

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.04.2017

CORAM

The Honourable Mr.Justice S.Manikumar
and
The Honourable Mr.Justice M.Govindaraj

C.M.A. No.1540 of 2015, M.P.No.1 of 2015
and Cross Objection No.59 of 2016

C.M.A. No.1540 of 2015

Reliance General Insurance Company Limited
Branch Office, Gee Jay Arcad
I Floor, 141/71, Thiruvengkatasamy Road (West)
R.S.Puram, Coimbatore - 641 002

.. Appellant /2nd Respondent

Vs.

1.S.Abdul Rahman 1st Respondent/Petitioner

(A person in a state of Loss of
memory and unable to communicate,
Rep. By next Friend/Guardian,
Father B.Syed Mohammed)

2.K.Gandhi ... 2nd Respondent/1st Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles
Act, 1988 against the judgment and decree dated 04.10.2013,
passed in M.C.O.P. No.2251 of 2012, by the Motor Accident Claims
Tribunal, Special Subordinate Judge, Coimbatore.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.Ma.P.Thangavel for R1
Mr.A.Tailarasan for R2

Cross Objection No.59 of 2016

S.Abdul Rahman .. Cross Objector/Petitioner

(A person in a state of Loss of
memory and unable to communicate,
Rep. By next Friend/Guardian,
Father B.Syed Mohammed)

Vs.

1. Reliance General Insurance Company Limited
Branch Office, Gee Jay Arcad
I Floor, 141/71, Thiruvengatasamy Road (West)
R.S.Puram, Coimbatore - 641 002

... 1st Respondent/2nd Respondent

2. K. Gandhi

.. 2nd Respondent/1st Respondent

(2nd Respondent ex parte before Tribunal)

Prayer: Cross Objection filed under Order 41 Rule 22 of Code of Civil Procedure for enhancement of the award dated 04.10.2013, passed in M.C.O.P. No.2251 of 2012, by the Motor Accident Claims Tribunal, Special Subordinate Judge, Coimbatore.

For Cross Objector : Mr. Ma. P. Thangavel
For Respondents : Mr. S. Arun Kumar for R1
Mr. A. Tamilarasan for R2

COMMON JUDGMENT
(Made by M. Govindaraj, J.)

Challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal (Special Subordinate Judge), Coimbatore, in M.C.O.P. No.2251/2012 dated 04.10.2013, Reliance General Insurance Company Limited/appellant herein, has preferred this appeal. The first respondent, has preferred a Cross Objection for enhancement of quantum of compensation.

2. The first respondent in this appeal/petitioner in Cross Objection, while riding his two wheeler, bearing Registration No. TN-37 AL-5530 on 30.10.2006, the second respondent, drove another two wheeler bearing Registration No. TN-38 AH-6545, in a rash and reckless manner, and dashed against the first respondent herein/petitioner. In the said impact, the first respondent herein/petitioner sustained injuries resulting in severe weakness of the right upper and lower limbs, old poliomyelitis (partial) in the right lower limbs, aphasia (not able to speak), spastic right hemiparesis (weakness of right upper and lower limbs). His left eye pupil was dilated and not reacted. He suffered partial paralysis of left III cranial nerve on the basis of CT scan taken on 2010. Doctors had opined that he suffered encephalomalacic changes, in both front temporal and left parieto occipital regions.

3. The first respondent herein/petitioner examined himself as PW1 and marked Exs. P1 to P20. PWs. 2 to 6 have let in evidence to substantiate the case of the first respondent herein. The court has marked Ex. X1-Authorisation Letter issued to PW4 and

the Bank statement of the petitioner as Ex.X2. Second respondent had adduced evidence as RW1 and marked his licence as Ex.R1.

4. On the basis of Ex.P1-FIR, Exs.P2 and P3 - Motor Vehicle Inspector Reports, Ex.P4-Charge sheet and Ex.P5-certified xerox copy of docket extract of STC No.220/2016 on the file of the learned Judicial Magistrate No.8, Coimbatore, and after considering oral evidence, the Tribunal, fixed the negligence on the part of the second respondent herein/owner.

