



THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2016

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A. (MD) No.1409 of 2016

and

C.M.P (MD) No.11788 of 2016

M/s. National Insurance Company Limited,
Rep.by its Divisional Manager,
No.3, North Veli Street,
Madurai-1.

... Appellant/Respondent No.2

Vs.

1.S.Kaliappan

... Respondent /Petitioner

2.M.Srinivasagam

... Respondent /Respondent No.1

Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 29.10.2009 made in M.C.O.P.No.2776 of 2004 on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge/Fast Track court No.III) Madurai.

For Appellant : Mrs.K.R.Shivasankari
for Mr.S.Srinivasa Raghavan

J U D G M E N T

The Insurance Company is the appellant before this Court challenging the award of Rs.1,92,000/- (Rupees One Lakh Ninety Two Thousand only) awarded to the first respondent for the disability sustained in the accident occurred on 22.09.2004, when he was travelling in the Tata Sumo Car bearing Registration No.TN-39-M-6600 belonging to the second respondent herein from Madurai to Peraiyur and the same was driven in a rash and negligent manner and the vehicle got capsized on the left side of the road and resultantly, the first respondent/claimant sustained multiple fractures and grievous injuries. Therefore, he filed a claim petition before the Tribunal.

2. The Tribunal, after contest, found that the driver was rash and negligent and awarded a sum of Rs.1,92,000/- (Rupees One Lakh Ninety Two Thousand only) as compensation. The said award is challenged before this Court.



3. Mrs.K.R.Shivasankari, learned Counsel appearing for the appellant submits that only the quantum is in question. According to her, there was only amputation of two fingers, namely, ring finger and index finger of the left hand and for that, the Tribunal determined the disability at 45%, which is on the higher side. Therefore, she seeks to reduce the award amount. Further she would submit that for loss of fingers as per the Employees' Compensation Act, only 7% disability could be taken whereas, the total permanent disability has been determined as 25% which is on the higher side.

4. There is no question of going into the negligence aspect. The Tribunal, rightly based on the evidence, found that the driver of the TATA Sumo Car was rash and negligent and responsible for the accident. Therefore, the same is confirmed.

5. The only contention raised is that the disability fixed by the Tribunal is on the higher side and the amount determined is also fixed on the higher side.

6. A perusal of the records would show that the first respondent sustained injuries in the accident on his ring finger and index finger of left hand, fracture on left hand, left leg, degloving and crush injuries on left wrist and left palm and lacerated injury on right eye lid and frontal area over head. The crush injuries sustained by the first respondent on left wrist and left palm and also the fracture on left leg, are not completely cured and properly united resulting in his restriction of movements of his left hand and left leg. The medical records, especially, under Ex.X1, issued by the Government Rajaji Hospital, Madurai, would reveal that the first respondent was admitted in the Hospital as inpatient on 23.09.2004 and he was discharged from the Hospital on 13.11.2004, nearly after 50 days. PW.3 - Ortho Doctor deposed that apart from injuries sustained by the first respondent in the left palm and around thumb, skin grafting had been done to him for the crush injuries caused in his left hand. He also deposed that the claimant could not fold his fourth finger and the movement is restricted to 10 degree instead of 9 degree and unable to grip the articles and loss of sensation in the left hand. The Doctor had assessed the disability at 3% for the loss of the fourth finger; 20% for the loss of the hand component prehension loss; 10% for the sensory loss and 15% for the strength loss, totalling 48% as partial permanent disability.

7. Taking into consideration Serial No.35 in the Schedule II, Part II of the list of injuries listed in the Employees' Compensation Act, the percentage of loss of earning is prescribed to 7%. Since the first respondent also sustained injuries on the other fingers also restriction in the mobility could be assessed 10 degrees instead of 9 degree, as proved by PW.3-Doctor. Therefore, the professional capacity as Mason of the first respondent is reduced considerably. Therefore, the Tribunal rightly fixed the



loss of earning capacity at 25% in view of 48% partial disability sustained by him, especially, when the left hand is affected and left leg also got affected because of the fracture. For a Mason, the hands and legs are very important for his manual works. When his left hand is affected, he would not be in a position to do his works or any other manual works which require use of hands and legs. Therefore, the Tribunal rightly applied the multiplier method to determine the loss of compensation.

8. The Tribunal taking into consideration his job as Mason determined a sum of Rs.4,000/- as monthly income and applied the multiplier '17' and deducted 1/3rd towards his personal expenses and awarded a sum of **Rs.1,36,000/-** (Rupees One Lakh Thirty Six Thousand Only).

9. The most disturbing fact is that even for injury case, the Tribunal mechanically deducted 1/3rd towards personal expenses, which is applicable only to the death cases and not for injury cases. Therefore, the deduction of 1/3rd done by the Tribunal is set aside.

