

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.03.2016

CORAM

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

C.M.A. NO.1138 OF 2012
M.P. NO.1 of 2014
and C.M.P.No.4606 of 2016

Neelakandan Nayir .. Appellant/Petitioner

- Vs -

1. Senthilkumar
2. M/s.Sri Mugambigai Spinning Mills Ltd.,
rep. by Managing Director,
No.551, Ganesapuram, S.S.Kulam,
Coimbatore.
3. Cholanmandalam M.S. General
Insurance Company Ltd.,
Avinashi Road, Kalai Kathir
Buildings, Coimbatore.

..... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Award and decree dated 14.11.2011 passed by the Motor Accident Claims Tribunal (Additional District and Sessions Judge), FTC No.1, Coimbatore, made in M.C.O.P.No.757 of 2009.

For Appellant : Mr.C.Veeraraghavan
For Respondents : Mr.N.Vijayaraghavan - R3

J U D G M E N T
(DELIVERED BY R.SUDHAKAR, J.)

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.

2. The appellant/claimant has filed the appeal challenging the Award dated 14.11.2011 passed by the Motor Accident Claims Tribunal (Additional District and Sessions Judge), FTC No.1, Coimbatore, made in M.C.O.P.No.757 of 2009.

3. It is a case of injury. On 14.4.2008 at 16.30 hours, when the injured Neelakandan Nayir was riding his motor cycle bearing Registration No.TN 38 K 6925 along with his son Harikrishna as a pillion rider on the extreme left side in the Avinashi road from West to East, a Skoda Octavia car bearing Registration No.TN40 Y 6292 came in a rash and negligent manner and dashed against the vehicle of the injured, as a result, the injured and his son were thrown out and sustained severe injuries. Hence, the claimant/appellant has filed claim petition claiming a sum of Rs.35,00,000/- as compensation. According to the claimant, he was working as Administrative Officer, BLR in Hester Pharmaceuticals Limited, Ahamedabad and was earning a sum of Rs.19,052/- per month.

4. In support of the claim petition, the son of the injured claimant was examined as P.W.1; the claimant was examined as P.W.2; one Gnanasekaran was examined as P.W.3, Dr.Gajendran was examined as P.W.4 and Exs.P-1 to P-58 were marked, the details of which are as follows:-

Ex.P-1	15.04.2008	Copy of first information report
Ex.P-2	15.04.2008	Copy of rough sketch
Ex.P-3	15.04.2008	Copy of MVI report
Ex.P-4	15.04.2008	Copy of MVI report
Ex.P-5	---	Copy of charge sheet
Ex.P-6	--	STC No.1003/2008 extraction copy
Ex.P-7	--	Wound certificate of Harikrishnan
Ex.P-8	15.04.2008	Discharge summary of Harikrishnan given by KG Hospital
Ex.P-9	15.04.2008	Inpatient Receipt given by KG Hospital for Harikrishnan
Ex.P-10	23.4.2008	Discharge summary of Harikrishnan given by Ernakulam hospital
Ex.P-11	23.4.2008	IP final bill of Harikrishnan
Ex.P-12	15.7.2011	Copy of Discharge summary of Harikrishnan given by Ernakulam hospital
Ex.P-13	23.4.2008	Copy of Discharge summary of Harikrishnan given by Ernakulam hospital
Ex.P-14	--	Medical bills series
Ex.P15	--	X-ray receipt

Ex.P16	7.7.2011	Receipt given by blood bank
Ex.P17	--	Photographs series
Ex.P18	--	Wound certificate of Neelakandan Nayir
Ex.P19	15.4.2008	Copy of discharge summary given by KG Hospital for Neelakantan Nayir
Ex.P.20	15.4.2008	Copy of receipt given by KG Hospital for Neelakantan Nayir
Ex.P21	30.7.2008	Copy of discharge summary given by Ernakulam Hospital for Neelakantan Nayir
Ex.P22	30.7.2008	IP final bill of Neelakandan Nayir issued by Ernakulam Hospital
Ex.P23	17.12.2008	IP final bill of Neelakandan Nayir issued by Ernakulam Hospital
Ex.P24	03.07.2009	copy of discharge summary of Neelankandan Nayir given by KG Hospital
Ex.P25	16.11.2009	IP final bill of Neelakandan Nayir issued by Ernakulam Hospital
Ex.P26	03.07.2009	copy of discharge summary of Neelankandan Nayir given by KG Hospital
Ex.P27	16.11.2009	IP final bill of Neelakandan Nayir issued by Ernakulam Hospital
Ex.P28	078.06.2010	IP final bill of Neelakandan Nayir issued by Ernakulam Hospital
Ex.P29	...	Medical bills
Ex.P30	06.60.2008	Radiology Report of Neelakandan Nayir
Ex.P.31	..	X-ray bills
Ex.P32	10.02.2009	Residential Certificate of Neelakandan Nayir
Ex.P33	15.11.2010	Treatment Certificate of Neelakandan Nayir
Ex.P34	..	X-ray bills
Ex.P35	..	Medical bills
Ex.P36	20.05.2011	X-ray bills

