

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Civil Miscellaneous Appeal Nos. 2393 and 2519 of 2016
and
C.M.P. No. 17844 of 2016 in CMA No. 2519 of 2016

C.M.A. No. 2393 of 2016

P. Shanthi
Wife of Paulraj
(Since the appellant is under coma, she
is represented by the Natural Guardian
and next friend viz., her husband Paulraj) ... Appellant

Versus

1. P. Prakash
2. IFFCO-TOKIO General Insurance Co., Ltd.,
New No.28, Old No.195
North Usman Road
T. Nagar, Chennai - 600 017 ... Respondents

C.M.A. No. 2519 of 2016

IFFCO-TOKIO General Insurance Co., Ltd.,
New No.28, Old No.195
North Usman Road
T. Nagar, Chennai - 600 017 ... Appellant

Versus

1. P. Shanthi
Wife of Paulraj
(Since the 1st respondent is under coma, she
is represented by the Natural Guardian
and next friend viz., her husband Paulraj)

2. P. Prakash ... Respondents

C.M.A. No. 2393 & 2519 of 2016:- Appeals filed under
Section 173 of The Motor Vehicle Act, 1988 against the fair and
final order dated 26.04.2016 passed in MCOP No. 8201 of 2013 on
the file of Motor Accidents Tribunal, (II Court of Small
Causes) Chennai

C.M.A. No. 2393 of 2016

For Appellant : Mr. N. Anand Venkatesh
For Respondents : Mr. C.R. Krishnamurthy for R2

C.M.A. No. 2519 of 2016

For Appellant : Mr. C.R. Krishnamurthy
For Respondents : Mr. N. Anand Venkatesh for R1

COMMON JUDGMENT

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

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Chennai, in and by the award dated 26.04.2016 passed in MCOP No. 8201 of 2013, the claimant has filed C.M.A. No. 2393 of 2016 seeking enhancement of compensation. As against the very same award, questioning the quantum of compensation awarded in favour of the claimant, the Insurance Company has filed C.M.A. No. 2519 of 2016. As both the appeals arise out of the common Order dated 26.04.2016 passed by the Tribunal, these appeals are taken up for hearing together and are disposed of by this common Judgment.

2. For the sake of convenience, the parties to these appeals shall be referred to as 'claimant' and 'Insurance Company'.

3. The case of the claimant is that on 16.10.2013 at about 11.30 hours, while the victim Shanthi, Wife of the claimant, was walking on S.P. Road, near CLRI Outgate, as a Pedestrian, the motor cycle bearing Registration No. TN 02 X 1072 was driven by the first respondent in the claim petition namely Prakash at a hectic speed and in a rash and negligent manner and hit the victim Shanthi. In the impact, the victim sustained multiple fracture injuries all over her body. Immediately, the victim was taken to Fortis Malar Hospital, Adyar, Chennai where she has taken treatment for some time and thereafter, she has also taken treatment at St. Thomas Hospital, St. Thomas Mount, Chennai - 600 016. According to the claimant, due to the injuries sustained in the accident, particularly the injuries on her head, the victim had slipped to coma and till the date of filing the claim petition, she could not regain consciousness. It is further stated that the accident had occurred due to the rash and negligent driving of the driver of the motor cycle and therefore, the owner of the two wheeler as well as the Insurance Company are jointly and severally liable to pay the compensation amount. Accordingly, the claimant has filed the claim petition claiming a sum of Rs. 1 crore as compensation.

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4. The case of the claimant was resisted by the Insurance Company contending that the accident had occurred due to the

fact that the victim has attempted to suddenly cross the road unmindful of the oncoming motor cycle. It was further contended that the injuries sustained by the victim are exaggerated and she has not sustained any permanent disablement owing to the accident. According to the Insurance Company, the compensation amount claimed by the claimant is excessive and exorbitant.

5. Before the Tribunal, on behalf of the claimant, the claimant examined himself as PW1 with four other witnesses as Pws 2 to 5 and Exs. P1 to P21 were marked. On behalf of the respondents in the claim petition, Mr. R.G. Kumar, Advocate Commissioner appointed by the Tribunal was examined as RW1 along with Dr. K.J. Mathiazhagan as RW2 and Exs. C1 to C3 were marked. The Tribunal after considering the oral and documentary evidence, concluded that the accident had occurred due to the rash and negligent driving of the two wheeler driven by the first respondent - Prakash, in the claim petition and therefore, the Insurance Company, with whom the two wheeler was insured, was liable to pay the compensation amount. As regards the quantum of compensation, the Tribunal, taking note of the period of treatment, nature of the treatment extended to the victim etc., awarded a total sum of Rs.79,60,000/- as compensation under various heads.

