

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2016

CORAM

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

C.M.A.No.3146 of 2013
and
M.P.Nos.1 of 2013 & 1 of 2015

The New India Assurance Co.Ltd.
No.45, 2nd Line Beach V Floor,
Moore Street, Chennai 600 001. Appellant/2nd Respondent

vs.

1. Dr.M.Gopinathan 1st Respondent/Petitioner
2. T.C.Joseph 2nd Respondent/1st respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 31.01.2013 passed in M.C.O.P.No.1935 of 2003 on the file of the Motor Accidents Claims Tribunal (VI Judge, Court of Small Causes), Chennai.

For Appellant : Mr.M.Krishnamoorthy
For Respondents : Ms.Ramya V.Rao for R1
R2- Exparte

JUDGMENT

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

The Insurance Company is on appeal challenging the award dated 31.01.2013 passed in M.C.O.P.No.1935 of 2003 on the file of the Motor Accidents Claims Tribunal (VI Judge, Court of Small Causes), Chennai.

2. It is a case of injury. On 08.11.2002 at about 10.30 hrs when the injured was going on his motorcycle bearing Registration No.TN-05-H-5725, the Ambassador car belonging to the first respondent bearing Registration No.TN-01-T-2715 came from opposite direction on the same road in a rash and negligent manner, dashed against the motorcycle and thereby, caused grievous injuries to the claimant. FIR was registered against the driver of the car. The injured claimant filed a claim for compensation for a sum of Rs.30,00,000/-.

3. In support of the claim, the claimant examined himself as P.W.1 and Dr.K.J.Mathiazhagan was examined as P.W.2 and Exs.P-1 to Ex.P.12 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Copy of the FIR
P2	Driving licence of the petitioner
P3	Discharge summary issued by Kalyani General Hospital
P4	Treatment certificate for 3 years
P5	Medical Bills for Rs.28,510.11ps
P6	Degree and Provisional Certificate
P7	Offer letter for Sri Kalyan Hospital, Chennai
P8	Relieving letter
P9	Photos with C.D.
P10	Future Plate Removing Estimate
P11	Disability Certificate
P12	X-ray

On behalf of the Insurance Company, no witnesses were examined and no documents were marked before the Tribunal and the 2nd respondent herein remained exparte.

4. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that the injured was having valid driving licence to drive the two wheeler came to conclusion that the driver of the car was rash and negligent in driving the vehicle and he was responsible for the accident and consequently liability was fixed on the insurance company and the 2nd respondent herein jointly and severally, as the vehicle was insured with the appellant insurance company, to compensate the claimant. On this issue, learned counsel for the appellant has not placed any material to come to a different conclusion from that of the conclusion arrived by the Tribunal.

5. Based on the oral and documentary evidence, 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 income for 4 months	Rs. 80,000/-
2	Transportation	Rs. 5,000/-
3	Extra Nourishment	Rs. 5,000/-
4	Damage to clothes	Rs. 1,500/-
5	Medical Expenses	Rs. 1,28,500/-
6	Attender Charges	Rs. 5,000/-
7	Loss of Amenities	Rs. 25,000/-
8	Pain and Suffering	Rs. 75,000/-
9.	Disability & Loss of Earning power	Rs.21,60,000/-
	Total compensation	Rs.24,85,000/-

6. Insofar as the compensation is concerned, based on the evidence of the claimant, the Tribunal fixed the income of the injured at Rs.20,000/- per month. Considering the fact that the accident had occurred in the year 2002, and that the injured was only 23 years old, he could not have earned a sum of Rs.20,000/- per month at that point of time. Hence, we are of the view that to meet the ends of justice, a sum of Rs.10,000/- p.m. would be a reasonable amount of salary the injured could have earned. Thus by fixing the monthly income of the injured at Rs.10,000/-, the loss of income for 4 months is fixed at Rs.40,000/-.

