IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2016

CORAM

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

C.M.A.No.1086 of 2012
and
Cross. Obj.No.32 of 2016

Oriental Insurance Co.Ltd.,
Apex Chambers, II Floor,
No.20, Sir Thiyagaraya Road,
T.Nagar,
Chennai-600 017 ... Appellant/2nd Respondent in MCOP/
... R1 in Cross Objection.

vs.

1.P.V.Gopala Krishnan
rep. By his wife S.Us ...Respondent No.1/Claimant
...Cross Objector

2.K.V.Lakshminarayanan ...Respondent No.2
/1st Respondent in MCOP
...R2 in Cross Objection.

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 and Cross Objection is filed Under Order 41, Rule 22 of CPC against the award and decree dated 18.01.2012 passed in M.C.O.P.No.696 of 2008 on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai.

CMA:

For Appellant :Mr.S.Manohar

For Respondents:Mr.T.G.Balachandran for R1
R2-Exparte.

COMMON JUDGMENT

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

The Oriental Insurance Company is on appeal challenging the award dated 18.01.2012 passed in M.C.O.P.No.696 of 2008 on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai.

2. C.M.P.No.5486 of 2016 is filed to condone the delay of 1356 days in filing the Cross Objection in C.M.A.No.1086 of 2012.

3. In view of the reasons stated in Paragraph No.3 of the affidavit filed in support of the petition, delay is condoned and CMP.No.5486 of 2016 is ordered. Cross Objection is taken on file.

4. It is a case of injury. On 09.03.2006 at 7.00 a.m., the claimant herein viz., P.V.Gopalakrishnan, while walking from west to east through pedestrian path on T.T.K.Road, a two wheeler bearing Reg.No.TN 07 AW 2363 drove by its rider in a rash and negligent manner, hit the claimant and consequently, he sustained severe head injuries. The claimant, who was 55 years old at the time of accident was working as Assistant Engineer, Graphics with Kasthuri & Sons Ltd., M/s.The Hindu, Chennai, and was earning a sum of Rs.27,961/- per month. He filed a claim for compensation for a sum of Rs.40,00,000/-.

5. In support of the claim, the wife of the claimant viz., S.Usha was examined as P.W.1; Dr.Syed Ali was examined as P.W.2. Exhibits P-1 to Ex.P-22 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Copy of F.I.R.
P2	Rough Sketch
P3	Copy of Charge Sheet
P4	Discharge Summary of Apollo Hospital (9.3.2006 to 4.8.2006)
P5	Discharge Summary of Apollo Hospital (9.3.2006 to 4.8.2006)
P6	Discharge Summary of Apollo Hospital (15.3.2011 to 22.3.2011)
P7	Discharge Summary of Apollo Hospital (23.3.2011 to 1.4.2011)

Ex.No.	Details
P8	Hospital Bills
P9	Medical Bills, Doctor Fees, Nursing Fees
P10	Physiotherapy Bills
P11	Certificate issued by Dr.Ganapathy
P12	Salary Certificate
P13	Leave Particulars
P14	Retirement Letter
P15	Salary and Leave Particulars issued by The Hindu
P16	Discharge summary of Tmt.Usha
P17	CT Scan Report
P18	Neuro Surgeon Report
P19	Neuro psychological Report
P20	ECG Report
P21	Reimbursement of medical expenses
P22	Medical expenses

On behalf of the Insurance Company, no witness was examined and no exhibit was marked before the Tribunal.

6. The Tribunal based on the oral evidence of the witnesses, F.I.R., registered in Crime No.135/AM1/06, Ex.P.2/Rough Sketch, Ex.P.3/Charge Sheet, the final report filed against the rider of motorcycle u/s.338 IPC and 184 of Motor Vehicles Act, gave a finding that due to the rash and negligent riding of the two-wheeler, the accident caused and consequently, fixed the liability on the appellant/Insurance Company, to compensate the claimant/P.V.Gopalakrishnan. On this issue, learned counsel for the appellant/Insurance Company 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.

7. Based on the oral and documentary evidence, the Tribunal, discussed the nature of injuries and diagnosis given to the injured claimant in paragraph 9 as under:-