6. The learned counsel appearing for the appellant/Insurance Company would contend that the amount awarded towards compensation by the Tribunal is unreasonable, arbitrary and excessive. According to the learned counsel for the appellant, when compensation towards medical expenses, future medical expenses, attendant charges etc., have been separately awarded, the sum of Rs.6 lakhs awarded by the Tribunal under the head 'miscellaneous expenses' is legally not sustainable. Further, the Tribunal awarded a sum of Rs.16,22,400/- towards loss of future earning capacity when there was no evidence produced before the Tribunal on behalf of the claimant except the oral testimony of the claimant, as PW1, to the effect that the victim was earning Rs.500/- per day by working as a catering assistant. Therefore, according to the learned counsel for the appellant/ Insurance Company, only on surmises and conjectures, the Tribunal has awarded the sum of Rs.16,22,400/- without any legally acceptable evidence. It is further contended that when the Tribunal has awarded the sum of Rs.16,22,400/- towards loss of future earning capacity, the Tribunal is not justified in separately awarding a sum of Rs.3,00,000/- towards disability. Further, the Tribunal has awarded a sum of Rs.6,00,000/- under the head of Miscellaneous Expenditure towards Attendant Charges, Medicines, Extra Nourishment, Attendant Charges etc., Apart from the sum of Rs.6,00,000/-, the Tribunal has awarded a sum of Rs.8,00,000/- separately towards attendant charges. Thus, it is the submission of the counsel for the appellant/Insurance Company that the Tribunal has awarded excessive amount as compensation and it is required to be proportionately reduced.

7. On the contrary, the learned counsel for the claimant

would contend that the victim, who is the wife of the claimant, soon after the accident, was admitted in Fortis Malar Hospital, Adyar, Chennai and on examination, the Doctors have declared that the victim had slipped into coma. It is further submitted that till date, the victim did not regain consciousness and she continued to remain under Coma. The disability suffered by the victim has been assessed as 100% and she is in a total vegetative condition unlikely to improve. From the date of accident, the victim is under constant medical examination with the hope of some improvement in gaining consciousness. Further, the victim was taken to hospital on and off by the claimant from the home besides that Doctors are attending on the claimant at the house of the claimant. In this regard, the claimant had continuously spent enormous amount towards treatment of the victim as well as for transportation. While so, the Tribunal ought to have awarded a sum of Rs.30,00,000/- towards future medical expenses, which expenses has to be met by the claimant till the life time of the victim. However, the Tribunal has awarded only a sum of Rs.7,00,000/- towards future medical expenses, which is grossly inadequate. Further, the amount awarded by the Tribunal towards attendant charges is grossly inadequate especially when the victim is still in coma stage and require a nursing assistant. Further, the amount awarded towards pain and suffering and trauma at Rs.4,00,000/- and towards mental agony at Rs.2,00,000/- are grossly inadequate and therefore, the learned counsel for the claimant prayed for proportionate enhancement.

8. We have heard the learned counsel for both sides and perused the materials placed on record. At the outset, it has to be mentioned that these appeals are filed by both the claimant as well as the Insurance Company only questioning the quantum of compensation awarded by the Court below. The Insurance Company has not questioned the liability fastened on them in this appeal. Therefore, we are not dealing with the other aspect of the award passed by the Tribunal in these appeals.

9. On perusal of the evidence made available, we find that the victim in this case, aged 50 years, had suffered severe head injuries which resulted in the victim slipping into a coma stage. As per Ex.P5 discharge summary issued by Fortis Malar Hospital, the victim was admitted in the hospital as an in-patient from 15.10.2013 to 31.10.2013. The victim was diagnosed with RTA with diffuse axonal injury and she was put on ventilator. During the course of treatment, she was subjected to CT scan examination which revealed that she is having left front SH with base of severe cerebral edema with base of skull fracture. The MRI Scan result of the victim reveal that she suffered diffuse axonal injury, mid brain injury with left frontal SDH thin. Even though the victim was discharged from Fortis Malar hospital on 31.10.2013 with no sign of improvement to regain consciousness, she was admitted with St. Thomas Hospital on the same day namely 31.10.2013, from where she was discharged on 02.12.2013 with no sign of

improvement in gaining consciousness.

10. Before the Tribunal, the claimant examined himself as PW1, who narrated the ordeal of treatment given to the victim till date and the pain and suffering and trauma undergone by the family of the victim. Further, Exs. P9, Medical Bills, P10 and P11, Photograph and Photos of the victim with CD respectively were marked before the Tribunal to indicate the nature of injuries sustained by the victim and her physical condition before and after the accident. However, for the purpose of ascertaining the correctness of the statement made by PW1 and also to ascertain the physical condition of the victim, the Tribunal appointed Mr. R.G. Kumar as an Advocate Commissioner who has also filed Ex.C1, report. In the report, it was staged that the victim is in a Coma stage and she is under ventilator support. It was further stated that a Staff nurse is attending on the victim through out the day and extending all nursing assistance.

11. Before the Tribunal, Dr. K.J. Mathiazhagan was examined as CW2, who has deposed that the victim is in a total vegetative condition unlikely to improve. The disability suffered by the victim was therefore assessed by CW2 at 100%. The disability certificate issued by CW2 was marked as Ex.C3.

