills have been filed before the Tribunal, based on which the Tribunal has awarded compensation, in the considered view of this Court, the said Bills are unbelievable. Even a cursory glance at the Cash Receipts issued by Halsted Surgical Clinic, Chennai-10 and Mohan

Nursing Home, M.T.H. Road, Villivakkam, Chennai-49 would reveal that the same are cooked up receipts for the purpose of proceeding with the claim. Neither there is description of injections/tablets administered to the claimant nor the details of medicines and drips given to him are specified in the Cash Receipts. The Cash Receipts are replica Cash Receipts that have been generated in a stereotyped manner. Though we are not inclined to rely on those Receipts, considering the nature of injuries sustained by the claimant, which are grievous in nature and considering the fact that his right leg has been amputated and there being no contra evidence let in by the Insurance Company, this Court awards a sum of Rs.3,00,000/-, in all, as compensation towards Medical expenses.

13. As regards the compensation awarded under the heads "Transportation charges", "Attender charges", "Loss of marital prospects", "Pain and suffering" and "Loss of amenities", we confirm the award passed by the Tribunal on these heads, as it is just and reasonable. Insofar as the sum of Rs.79,512/- awarded under the head "Loss of income for six months", this Court awards a sum of Rs.48,600/- (Rs.8,100/- x 6) under the said head. Considering the nature of injuries sustained by the claimant, we enhance the compensation towards "extra nourishment" to Rs.50,000/-. Accordingly, this Court modifies the compensation as under:

S.No.	Heads	Compensation awarded by the Tribunal	Modified Compensation by this Court
1	Loss of income for 6 months	Rs. 79,512/-	Rs. 48,600/-
2	Transportation charges	Rs. 6,800/-	Rs. 6,800/-
3	Extra nourishment	Rs. 20,000/-	Rs. 50,000/-
4	Loss of Marriage prospects	Rs. 1,50,000/-	Rs. 1,50,000/-
5	Medical expenses	Rs. 9,81,197/-	Rs. 3,00,000/-
6	Attender charges	Rs. 25,000/-	Rs. 25,000/-
7	Pain and suffering	Rs. 2,00,000/-	Rs. 2,00,000/-
8	Loss of amenities	Rs. 1,50,000/-	Rs. 1,50,000/-
9	Loss of earning power	Rs. 28,62,432/-	Rs. 12,24,720/-
	Total	Rs.44,74,941/- r/off to Rs.44,75,000/-	Rs. 21,55,120/- r/off to Rs.21,55,500/-

14. In fine, the compensation of a sum of Rs.44,75,000/- awarded by the Tribunal is modified and the claimant is entitled to a sum of Rs.21,55,500/- (Rupees Twenty One Lakhs Fifty Five Thousand Five Hundred only). The said amount shall be deposited

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by the appellant/Insurance Company to the credit of M.C.O.P.No.4691 of 2012, less the amount, if any, deposited within a period of six (6) weeks from the date of receipt of a copy of this order. Interest awarded by the Tribunal at 7.5% per annum from the date of filing the claim petition till the date of deposit, is confirmed. It is also made clear that the amount awarded by this Court shall be paid to the claimant in the form of a crossed Account Payee Cheque, favouring only the claimant and it should not be issued in favour of any other person/Company under proper identification and acknowledgment.

15. While parting with, we record our anguish over the action of the hospital authorities, who have issued cooked up Cash Receipts in support of the claim. Their action has to be deprecated. They can neither take the judiciary nor the insurer for a ride. It is crystal clear that the person who issued the Receipt, Doctor or others might be hand-in-glove with the person responsible to seek undue compensation. It is public money which is being siphoned off by the culprits. Public shall be made aware of such hospitals.

With the above direction and observation, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To:
The Motor Accidents Claims Tribunal,
(Small Causes Court, V Judge), Chennai.

+1 cc to M/s.K.Suryanarayanan Advocate sr.22684
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