> "Ex.P.7 is the Discharge summary of Apollo Hospital, Chennai. It reveals that the petitioner was admitted on 23.03.2011 and discharged on 1.04.2011. Perusal of the same reveals that the petitioner was diagnosed for post traumatic hydrocephalus post right VP shunt, multiple pathological Rib fractures,

hyponatremia, plate atelecrasis of lower lobe of left lung, myositis ossificans of hip and cholelithiasis. He was admitted and evaluated. Serum sodium was 124 meq/L. He was started on hypertomic 3%. Saline infusion and high salt diet. He underwent bone scan for evaluation of pathological fractures. Bone scan revealed increased concentration on TC99m-MDP in D7, D8 and D9 vertebra, bilateral multiple ribs, pelvis, greater trochanter of right femur, neck of left femur, right 8th and 9th costonchondral junctions. The diagnostic possibilities were removed on POD 10. Urine for Bence Jones proteins and serum electrophoresis were negative. Opinion from pulmonologist was obtained and she advised bone biopsy. Opinion from radiologist was obtained and CT chest and pelvis was done to evaluate for bone biopsy. CT chest revealed multiple old healing rib fractures. CT pelvis revealed myositis ossificans in the hip. Serum sodium remained low. Opinion from Neprologist was obtained and Tablet Ledermycin was started. Opinion from Medical oncologist was obtained and bone marrow aspiration for immunofixation was done on 29.03.2011. The bone marrow cytoloby was normal."

8. On the above analysis, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of earning power	Rs.23,76,000/-
2	Permanent disability	Rs. 1,00,000/-
3	Loss of income during treatment	Rs. 1,08,000/-
4	Transport charges	Rs. 5,000/-
5	Extra nourishment	Rs. 5,000/-
6	Damage to clothes and articles	Rs. 1,000/-
7	Medical expenses, attender and nursing charges	Rs. 10,00,000/-
8	Pain and suffering	Rs. 1,00,000/-
	Total	Rs. 36,95,000/-

9. The learned counsel for the appellant/insurance company contended that higher multiplier should not have been applied to the case of the injured claimant as he was 55 years old at the time of accident. He also contended that there is no loss of income during the period of treatment at all for the injured claimant as the employer of the claimant viz., The Hindu, paid the salary even during the period of treatment; further, over and above, the medical expenses paid by the injured claimant was reimbursed to him. The learned counsel also submitted that towards medical expenses, attender and nursing charges, the Tribunal had granted a huge sum of Rs.10,00,000/-, which is not sustainable. The learned counsel for the appellant also contended that Ex.P.10 and Ex.P.22 had no proper authentication.

10. The claimant also filed Cross Objection for enhancement of the compensation granted to him. The learned counsel appearing for the Cross Objector/claimant submits that meagre amount has been granted towards extra nourishment expenses. The learned counsel also justified the compensation granted under the medical bills and nursing charges and he also contended that the medical bills are in order. According to the learned counsel for the claimant, no amount has been granted towards future prospects of the injured claimant and therefore, the multiplier 11 adopted is justified.

11. Heard the learned counsel for the appellant/insurance company and the learned counsel for the injured claimant/cross objector.

12. On the first plea raised by the learned counsel for the appellant/Insurance Company as regards higher multiplier adopted is concerned, it is seen that the Tribunal adopted 11 multiplier for the loss of earning power for the reason that disability in the case of injured claimant was assessed at 100% by the doctor, who examined him. It is pertinent to note that the injured claimant had already voluntarily retired on medical grounds. That apart, if he had been in service, there is possibility of enhancement of salary and post retirement also, he can very well earn good remuneration as he was a Graphics Engineer. However, in view of the injuries caused and disability being assessed at 100%, the future prospects are totally vanished and hence going by the decision reported in 2011(1)TN MAC 161 (SC) [K.R.MADHUSUDAN AND OTHERS VS. ADMINISTRATIVE OFFICER AND ANOTHER], the 11 multiplier adopted by the Tribunal is perfectly justified, wherein, the Supreme Court has held in paragraph 9 as under:-

> " 9. In the Sarla Verma (supra) judgment the Court has held that there should be no addition to income for future prospects where the age of the

deceased is more than 50 years. The learned Bench called it a rule of thumb and it was developed so as to avoid uncertainties in the outcomes of litigation. However, the Bench held that a departure can be made in rare and exceptional cases involving special circumstances. We are of the opinion that the rule of thumb evolved in Sarla Verma (supra) is to be applied to those cases where there was no concrete evidence on record of definite rise in income due to future prospects. Obviously, the said rule was based on assumption and to avoid uncertainties and inconsistencies in the interpretation of different courts, and to overcome the same."

13. As far as loss of income during the period of treatment is concerned, the first contention is that from 2006 to 2010, there is no proof filed by the claimant before the Tribunal showing that the employer had deducted the salary and no such certificate by the company has been produced. In view of the same, the compensation of Rs.1,08,000/- granted under the head loss of income during the period of treatment is deleted.