12. One Shanmuganathan, an eye witness to the accident was examined as PW2 before the Tribunal who has deposed that the accident had occurred due to the rash and negligent driving of the driver of the two wheeler.

13. Having regard to the above evidences made available, the Tribunal has awarded a total sum of Rs.79,60,000/- as compensation. The grievance of the appellant/Insurance Company is that when the Tribunal has awarded a sum of Rs.31,37,000/- towards medical expenses, awarding a further sum of Rs.6,00,000/- under the head of Miscellaneous Expenditure made towards Extra Nourishment, Attendant charges, Nursing charges, doctors fees etc.,. That apart, the Tribunal has awarded a sum of Rs.8,00,000/- separately towards Attendant charges.

14. On perusal of the records, we find that the Tribunal, for awarding the sum of Rs.6,00,000/- under the head of Miscellaneous Expenditure, has considered that due to the injuries sustained in the accident, the victim slipped into coma and she is taking liquid diet through a tube. The amount of Rs.6,00,000/- awarded by the Tribunal under the head Miscellaneous Expenses, inclusive of Extra Nourishment, is towards the amount already spent by the claimant prior to the Judgment of the Tribunal. As the victim is in a coma stage and she has to be administered liquid diet through out her life time, the Tribunal has chosen to separately award a sum of Rs.8,00,000/- separately towards Extra Nourishment and therefore, we do not find any infirmity in the same.

15. As rightly pointed out by the counsel for the appellant/Insurance Company, when the Tribunal has awarded a sum of Rs.16,22,400/- towards loss of future earning capacity,

awarding a sum of Rs.3,00,000/- separately towards disability is not warranted and therefore, the amount of Rs.3,00,000/- awarded by the Tribunal is hereby set aside.

16. It is pointed out by the learned counsel for the appellant/Insurance Company that when the Tribunal awarded compensation towards loss of future earning capacity, by treating the disability of the victim as 100%, the amount of Rs.2,00,000/- awarded under the head of loss of amenities is liable to be set aside as per the dictum laid down by the Honourable Supreme Court in the case of (Raj Kumar and Ajay Kumar and another) reported in 2010 (2) TNMAC 581 (SC). It is no doubt true that as per the dictum laid down by the Honourable Supreme Court in the aforesaid decision, when compensation is awarded by treating the loss of earning capacity as 100% or even anything more than 50%, the need to award compensation separately under the head of loss amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise, there may be a duplication in the award of compensation. Therefore, having regard to the above decision of the Honourable Supreme Court, we are inclined to reduce the quantum of compensation awarded by the Tribunal under the head of Loss of Amenities from Rs.2,00,000/- to Rs.40,000/-.

17. As regards the amount awarded under the other heads, we feel that the Tribunal has awarded a just and fair compensation befitting to the nature and magnitude of the injuries sustained by the victim and her vegetative stage. The Tribunal has also taken note of the fact that the victim require constant medical care through out her life. Therefore, the amount awarded by the Tribunal under various heads, in our opinion, appears to be reasonable and therefore, we are not inclined to interfere with the compensation awarded by the Tribunal under various other heads.

18. In the result, we re-calculate the compensation awarded by the Tribunal as follows:-

Medical Expenses	Rs.31,37,000.00
Future Medical Expenses	Rs. 7,00,000.00
Attendant Charges	Rs. 8,00,000.00
Loss of Future Earning Capacity	
Rs.16,22,400.00	
Damages for pain, suffering and trauma	Rs. 4,00,000.00
Mental agony	Rs. 2,00,000.00
Loss of Amenities	Rs. 40,000.00
Miscellaneous Expenses	Rs. 6,00,000.00

	Rs.74,99,400.00
Rounded off to	Rs.75,00,000.00

19. Accordingly, the compensation amount awarded by the Tribunal is reduced from Rs.79,60,000/- to Rs.75,00,000/- as indicated above and consequently, the appeal filed by the claimant in CMA No. 2393 of 2016 is dismissed and C.M.A. No.

2519 of 2016 filed by the Insurance Company is partly allowed. No costs. Consequently, connected miscellaneous petition is closed. The appellant/ Insurance Company is directed to deposit the entire compensation amount, as determined by us, in this Judgment, with interest at 7.5% per annum, after adjusting the amount, if any, already deposited, to the credit of MCOP No. 8201 of 2013 on the file of Motor Accidents Tribunal, (II Court of Small Causes) Chennai, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the entire amount together with accrued interest.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Tribunal
(II Court of Small Causes)
Chennai

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

+2cc to Mr.N.Anand Venkatesh, Advocate, S.R.No.70328,70327

+1cc to Mr.C.R.Krishnamoorthy, Advocate, S.R.No.69758

सत्यमेव जयते

CMA Nos. 2393 & 2519/2016

CNR(CO)
GN(26/10/2017)

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