5. Insofar as the quantum of compensation is concerned, the Tribunal has relied on Ex.P14 - Appointment order of the first respondent herein/petitioner, Exs.P15, P16 and P20 - Salary certificates of the first respondent herein/petitioner and arrived at the monthly income of the injured as Rs.9,114/-. At the time of accident, the first respondent/petitioner was aged 24 years. On the basis of evidence of PW2-doctor and Ex.P6-wound certificate, Ex.P7-discharge summary, Ex.P8-X-Ray, Ex.P9 - C.T. Scan Report, Ex.P13 - Disability Certificate, the Tribunal has fixed the permanent disability as 100%. The Tribunal has recorded that the petitioner has become vegetative. Therefore, the Tribunal has chosen to apply multiplier method. Corresponding to the age of the petitioner, 24 years, the Tribunal has taken multiplier '18'. Loss of future earning capacity has been calculated as Rs.19,68,624/- (Rs.9,114/- x 12 x 18).

6. In addition to the above, the Tribunal has awarded a sum of Rs.5,12,000/- towards medical expenses based on Ex.P12 - Medical Bills. Rs.3,00,000/- for pain and suffering, Rs.50,000/- for extra nourishment, Rs.20,000/- for transportation and Rs.3,00,000/- for loss of amenities and enjoyment. The Tribunal has also assessed loss of expectancy of the life of the petitioner as 55 years and towards attendant charges, added Rs.2,000/- per month, for 31 years and that under the head, the Tribunal has awarded a sum of Rs.7,44,000/-. Thus, a sum of Rs.38,98,674/- has been awarded as compensation.

7. Being aggrieved by the above quantum of compensation, insurance company has preferred the above appeal on the ground that the award is excessive and loss of future income arrived at, is without any proof and that compensation awarded under other heads is excessive.

8. By way of cross objection for enhancement, the claimant would submit that the claimant underwent several surgeries. As he was a Diploma Holder in Electrical and Electronics Engineering and employed as senior level officer in Technical Department of Bharti Comtal Limited, Coimbatore, he had a bright future, and now after the accident, it is bleak. The claimant

also prayed to fix future prospects as 50%, as awarded by the Hon'ble Supreme Court in a case reported in 2013 (2) TN MAC 66. In view of the above judgment of the Hon'ble Supreme Court, the claimant has further prayed for enhancement under other heads, frustration, hardship, inconvenience, disablement, mental shock, and unhappiness in future life.

9. We have considered the rival claims of both sides and perused the materials available on record.

10. Considering the gravity of injuries, surgeries, period of treatment and the evidence of PW2 - doctor, and documents Exs.P6 to P9, there is no dispute that the claimant has suffered permanent disability. The injuries described above, show that the claimant had gone to a vegetative state and not in a position to recover from his ailment. The Tribunal has fixed 100% disability and we concur with the finding.

11. It is also seen that the claimant was a Technical Officer in Bharti Comtal Limited, Coimbatore, vide Ex.P14 - Appointment order dated 30.06.2006. From Exs.P15, P16 and P20, it is noticed that salary of the petitioner was Rs.10,000/- and that the Tribunal has fixed it as, Rs.9,114/- only. We are of the view that the Tribunal has correctly fixed the monthly income and the same does not require interference.

12. Insofar as career prospects of the petitioner is concerned, at the time of accident, he was just 24 years old, well qualified and placed in a reputed company. In future, he would reach a higher position. The Tribunal has not considered this aspect. As held by the Supreme Court in Santhosh Devi v. National Insurance Co. Ltd. reported in 2012 (6) SCC 421. The claim of the first respondent herein/petitioner in Cross Objection, to consider future prospects is justified. As the claimant was just 24 years at the time of accident, 50% should be added towards future prospects. Multiplier 18 has to be applied. By adding 50% towards future prospects the monthly income is arrived at Rs.13,671/-. Therefore, the loss of earning capacity of the injured claimant will be Rs.29,52,936/- (Rs.13,671/- x 12 x 18).

