

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2016

CORAM

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

C.M.A.No.4166 of 2008
and
M.P.Nos.1 of 2008 & 1 of 2009

National Insurance Company Ltd.
No.10/40-E, Rajaji Street,
Kangeyam - 638701.

... Appellant/2nd Respondent

vs.

1. C.Vilvaraja ... 1st Respondent/Petitioner
2. S.Meyappan ... 2nd Respondent/1st respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 24.06.2008 passed in M.C.O.P.No.1150 of 2002 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Namakkal.

For Appellant : Mr.N.Vijayaraghavan

For Respondents: Mr.A.R.Suresh for R1
Mr.A.K.Kumaraswamy-R2

JUDGMENT

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

The Insurance Company is on appeal challenging the award dated 24.06.2008 passed in M.C.O.P.No.1150 of 2002, on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Namakkal.

2. It is a case of injury. On 09.06.2002 at about 06.30 hrs. when the injured was travelled as pillion rider in the motorcycle bearing Registration No.TN-34-A-1118 driven by his brother, at the left side of the road at Kumaramangalam to Tiruchengode Main Road near Andikkadu Diversion Road, the Tipper lorry belonging to the second respondent bearing Registration No.TN-33-U-1039 which was

proceeding in a rash and negligent manner dashed against the motorcyclist due to which the motorcyclist died on the spot and the claimant herein sustained grievous injuries including fracture on the ribs. FIR was registered against the driver of the Tipper lorry. Two separate claim petitions were filed before the Tribunal, one by the petitioner and the other by the legal heirs of the deceased. By a common order, the Tribunal has granted compensation of a sum of Rs.3,80,000/- to the injured and Rs.40,00,000/- to legal heirs of the deceased. As against the compensation granted to the injured claimant, the insurance company has preferred the present appeal.

3. In support of the claim, the claimant was examined himself as P.W.2 and Dr.Sivalangam, who treated P.W.2 was examined as P.W.4 and the common Exs.P-1 to Ex.P.26 were marked, the details of which are as follows:-

Ex.No.	Details
P1	FIR (Certified copy)
P2	Motor Vehicle Inspector's Report (C/C)
P3	Motor Vehicle Inspector' report (C/C)
P4	Post mortem certificate (Omprakash)
P5	Charge sheet (c/c)
P6	Death certificate (Original)
P7	Legalheirs certificate (Original)
P8	Licence Om Prakash (Original)
P9	Identity card (Original) United India Insurance
P10	Identity card
P11	Membership card (Original)
P12	Wound certificate (Vilwararaja)
P13	Commission certificate
P14	Commission certificate
P15	Disability certificate
P16	X ray
P17	Discharge summary
P18	Medical Bills
P19	Medical Bills series
P20	Discharge summary (K.G.Hospital)
P21	X ray
P22	X ray
P23	Scan report

Ex.No.	Details
P24	Scan film
P25	Psychological report (Original)
P26	Certificate (for Kowsalys)

On behalf of the Insurance Company, no witnesses were examined and Ex.R1 and Ex.R2 were marked before the Tribunal, the details of which are as follows:-

Ex.No.	Details
R1	Ex Servicemen Identity card (Xerox)
P2	Pension certificate (xerox)

4. The Tribunal based on the oral evidence of the witnesses and the F.I.R., came to conclusion that the driver of the Tipper lorry was rash and negligent in driving the vehicle and 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 claimants. 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	Permanent Disablement	Rs. 2,50,000/-
2	Medical Treatment	Rs. 40,000/-
3	Extra Nourishment	Rs. 10,000/-
4	Transport Charges	Rs. 10,000/-
5	Mental Agony	Rs. 20,000/-
6	Loss of earning capacity	Rs. 50,000/-
	Total compensation	Rs. 3,80,000/-

6. Insofar as the compensation is concerned, based on the evidence of the claimant, the Tribunal has come to the conclusion that there is no material to support the plea that the claimant has been completely ruined from his employment consequent to the injury and disability suffered. Therefore, we are of the view that the compensation awarded towards the head Loss of income needs modification.

7. In so far as pain and suffering is concerned, considering the period of treatment, nature of injury i.e., fracture in the ribs, we hold that the claimant would be entitled a sum of Rs.25,000/- towards pain and sufferings.

8. Apart from that, the Tribunal has not stated any specific reason as to how the claimant is entitled for compensation under the head mental agony and therefore, we are of the view that a sum of Rs.20,000/- granted under the said head is unreasonable.

9. Insofar as the compensation awarded by the Tribunal under the heads Extra nourishment, Transport and Loss of earning capacity are concerned, they seems to be very reasonable and they were justified.

10. Insofar as the compensation awarded under the head disability, since the injured suffered only 25% disability as per the evidence of the doctor, we are inclined to grant a sum of Rs.75,000/- towards loss of income as well as disability.

11. Accordingly, the compensation awarded by the Tribunal under different heads are modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount now modified
1	Loss of income	Rs.2,50,000/-	Rs.75,000/-
2	Pain and Suffering		Rs.25,000/-
3	Extra Nourishment	Rs.10,000/-	Rs.10,000/-
4	Medical Treatment	Rs.40,000/-	Rs.20,000/-
5	Transport	Rs.10,000/-	Rs.10,000/-
6	Mental Agony	Rs.20,000/-	--
7	Loss of Earning capacity	Rs.50,000/-	Rs.50,000/-
	Total compensation	Rs. 3,80,000/-	Rs.1,90,000/-

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

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

(i) The award of the Tribunal is reduced to Rs.1,90,000/- from Rs.3,80,000/-.

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

(iii) The appellant/Insurance Company is directed to deposit the compensation now

awarded by this Court, less the amount already deposited to the credit of M.C.O.P.No.1150 of 2002 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Namakkal, within a period of eight weeks, from the date of receipt of a copy of the order.

(iv) 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.

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

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

rg/smi

To

1. The Principal District Judge
Motor Accidents Claims Tribunal,
Namakkal.

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

1 cc to Mr.N. Vijayaraghavan, Advocate, Sr. 16179

1 cc to Mr.A.R. Suresh, Advocate, Sr. 16461

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