

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2017

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

CMA NO.1953 OF 2015
AND M.P.NOS.1 AND 2 OF 2015
AND CROS.OBJ.NO.106 OF 2015

National Insurance Company Limited
Karthekya Complex
403, B-1, Mettur Main Road,
Bhavani, Erode District.

... Appellant/3rd Respondent
1st Respondent in Cross Objection 106/15

Versus

1.Senthil Kumar ...1st Respondent/Petitioner in Cross
Objection 106/15

2.Selvaraj

3.Vadivel Murugan

... Respondents 2 & 3/
Respondents 1 & 2/Respondents
1 & 2 in Cross Objection 106/15.

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act,
1988, against the judgment and decree dated 30.06.2014 passed in
M.C.O.P.No.681 of 2012, by the Motor Accidents Claims Tribunal,
2nd Additional District Court, Tiruppur.

For Appellant in CMA
and 1st Respondent

in Cross Objection : Ms.N.B.Surekha

For Respondent-3 : Mr.Suganthan

for Mr.N.Manokaran

For 1st Respondent
in CMA & Petitioner

in Cross Objection : Mr.Ma.P.Thangavel

J U D G M E N T

[JUDGMENT OF THE COURT WAS MADE BY M.GOVINDARAJ, J.]

Challenging the award of compensation made in MCOP
No.681 of 2012, on the file of Motor Accident Claims Tribunal
(II Additional District Judge) Tiruppur, dated 30.06.2014, the

insurance company has preferred the above appeal.

2. On 20.10.2012, at around 06.00 p.m., while the first respondent / claimant / injured was riding his two wheeler bearing Registration No.TN43-F-5906, the Mahendra Pickup vehicle bearing Registration No.TN36-W-4681, belonging to the second respondent, driven in a rash and negligent manner, dashed against the claimant's vehicle and caused grievous injuries. Therefore, claiming compensation for the injuries suffered, the injured has filed a claim petition in MCOP No.681 of 2012, on the file of Motor Accidents Claims Tribunal (II Additional District Judge) Tiruppur, for a sum of Rs.30,00,000/-.

3. The claim was opposed by the appellant insurance company on the grounds that the driver of the offending vehicle was not possessing valid licence and therefore, the owner of the vehicle i.e, the third respondent herein, is liable to pay the compensation.

4. The owner / third respondent has filed a counter stating that his driver has valid driving license to drive the vehicle. The vehicle is covered by insurance under the appellant insurance company, that is why the insurance company is liable to pay compensation.

5. The claimant has let in evidence as P.W.1, which was supported by P.W.2 and P.W.3 - Doctor spoke about the disability of the claimant. Exs.P1 to P6 were marked on the side of the claimant. On the side of the insurance company, the Superintendent of Regional Transport Office was examined as R.W.1 and the Assistant Manager was examined as R.W.2. The copy of driving license and insurance policy were marked as Exs.R2 and R3.

6. Based on the materials available before the Tribunal, more particularly relying on Ex.P1 - FIR and evidence of P.W.1, the Tribunal has held that the accident has taken place due to the rash and negligent driving of the driver of the offending vehicle. Insofar as the liability is concerned, the Tribunal has held that the insurance company can pay compensation and recover the same from the owner of the vehicle, based on the evidence of R.W.1 and R.W.2 and Exs.R2 and R3.

7. In so far as the quantum is concerned, the injured has stated that he was working as a Tailor and also working in a Mobile Shop and earning a sum of Rs.10,000/- per month. Due to the accident, he underwent amputation below the knee. The injuries suffered by the claimant was proved by Exs.P2 to P6. R.W.3 - Doctor has let in evidence that the injured has suffered grievous injuries and his right leg was amputated below the knee. On the basis of the assessment made by him, he has fixed

60% as permanent disability. During cross examination, it was stated that the injured has fixed artificial limb on his right leg. Therefore, it is clear that the injured has suffered 60% disability.

8. Based on the materials available on record, the Tribunal has fixed the monthly income of the injured at Rs.7,500/-. The injured was 22 years of age at the time of accident and therefore, on the basis of the judgment of SARLA VERMA (SMT) AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER [2009 (6) SCC 121] the Tribunal has fixed 50% towards future prospects and the monthly income was taken as Rs.11,250/-. On the basis of disability at 60% and applying multiplier 18 corresponding to the age of the injured, the Tribunal has arrived at the loss of income at Rs.14,58,000/- [Rs.11,250 X 12 X 60/100 X 18 = Rs.14,58,000/-]. The Tribunal has awarded Rs.50,000/- towards pain and sufferings; Rs.62,195/- towards medical expenses on the basis of Ex.P4; Rs.30,000/- towards transportation; Rs.30,000/- towards extra nourishment; Rs.50,000/- towards amenities and arrived at a total compensation of Rs.16,80,195/- along with interest at the rate of 7.5% per annum from the date of claim till deposit.

9. Challenging the quantum of compensation awarded by the Tribunal, the insurance company has preferred the appeal on the grounds that there is no proof of income for arriving at the compensation and the award of compensation under other heads are also excessive.

10. The first respondent / injured / claimant has preferred a Cross Objection in Cros.Obj.No.106/2015 in the above appeal.

11. The cross objector / claimant has stated that he was earning a sum of Rs.20,000/- per month and the Tribunal has fixed Rs.7,500/- as notional income, which is very low. He would also claim that he had suffered 100% earning capacity, whereas the Tribunal has calculated his loss of earning capacity at 60%, which is also very low. He would also seek enhancement of compensation under the head pain and sufferings, extra nourishment, loss of amenities to life and also Rs.50,000/- towards attendant charges and Rs.3,00,000/- towards loss of permanent disablement. Further, the claimant claimed a sum of Rs.3,00,000/- towards future medical expenses and Rs.5,00,000/- towards frustration, hardship, inconvenience and mental shock in life.