13. The Tribunal has awarded a sum of Rs.5,12,000/- towards medical expenses, based on Ex.P12. As it is supported by document, the same is confirmed. Insofar as pain and suffering is concerned, the Tribunal has awarded Rs.3,00,000/-. Claimant has sought for Rs.5,00,000/-, which is vehemently opposed by the counsel for Insurance company. We have considered the disability and the physical condition of the claimant and we are inclined to grant a sum of Rs.1,00,000/- towards pain and suffering and Rs.2,00,000/- for mental agony.

14. Insofar as loss of amenities and enjoyment is concerned, the Tribunal has awarded Rs.3,00,000/-. On consideration of various aspects, we deem it fit to modify the same and award a sum of Rs.1,50,000/- towards loss of amenities and Rs.2,00,000/- towards loss of marriage prospects.

15. Insofar as compensation for frustration, hardship, inconvenience, disappointment, mental shock, and prospects in future life, we bring the above under the head of loss of expectancy of life and awarded a sum of Rs.1,00,000/-. The Tribunal has awarded a sum of Rs.50,000/- for extra nourishment, which is just and reasonable. The Tribunal has awarded Rs.20,000/- towards transportation, which is slightly lesser. Hence we enhance the same to Rs.30,000/-.

16. Insofar as the award of Rs.3,00,000/- under the head attendant charges, is concerned, learned counsel appearing for the appellant/insurance company, would contend that the same cannot be fixed for 31 years, as done by the Tribunal. When uniform scale of multiplier is applied, it is reasonable to follow the same structure and we restrict the award of attendant charges to 18 years corresponding to the multiplier adopted in the instant case. The Tribunal has awarded Rs.2,000/- per month as attendant charges and the same is restricted to 18 years instead of 31 years. As such, we award compensation of Rs.4,32,000/- under the head Attender charges. After re-working, compensation due and payable to the injured, works out to Rs.46,76,936/- as under:

Loss of earning capacity	: Rs.29,52,936/-
Medical Expenses	: Rs. 5,12,000/-
For pain and suffering	: Rs. 1,00,000/-
For mental agony	: Rs. 2,00,000/-
Extra nourishment	: Rs. 50,000/-
Transportation	: Rs. 30,000/-
Attender charges	: Rs. 4,32,000/-
Loss of amenities	: Rs. 1,50,000/-
Marriage prospects	: Rs. 2,00,000/-
Loss of expectancy of life	: Rs. 1,00,000/-
Total	: Rs.46,76,936/-

Compensation awarded by the Tribunal is Rs.38,94,624/-. On Cross Objection, compensation now determined by this court is Rs.46,76,936/-. Enhanced amount of compensation is Rs.7,62,312/- as detailed above. Therefore, the award passed by the Tribunal

is modified and enhanced.

Accordingly, the Civil Miscellaneous Appeal filed by the appellant/Insurance company is dismissed and the cross objection filed by the claimant, is partly allowed, as indicated above. The insurance company has deposited the entire amount with proportionate interest and cost and permitted the claimant to withdraw a sum of Rs.15,00,000/-. In view of the modification and enhancement of the award of compensation, balance of Rs.7,62,312/- with proportionate interest is directed to be deposited within a period of four weeks, from the date of receipt of a copy of this judgment. On such deposit, the claimant/petitioner is entitled to withdraw a sum of Rs.15,00,000/- through his guardian, by filing appropriate application. We further direct that the balance amount of compensation with accrued interest lying in the credit of M.C.O.P. No.2251 of 2012, shall be deposited in a Nationalised Bank under reinvestment scheme in the name of the claimant. Whenever necessity arises for medical expenses, guardian of the claimant is entitled to approach the Tribunal with appropriate application and withdraw the required sum. Father and guardian is entitled to withdraw the accrued interest every month, for the welfare of the claimant. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

asr

To

1.The Motor Accident Claims Tribunal
(Special Subordinate Judge), Coimbatore.

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

+1cc to Mr.S.Arunkumar, Advocate SR.No.21985
+1cc to Mr.Ma.P.Thangavel, Advocate SR.No.22146

C.M.A.No.1540 of 2015, M.P.No.1 of 215
and Cross Objection No.59 of 2016

SS(CO)
GN(20/12/2017)