

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2016

C O R A M

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

C.M.A.No.2264 of 2012
and M.P.No.1 of 2012
and Cross Obj.72 of 2012

M/s.National Insurance Co.Ltd.,
No.751, Anna Salai
II Floor, Chennai-600 002 ...Appellant/2nd Respondent

Vs

1.Mani Raj
(injured coma stage
Rep by his Wife/ Guardian Vasugi)
2.J.Anbarasi
(R2 are set exparte in Lower Court)
... Respondents/Petitioners

Cross Obj.72 of 2012
Maniraj
(injured Coma Stage
Rep by his wife/Guardian Vasugi) ..Cross Objector/1st
Respondent

Vs

1.The National Insurance Co.Ltd
751, Anna Salai, II floor
Divisional Office-3
Chennai-2
2.J.Anbarasi
(R2 set exparte in Lower Court) ..Respondents/Appellant/2nd
Respondent

Civil Miscellaneous Appeal and Cross Objection filed under
Section 173 of the Motor Vehicles Act, 1988, against the
judgment and decree dated 17.11.2011 made in M.C.O.P.No.367 of
2008 on the file of Motor Accident Claims Tribunal (Additional
District Judge) Fast Track Court No.I, at Poonamallee.

For appellant in CMA ... Mr.M.Krishnamurthy
For 1st Respondents
in Cross Objection
For respondent in CMA ... Mr.U.M.Ravichandran for
Mr.G.Mannar Mannan for R1
For Cross Objector in
in Cross Objection
(in both) R2 -Exparte.

JUDGMENT

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

The Civil Miscellaneous appeal has been filed by the National Insurance Company Limited challenging the compensation granted by the Tribunal. The Cross Objection has been filed by the claimant seeking enhancement of the compensation granted to him.

2. It is a case of injury. It is stated by Mani Raj/claimant, in his claim petition in M.C.O.P.No.367 of 2008, that on 16.11.2007 at about 9 a.m., while he was riding two wheeler (scooty) bearing Reg.No.TN-22-AE-5087 and crossing the GST Road from Chitlapakkam Main Road to enter into MEPZ, from east to west, a Car bearing Regn.No.PY-01-W-3366, driven in a rash and negligent manner, dashed the petitioner's two wheeler and in the resultant accident, the claimant suffered grievous injuries. The claimant made a total claim of Rs.48,00,000/-. At the time of accident, the claimant was working as General Manager-Operations in Twinstar Metal Products Pvt.Ltd., MEPZ.

3. Based on the oral and documentary evidence let in by both sides, the Tribunal, granted compensation to the claimant to the tune of Rs.35,50,000/- with interest at the rate of 7.5%. As per Ex.P.20, the disability certificate issued by the Orthopaedic Surgeon, the claimant had right temporo parietal intra parenchyma haemorrhage with intraventricular haemorrhage, fracture left clavicle and left scapula left 2, 3 and 4 rib fractures and the doctor assessed total and permanent disability of 100%. The doctor also assessed that the claimant is not able to speak, not able to take food and now is in a vegetative condition. The Tribunal, based on the above evidence and other records, came to a conclusion that the claimant earned a monthly salary of Rs.34,000/- and is aged 51 years and applied multiplier 10 and granted compensation as follows:-

Heads	Amount awarded by the Tribunal
1.Pecuniary loss to the family	Rs.27,00,000/-
2.Transport expenses	Rs. 50,000/-
3.Medical Bills	Rs. 7,00,000/-
4.Salary of attendant	Rs. 1,00,000/-
Total	Rs. 35,50,000/-

4. The learned counsel for the appellant/Insurance Company submitted that the driver of the car-R.W.1 was driving his vehicle at a moderate speed, but the injured Scooter rider had suddenly crossed the road and in that process, the accident occurred. He further submitted that the Tribunal had failed to note that the accident had occurred only due to the negligence of the rider of the two-wheeler, who even failed to wear helmet and hence, he was guilty of contributory negligence. The learned counsel, thus, prayed for reducing the compensation for the reason of contributory negligence attributable to the claimant.

5. The learned counsel appearing for the Cross Objector submitted that there was clear evidence that the claimant had suffered 100% disability and was completely bed ridden from 2007 to 2012 and was undergoing continuous pain and suffering, however, the Tribunal had not adopted proper multiplier of 11 and thereby, the compensation for loss of earning power granted by the Tribunal involves interference by this Court. He further submitted that no amount has been granted under the head Pain and Suffering, Mental Agony, Amenities, Nutritious Food, Damage to clothing etc. The learned counsel thus argued for enhancement of compensation granted by the Tribunal.

6. Heard the learned counsel appearing on either side and perused the relevant records placed before this court.

7. Though the plea has been taken by the learned counsel for the Cross Objector/claimant that the compensation has not been granted under heads viz., Pain and Suffering, Mental Agony, Amenities, Nutritious Food etc., we find that the compensation granted for Pecuniary Loss is on the higher side and the same supplant the other heads. As far as the plea taken by the learned counsel for the appellant/Insurance Company that the claimant is attributable to contributory negligence, from the nature of accident that took place, we are of the view that only due to the failure on the part of the claimant to wear helmet, such grievous injuries caused. On such reasoning, we are

inclined to interfere with the award of the Tribunal and reduce a sum of Rs.50,000/- from the total compensation granted to the claimant.

8. In the result, this court, without interfering with the compensation awarded by the Tribunal under each head, by reducing Rs.50,000/- from the total compensation for the contributory negligence of the claimant and also for the violation of the Motor Vehicles Rules in respect of not wearing the Helmet while riding two wheeler, modified the compensation to Rs.35,00,000/- from Rs.35,50,000/-. This court, by order dated 30.07.2012, directed the appellant/Insurance Company to deposit 30,00,000/- before the Tribunal. In view of the same, the appellant shall deposit the balance Rs.5,00,000/-. On such deposit, the claimant shall withdraw the same with accrued interest. The interest granted at the rate of 7.5 % per annum is confirmed.

9. The Civil Miscellaneous Appeal and Cross objection are ordered accordingly.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal
(Additional District Judge)
Fast Track Court No.I, at Poonamallee.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.16175
+2cc to Mr.g.Mannar Mannan, Advocate, S.R.No.16064

C.M.A.No.2264 of 2012
and Cross Obj.72 of 2012

tej (CO)
srg (05/05/2016)