14. Insofar as the argument advanced by the learned counsel for the appellant/insurance company that Ex.P.10 and Ex.22 are not authenticated bills is concerned, this court perused the original records composed of the Exhibits filed before the Tribunal and the evidence recorded by the Tribunal. It is seen that for the year 2006, the medical bills are duly authorised by the Hospital. However, in the medical bills for the year 2007 onwards filed before the tribunal, it is seen that the receipts had no serial number, no endorsement of the person who signed the bills on behalf of the Hospital or the Nursing Service, where the claimant alleged to have undergone physiotherapy and other related services. These lapses create doubt in our minds as regards the bonafide claim of the claimant. We could not even find any rubber stamp in the Bills and the person who signed the Medical bills filed in Ex.P.10 and Ex.P.22, was not found to be the authorised person of the Hospital. Hence, we are not able to accept the said bills. Accordingly, for the period 2007 onwards, the claim filed in Ex.P.10-Physiotherapy bills for Rs.48,000/-, Ex.P.22 - Medical expenses of Rs.3,440/- (totally 48,000 + 3,440 =51,440/-), cannot be approved. Insofar as Ex.P.8 / Hospital Bills for Rs.1,34,156.37 ps + Rs.2,26,349/- and Ex.P.9 / Medical Bills, Doctor Fees and Nursing Fees Rs.7,18,687.45 (totally Rs.9,45,036.45 ps) are concerned, for the period covering 2006, the same appears to be justified as they are issued by the reputed hospital, therefore, we approve the same.

15. Insofar as period of hospitalisation and treatment at various nursing centres are concerned, we are of the view that

here, the case is that the injured claimant has suffered traumatic brain injury and treated for a long period of time and further due to the injuries caused, the injured claimant is entitled to just compensation.

16. As far as the claimant's claim under other heads, it is to be noted that for the long period of treatment he undergone, he could have spent much sum towards transportation to hospital and hence, we are inclined to enhance the amount under the following heads:-

Extra Nourishment= Rs.25,000/-
Transport charges = Rs.25,000/-

In view of the just sum i.e, Rs.1,00,000/- each awarded towards Pain and suffering and Permanent Disability, the same are confirmed. The sum of Rs.1,000/- granted under the head Damage to clothes and articles is also confirmed.

17. Coming to the primary issue i.e., loss of earning, it is not disputed that the claimant suffered 100% disability. It is also stated by the learned counsel for the claimant that the claimant now become totally immobile and his life is in vegetable condition. While determining the loss of earning, Ex.P.12/Salary Certificate shows that the income of the claimant is Rs.27,961.36. The income tax deduction comes to Rs.4,500.00 and the other deduction also come to Rs.500.00. Accordingly, the net income is Rs.23,000/-. However, the Tribunal mistakenly taken the salary as Rs.18,000/-. As far as multiplier 11 is concerned, there is no dispute. Accordingly, now, this Court refix the compensation under the head loss of earning and it is as follows:-

Salary = Rs.27,961.36
Income Tax deduction = Rs.4500.00
Other deductions = Rs. 500.00
Net income taken = Rs.23,000/- per month
Rs.23,000 x 12 x 11 = Rs.30,36,000/-

18. 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 earning power	Rs.23,76,000/-	Rs.30,36,000/-
2	Permanent disability	Rs. 1,00,000/-	Rs.1,00,000/-

Sl.No.	Head	Amount granted by the Tribunal	Amount granted by this court
3	Loss of income during treatment	Rs. 1,08,000/-	---
4	Transport charges	Rs. 5,000/-	Rs.25,000/-
5	Extra nourishment	Rs. 5,000/-	Rs.25,000/-
6	Damage to clothes and articles	Rs. 1,000/-	Rs. 1,000/-
7	Medical expenses, attender and nursing charges	Rs. 10,00,000/-	Rs.9,45,036.45 ps
8	Pain and suffering	Rs. 1,00,000/-	Rs. 1,00,000/-
	Total	Rs. 36,95,000/-	Rs.42,32,036.45 p rounded to Rs.42,32,036/-.

19. Accordingly, the Civil Miscellaneous Appeal filed by the appellant/insurance company is dismissed; Cross Objection filed by the claimant is allowed. Since the Cross Objection has been filed with the delay of 1356 days and the compensation granted by the Tribunal is enhanced, for the period of delay, no interest will be paid to the claimant.

(i) The award of the Tribunal is enhanced to Rs.42,32,036/- from Rs.36,95,000/-.

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

(iii) This Court by order dated 18.04.2012 directed the appellant/ insurance company to deposit the entire award amount along with accrued interest and costs. Further, this court, by order dated 30.08.2013, permitted the claimant to withdraw 50% of the award amount.

(iv) The claimant is permitted to withdraw the modified award amount less the amount already withdrawn along with accrued interest. However, for the enhanced amount, no interest will be paid to the claimant.

(v) The appellant/insurance company is directed to deposit the enhanced amount within 8 weeks from the date of receipt of a copy of this order.

(vi) The claimant is directed to pay necessary court fee immediately.

(vii) There will be no order as to costs in this appeal.

(vii) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Registrar,
II Court of Small Causes
(The Motor Accidents Claims Tribunal)
Chennai.

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

+1cc to Mr.T.G. Balachandran, Advocate Sr.19130
+1cc to Mr.S.Manohar, Advocate Sr.18921

C.M.A.No.1086 of 2012

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srg 11/07/2016