7. Insofar as the compensation awarded by the Tribunal under the heads transportation, extra nourishment, damage to clothes, medical expenses and attender charges are very reasonable and justified.

8. As regards the compensation of Rs.25,000/- and Rs.75,000/- awarded by the Tribunal under the head loss of amenities and pain and sufferings are concerned, it is too low, considering the fact that the injured was taking treatment as inpatient for a period of 34 days and that he has suffered 65% disability. Hence, we are inclined to enhance the same to Rs.50,000/- and Rs.1,00,000/- respectively.

9. Insofar as the compensation awarded under the head disability and loss of earning power is concerned, since we have fixed the monthly income of the claimant at Rs.10,000/-, the calculation arrived at by the Tribunal under the said head has to be modified. The multiplier adopted by the Tribunal at 18, considering the age of the injured, viz., 23 years, is correct. But, considering the fact that the injured has suffered 65% disability, which is evident from the disability certificate

given by P.W.2 Doctor, we are of the view that 50% disability taken by the Tribunal is not justified. Accordingly, the amount awarded under the head disability and loss of earning power is modified as follows:-

Rs.10,000/- x 12 x 18 x 65/100= Rs.14,04,000/-.
Thus, an amount of Rs.14,04,000/- is awarded under the said head instead of Rs.21,60,000/-.

10. Accordingly, the compensation awarded by the Tribunal under different heads is modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount now modified
1	Loss of income for 4 months	Rs. 80,000/-	Rs. 40,000/-
2	Transportation	Rs. 5,000/-	Rs. 5,000/-
3	Extra Nourishment	Rs. 5,000/-	Rs. 5,000/-
4	Damage to clothes	Rs. 1,500/-	Rs. 1,500/-
5	Medical Expenses	Rs. 1,28,500/-	Rs. 1,28,500/-
6	Attender Charges	Rs. 5,000/-	Rs. 5,000/-
7	Loss of Amenities	Rs. 25,000/-	Rs. 50,000/-
8	Pain and Suffering	Rs. 75,000/-	Rs. 1,00,000/-
9.	Disability & Loss of Earning power	Rs.21,60,000/-	Rs.14,04,000 /-
	Total compensation	Rs.24,85,000/-	Rs.17,39,000 /-

11. There is no serious objection with respect the interest granted at 7.5% per annum.

12. In the result, the civil miscellaneous appeal is partly allowed in the following terms:-

(i) The award of the Tribunal is reduced to Rs.17,39,000/- from Rs.24,85,000/-

(ii) The interest granted at 7.5% p.a. is confirmed.

(iii) Pursuant to the interim order granted by this Court, the appellant/Insurance Company has deposited a sum of Rs.25,00,000/-to the credit of M.C.O.P.No.1935 of 2003 on the file of the Motor Accidents Claims Tribunal (VI Judge, Court of Small Causes), Chennai. In view of the same, the appellant/Insurance Company is directed to deposit the balance award amount if any, as per the modified award to the credit of M.C.O.P.No.1935 of 2003 on the file of the Motor Accidents Claims Tribunal (VI Judge, Court of Small Causes), Chennai within a period of eight weeks from the date of receipt of a copy of the same and on such deposit being made, the first respondent/claimant is permitted to withdraw the entire award amount now modified by this Court along with proportionate interest by filing necessary application before the Tribunal. It is also made clear that if any excess amount is deposited, the appellant/Insurance company is entitled to withdraw the same.

(iv) The excess Court fee paid if any is directed to be refunded to the appellant.

There will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.
rg

s/d-

Assistant Registrar(CS-VI)

True Copy

Sub-Assistant Registrar

To

1. The VI Judge, (Motor Accidents Claims Tribunal)Chennai

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

+ 1 cc to M/s.A.N.Viswantha Rao, Advocate, SR 13960

+ 1 cc to M/s.M.Krishnamoorthy,Advocate, SR 13355

rsk(co)

prk22/3

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