10. This Court approves the award of Rs.4,000/- determined by the Tribunal as monthly income as the same is also in consonance with the judgment of the Honourable Supreme Court in **New India Insurance Company -vs- Smt Kalpana** reported in **2007 (2) TN MAC 1**. However, no amount was awarded towards future prospects as per the judgment in **Rajesh and others -Vs- Rajbir Singh and others** reported in **2013 (2) TNMAC 55**. Therefore, 50% is added as claimant's age about 33 years as proved by Exs.P7 and X1. The Tribunal rightly adopted the multiplier 17 as the age of the first respondent is 33. The monthly income of Rs.6,000/- and the compensation for the partial permanent disability is worked out as follows:

$$\text{Rs.6,000/-} \times 12 \times 17 \times 25/100 = \text{Rs.3,06,000/-}$$

11. The amounts awarded under the other heads, viz., a sum of **Rs.30,000/-** (Rupees Thirty Thousand only) awarded by the Tribunal towards Pain and Sufferings and **Rs.10,000/-** (Rupees Ten Thousand only) towards attendant's charges, are reasonable and they are confirmed.

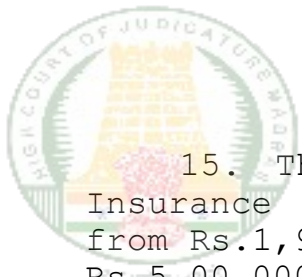
12. However, a sum of Rs.8,000/- (Rupees Eight Thousand only) awarded towards extra nourishment is very low and the same is enhanced to **Rs.15,000/-** (Rupees Fifteen Thousand only). A sum of Rs.7,000/- towards loss of income during the treatment period is very low and the is enhanced by this Court to **Rs.10,000/-** (Rupees Ten Thousand only). A sum of Rs.1,000/- awarded by the Tribunal towards Transportation is low and the same is enhanced to **Rs.5,000/-** (Rupees Five Thousand only). That apart, no amount awarded towards loss of amenities and this Court awards a sum of **Rs.25,000/-** towards loss of

13. The claimant is a bachelor at the time of the accident and

it is very difficult for him to get a suitable girl for his marriage. As no girl would come forward to marry a person with disability and even a normal person nowadays finds it very difficult to get married. Therefore, his matrimonial prospects are bleak and this Court awards a sum of Rs.1,00,000/- (Rupees One Lakh only) towards loss of marital life and totally, a sum of Rs.5,00,000/- (Rupees Five Lakhs only) is awarded, as under:

Sl. No.	Heads	Amount awarded by Tribunal (Rs.)	Amount reduced/enhanced by this Court (Rs.)	Total (Rs.)
1.	For Partial Permanent Disability	1,36,000.00	(+) 1,70,000.00	3,06,000.00
2.	Pain and Sufferings	30,000.00	Nil	30,000.00
3.	Attendant's Charges	10,000.00	Nil	10,000.00
4.	Extra Nourishment	8,000.00	(+) 7,000.00	15,000.00
5.	Loss of Income during treatment period	7,000.00	(+) 3,000.00	10,000.00
6.	Transportation Charges	1,000.00	(+) 4,000.00	5,000.00
7.	Loss of Amenities	Nil	(+) 25,000.00	25,000.00
8.	Loss of Marital Life	Nil	(+) 1,00,000.00	1,00,000.00
Grand Total				5,01,000.00
Rounded off				5,00,000.00

14. Though the appeal is preferred by the Insurance Company against the award of Rs.1,92,000/- (Rupees One Lakh and Ninety Two Thousand only), since the Tribunal erroneously deducted 1/3rd towards personal expenses, it is to be deducted only in death cases and the Tribunal did not add any amount towards future prospectus and not given any amount to loss of matrimonial prospectus and on reappreciation under Order 41 Rule 30 of Code of Civil Procedure, this Court *suo motu* enhances the compensation to Rs.5,00,000/- (Rupees Five Lakhs only). This Court has got jurisdiction and power to enhance the compensation *suo motu* even in the absence of appeal or cross-appeal by the claimant and this Court has to see whether the claimant is awarded just compensation and it should not be neither on the higher side or lesser amount. Moreover, the provisions of the Motor Vehicles Act are benevolent in nature and appropriate compensation has to be given by this Court, especially, when the Tribunal failed to award just compensation. The power of this Court has been recognised by the Honourable Supreme Court in **Nagappa -vs- Gurudayal Singh** reported in **2003(2) SCC 274**.



15. Therefore, while dismissing the appeal preferred by the Insurance Company, this Court *suo motu* enhances the compensation from Rs.1,92,000/- (Rupees One Lakh and Ninety Two Thousand only) to Rs.5,00,000/- (Rupees Five Lakhs only) with the interest at the rate of 7.5% per annum from the date of petition till date of realisation. Since, the claimant is not a party, the Registry is directed to send the order copy directly to the claimant on free of cost. The appellant Insurance Company is directed to transfer the enhanced compensation amount, less the amount deposited, if any, to the personal Savings Bank Account Number of the respondent/claimant by RTGS/NEFT within a period of four weeks from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal
(Additional District and Sessions Judge/
Fast Track court No.III)
Madurai.
2. S.Kaliappan,
S/o.Sankaralingam,
East Street, Parapatti,
Deivanayagapuram Post,
Peraiyur Taluk,
Madurai District.

+ 1 CC TO Mr.S.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 80582

GSR

TE/SS2-KSM : 18/01/2017 : 5P/4C

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