Ex.P37	..	Medical bills
Ex.P38	..	SSLC Extract
Ex.P39	03.01.1983	Education Certificate of Neelakandan Nayir
Ex.P40	..	Copy of driving licence of Neelakandan Nayir
Ex.P41	..	Copy of salary certificate
Ex.P42	24.09.2008	Copy of salary certificate
Ex.P43	..	Copy of pan card of Neelakandan Nayir
Ex.P44	24.7.2006	copy of saral form
Ex.P45	28.7.2007	Acknowledgement Card of Income Tax Office
Ex.P46	28.7.2008	Acknowledgement Card of Income Tax Office
Ex.P47	16.4.2008	Copy of Form 16
Ex.P48	20.4.2008	Copy of the letter sent to the office of the Neelakandan Nayir
Ex.P49	15.4.2008	Ambulance Bill
Ex.P50	..	Photographs series
Ex.P51	11.4.2008	CT scan report
Ex.P52	..	Authorisation letter
Ex.P53	..	copy of salary certificate
Ex.P54	..	copy of salary certificate
Ex.P56	..	Permanent Disability certificate
Ex.P57	..	x-ray
Ex.P58	..	Permanent Disability certificate

5. On the side of the respondents, no witnesses were examined and no documents were marked.

6. The Tribunal based on the oral evidence of witnesses, the F.I.R. and also taking into account the documentary evidence and further there being no satisfactory evidence adduced on behalf of the third respondent/Insurance Company to refute the evidence as to the rash and negligent driving of the Skoda Octavia Car, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the Skoda Octavia Car, and therefore, the liability was fixed on the third respondent herein and consequently the third respondent was directed to compensate the claimant. Accordingly, the Tribunal awarded compensation under the following heads :-

Loss of income for 6 months (Rs.19,000x6)	-	Rs.1,14,000/-
Pain and suffering	-	Rs. 25,000/-
Extra nourishment	-	Rs. 10,000/-
Permanent Disability (Rs.2,000x35)	-	Rs. 70,000/-
Attender Charges	-	Rs. 5,000/-
Medical Expenses	-	Rs.4,31,000/-
Future Medical Expenses	-	Rs. 10,000/-
Total Compensation	-	Rs.6,65,000/-

7. In all, the Tribunal awarded a compensation of Rs.6,65,000/= with interest at the rate of 7.5% from the date of filing of petition. Aggrieved by the said award, the appellant - claimant is before this Court by filing this appeal seeking enhancement of the award.

8. Learned counsel appearing for the appellant-Claimant submitted that the claimant had suffered fracture in tibia and was hospitalised on three occasions. He further submitted that the injured claimant is still not in a position to do his work and hence, the disability fixed by the Tribunal at 35% may be enhanced. Further, the amount awarded under other heads is also meagre. Per contra, it is submitted by the learned counsel for the third respondent/Insurance Company that taking note of the injury sustained by the claimant, the Tribunal had correctly awarded compensation and therefore, no interference is called for with the well considered finding of the Tribunal.

9. This Court has given its careful consideration to the above contentions advanced by either parties and also perused the materials available on record.

10. With regard to the contention of the learned counsel appearing for the appellant that percentage of disability be fixed on the higher side, we find that there is no evidence to show that the injury has caused loss of earning capacity. However, considering the nature of injury and the treatment taken by the injured claimant for a substantial period, at best, the disability can be fixed at 50% and at Rs.3,000/- for 1% be compensated. We find that the Tribunal has awarded meagre amount on other heads and hence, the same needs to be modified.

