

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2017

CORAM:

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

C.M.A.No.685 of 2015
M.P.No.1 of 2015

The Regional Manager,
Royal Sundaram Alliance Insurance Co. Ltd.,
Regional Office, Chennai 600 002. Appellant/
2nd Respondent

v.

1. N.Sivakumar1st Respondent/
petitioner
2. S.Govindan2nd Respondents/
1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order in M.C.O.P.No.1215 of 2013, dated 23.06.2014, on the file of Motor Accidents Claims Tribunal (Special Subordinate Judge), Krishnagiri.

For Appellants : Mr.N.Vijayaraghavan
For 1st Respondent : Mr.V.Vijayakumar

J U D G M E N T

[Judgment of the Court was made by S.MANIKUMAR, J.]

Challenging the quantum of compensation of Rs.16,33,373/- with interest, at the rate of 6% per annum, from the date of claim, till deposit and costs, M/s.Royal Sundaram Alliance Insurance Co. Ltd., has filed the instant appeal. At the time of accident, the claimant was aged 26 years and engaged in the business of Sago and running a factory, in the name and style of "Siva Sago Factory".

2. Going through the award and material on record, it could be deduced that on 19.09.2010, about 7.30 P.M., while respondent/claimant was proceeding in his Hero Honda Motorcycle, bearing Registration No.TN 29 AY 3288, on the left side of Anandhur to Kallavi Road, a Tractor, bearing Registration No.TN

24 D 9814, belonging to the 2nd respondent and insured with the appellant-Insurance Company, driven by its driver, in a rash and negligent manner, in the opposite direction, hit the motorcycle and he sustained multiple injuries. He claimed compensation of 25,00,000/-, under various heads.

3. As per Ex.P2 - Accident Register, issued by the Government Hospital, Uthangarai, the respondent/claimant has sustained following injuries,

- (1) Lacerated wound present over the scalp forehead 7x1.5cm bone deep.
- (2) Fracture of left clavicle.
- (3) Bilateral fracture of face-maxilla and mandible bone.

4. As per Ex.P3 - Wound Certificate, issued by Sparsh Hospital, Bangalore, he has sustained the following injuries,

- (1) Lacerated wound present over the scalp forehead 7x1.5cm bone deep.
- (2) Fracture of left clavicle.
- (3) Bilateral fracture of face-maxilla and mandible bone.
- (4) Comminuted fracture of right femur with intra articular extension.
- (5) Compound fracture of right patella, right tibia and fibula.
- (6) Lacerated wound over right knee 6x5cm x bone deep.
- (7) Head injuries:
 - (a) Anterior cranial fossa communitied fracture, fracture of right temporal fossa upto petreoue bone.
 - (b) Diffuse cerebral oedema.
 - (c) Bifrontal basal contusions.
 - (d) Left parieto occipital contusion.
 - (e) Right temporal fracture.

5. PW.2, Doctor, who clinically examined the respondent/claimant, with reference to medical records, viz., Ex.P14 - C.T.Scan Report issued by Sparsh Hospital, Bangalore and Ex.P15 - X-Rays, has found that a surgery has been done in the right leg knee region and that the fracture in right clavicle was united, with 2 degrees malunion. He has also noticed asterio arthritis in right knee, due to which, the respondent/claimant was unable to walk, long distance and stand for a long time. There was difficulty in climbing staircase, sit or squat in floor. PW.2, Doctor, has further found that due to the fracture, loss of teeth in the upper jaw, there was disfiguration in the face and the injured was unable to munch hard food. PW.2, Doctor, has assessed the disability at 70% and issued Ex.P16 - Disability Certificate.

6. On the basis of oral and documentary evidence, the Claims Tribunal held that the driver of the Tractor, bearing Registration No.TN 24 D 9814, belonging to the 2nd respondent and insured with the appellant-Insurance Company, was negligent in causing the accident. Fixing the monthly income as Rs.5,000/-, the Tribunal awarded compensation of Rs.16,33,373/-, with 7.5% per annum, with interest and costs, as follows:-

Pecuniary loss ... Rs. 6,12,000/-
(Rs.5,000 x 12 x 17 x 60%)

Pain and suffering	...	Rs.	50,000/-
Partial loss of income	...	Rs.	25,000/-
Medical expenses	...	Rs.	8,56,373/-
Future medical expenses	...	Rs.	50,000/-
Extra nourishment and			
Transport to hospital	...	Rs.	20,000/-
Attendant charges	...	Rs.	20,000/-

Rs.16,33,373/-

7. When the appeal came up for hearing, we requested the learned counsel for both parties to consider the award made various heads and whether compensation could be sustained and reduced, on the principle of just compensation. Going through the same and after deliberation, learned counsel for the parties, on consensus agreed to fix a consolidated compensation of Rs.16,00,000/-,

8. In the light of consensus arrived at, appellants/claimants are entitled to Rs.16,00,000/-, with interest at the rate of 7.5% per annum and costs, as against Rs.16,33,373/- awarded by the tribunal, with interest, at the rate of 6% per annum, from the date claim till deposit.

9. On 07.04.2015, this Court, while admitting the appeal, directed the appellant-Insurance Company to deposit the entire award amount with interest and costs. If the award amount has not been deposited, the appellant-Insurance Company is directed to deposit the compensation amount, now consented to, by both parties, at the rate of 7.5% per annum, from the date of claim, till deposit and costs, less the statutory deposit, to the credit of M.C.O.P.No.1215 of 2013, on the file of Motor Accidents Claims Tribunal (Special Subordinate Judge), Krishnagiri, within a period of four weeks from the date of receipt of a copy of this order. However, if the award amount has already been deposited, the appellant-Insurance Company is permitted to withdraw the balance amount of Rs.33,373/-, with accrued interest and costs. The respondent/claimant is also

permitted to withdraw the compensation amount, now consented to, by both parties, by making necessary applications before the tribunal.

10. The Civil Miscellaneous Appeal is partly allowed as indicated above. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

skm

To

The Motor Accidents Claims Tribunal
(Special Subordinate Judge), Krishnagiri.

+1 cc to Mr.N.Vijayaraghavan Advocate sr42443

+1 cc to Mr.V.Vijayakumar Advocate sr 41809

C.M.A.No.685 of 2015

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