12. By consent, both the Civil Miscellaneous Appeal and the Cross Objection are taken up together and a common judgment is passed.

13. The Tribunal, based on the evidence of R.W.1 and R.W.2 and Exs.R2 and R3, has held that the owner of the vehicle is liable for payment of compensation and directed the appellant insurance company to pay compensation and recover the same from the owner of the vehicle. Therefore, the cause of the accident was due to the negligent driving of the driver of the offending vehicle, is held to be correct and it does not require interference.

14. In so far as the quantum is concerned, even though the claimant has laid his claim, showing Rs.10,000/- as is monthly income, by way of cross objection, has raised it to Rs.20,000/-. There is no evidence adduced in support of his income nor any documents were marked. The Tribunal, considering the consumer price index and the normal income during the period of accident has fixed the monthly income as Rs.7,500/-. Even assuming that a labour, during 2014, could have earn a sum of Rs.250/- per day and for 30 days, it will come around Rs.7,500/- and thus, we hold that Rs.7,500/- as monthly income, arrived at by the Tribunal, is correct. The Tribunal has awarded 50% under the head future prospects, which is also correct. P.W.3 - Doctor had let in evidence that the injured / claimant has suffered 60% permanent disability. The Tribunal has taken the disability as 60% and applied multiplier 18, as the claimant was 22 years of age, at the time of accident. Quantum of compensation arrived at by the Tribunal is just and reasonable and hence, it does not require interference. Therefore, the compensation of Rs.14,58,000/- under the head loss of income, awarded by the Tribunal, is hereby confirmed.

15. In so far as the award of compensation under other heads are concerned, the Tribunal has awarded a sum of Rs.50,000/- towards pain and sufferings. The injured / claimant has claimed a sum of Rs.1,00,000/- towards pain and sufferings, by way of cross objection. The injured was 22 years of age and had lost his right leg. Therefore, we consider that compensation of Rs.50,000/- can be enhanced to Rs.1,00,000/-. Accordingly, Rs.1,00,000/- is awarded for pain and sufferings.

16. The Tribunal has awarded a sum of Rs.62,195/- towards medical expenses, based on Ex.P4. The Doctor, who assessed the disability has clearly deposed before the Tribunal, in his cross examination, that the injured has fixed artificial limb, in his right leg. Therefore, this aspect has to be borne in mind. The claimant has claimed Rs.3,00,000/- towards future medical expenses on the basis of the judgment reported in 2013 (2) TNMAC 76 (SC). In view of the facts elucidated by way of cross examination, we are inclined to award a sum of Rs.1,00,000/- towards fixing of artificial limb under the head future medical expenses. However, enhancement of this amount

will not bear any interest while calculating the compensation.

17. In so far as the amenities is concerned, the Tribunal has awarded a sum of Rs.50,000/-. Again considering the age of the injured at the time of accident, i.e., 22 years, he had lost the amenities throughout his life. Considering his loss of enjoyment, we enhance it by Rs.75,000/-. Thus, a sum of Rs.1,25,000/- is awarded under the head loss of amenities.

18. The claimant has claimed 100% permanent disability and disablement compensation. But the materials available before the Tribunal and the evidence of the Doctor clearly states that he has suffered 60% permanent disability. The evidence on behalf of the claimant himself is only 60% and therefore, it would not be increased to 100%.

19. The Hon'ble Supreme Court in B.KOTHANDAPANI VS. TAMIL NADU STATE TRANSPORT CORPORATION LIMITED [2011 (6) SCC 420] has held that apart from awarding compensation for pain and sufferings and loss of enjoyment of life and loss of earning, compensation can be awarded under the head permanent disablement. Considering the judgment of the Supreme Court, we think it fit to award compensation under the head permanent disablement.

20. The accident had taken place during 2012 and at the relevant point of time, compensation was fixed at Rs.2,000/- per disability. Here, in the instant appeal, disability is 60%. Therefore, a sum of Rs.1,20,000/- is awarded for permanent disablement suffered by the injured.

21. The award of compensation of Rs.30,000/- towards transportation and Rs.30,000/- towards extra nourishment are sustained. Besides this, a sum of Rs.1,000/- is awarded towards conventional damages. Thus, a sum of Rs.4,21,000/- is enhanced and the award of the Tribunal is enhanced to Rs.21,01,195/-.

22. In the result, the appeal filed by the appellant insurance company is dismissed and the cross objection filed by the injured / claimant is partly allowed. The award of the Tribunal in so far as the liability and right to recover, is hereby confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

23. It is submitted that the insurance company has already deposited the entire award amount to the credit of MCOP No.681 of 2012 on the file of Motor Accidents Claims Tribunal (II Additional District Judge) Tiruppur. In view of the enhancement, the appellant insurance company is directed to deposit the balance amount of Rs.4,21,000/-, with proportionate interest at the rate of 7.5% per annum, within a period of four

weeks from the date of receipt of a copy of this order. It is made clear that in so far as the enhancement under the head future medical expenses towards artificial limb, will not bear any interest. On such deposit being made, the claimant is permitted to withdraw the same by filing proper application before the Tribunal.

s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

TK

To

The Motor Accident Claims Tribunal
(II Additional District Court)
Tiruppur.

+1 CC to Mr.M.B. Surekha, Advocate sr 22649
+1 CC to Mr.Ma.P. Thangavel, Advocate sr 22556
+1 CC to Mr.N.Manokaran, Advocate sr 22493

CMA NO.1953 OF 2015
and CroS.OBJ.NO.106 of 2015

KS (CO)
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