11. Accordingly, the compensation awarded by the Tribunal is modified as hereunder :-

	Compensation awarded by the Tribunal	Compensation awarded by this Court
Loss of income for 6 months (Rs.19,000x6)	Rs.1,14,000/-	Rs.1,14,000/-
Pain and suffering	Rs. 25,000/-	Rs. 50,000/-
Extra nourishment	Rs. 10,000/-	Rs. 15,000/-
Permanent Disability	Rs. 70,000/- (Rs.2,000x35)	Rs.1,50,000/- (Rs.3,000 x 50)
Attender Charges	Rs. 5,000/-	Rs. 15,000/-
Medical Expenses	Rs.4,31,000/-	Rs.4,31,000/-
Future Medical Expenses	Rs. 10,000/-	Rs. 25,000/-
Loss of Amenities	--	Rs. 50,000/-
Total Compensation	Rs.6,65,000/-	Rs.8,50,000/-

The interest awarded by the Tribunal at 7.5% per annum is not in dispute and the same is confirmed.

12. Accordingly, this Civil Miscellaneous Appeal is partly allowed with the above modification. Learned counsel appearing for the third respondent - Insurance company seeks time to deposit the enhanced award amount. The third respondent - Insurance Company is granted eight weeks time to deposit the enhanced award amount along with interest at the rate of 7.5% per annum from the date of filing of the appeal. On such deposit being made, the appellant/claimant is permitted to withdraw the amount along with interest and costs. Consequently, connected miscellaneous petitions are closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge),
FTC No.1 (Motor Accidents Claims Tribunal)
Coimbatore.

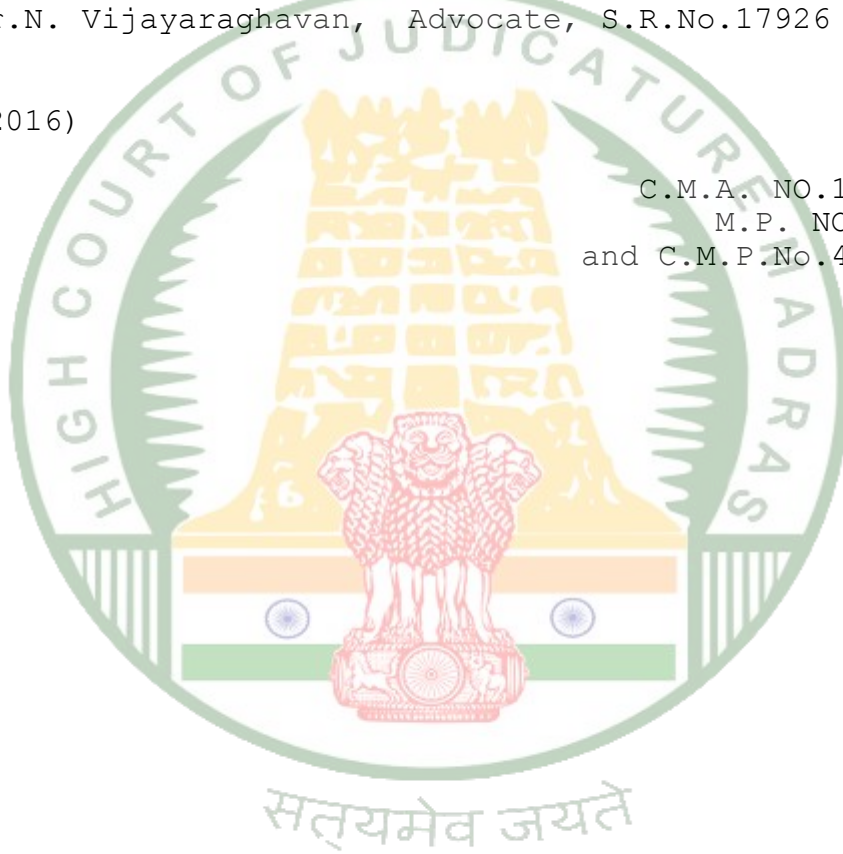
2. The Record Keeper
V.R. Section
High Court, Madras.

+1cc to M/S. C. Veeraraghavan, Advocate, S.R.No.17803

+1cc to Mr.N. Vijayaraghavan, Advocate, S.R.No.17926

ALA(CO)
EU(10/05/2016)

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