

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.03.2017

C O R A M

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

Civil Miscellaneous Appeal Nos. 652 & 653 of 2017
and
C.M.P. Nos. 3647 to 3649 of 2017

National Insurance Co. Ltd.,
Branch Office
Thanthai Periyar Market Complex
Opp. to Old Bus Stand
Salem - 1

... Appellant in both CMAs/2nd Respondent

Vs

1. Raja ... 1st Respondent in CMA
No. 652 of 2017

2. D. Kumar ... 1st Respondent in CMA
No. 653 of 2017

2. M. Kasi ... 2nd Respondent in both
CMAs

Prayer in C.M.A. Nos. 652 and 653 of 2016: Appeal filed under
Section 173 of the Motor Vehicles Act, 1988 against the common
judgment and decree dated 13.08.2014, passed in M.C.O.P. No. 2130
and 2131 of 2010, by the Motor Accident Claims Tribunal,
(Special Sub Court No. 1), Salem.

For Appellant : Mr. S. Vadivel
in both CMAs

For Respondents: Mr. S. P. Yuvaraj for R1

COMMON JUDGMENT
(Made by S. Manikumar, J)

In the accident, which occurred on 27.05.2010 between a
Eicher lorry bearing Registration No. TN-27 P-8070 and another
lorry bearing Registration No. RJ-14 GB-1312, Raja stated to be
aged 20 years, a load man, sustained injuries. Another person

aged about 26 years, cleaner-cum-load man in Eicher Lorry also sustained injuries. Both of them were provided first aid in Sri Vinayaga Mission Hospital and shifted to Ganga Medical Centre & Hospital, Coimbatore. In this regard, a case in Crime No.346/2010 under Sections 279 and 338 IPC has been registered against the driver of the eicher lorry bearing Registration No.TN-27 P-8070, insured with National Insurance Company Ltd., Salem/appellant herein. Despite treatment, Raja's right leg below knee was amputated. Injured D.Kumar's left limb was amputated below knee and again there was another amputation above knee.

2. For the loss of earning during the period of treatment, medical expenses incurred, loss of future earning, expenses incurred for purchase of artificial limb and other heads, Raja filed MCOP No.2130/2010 claiming a compensation of Rs.50,00,000/-. Similarly, injured D.Kumar, filed MCOP No.2131/2010 claiming compensation of Rs.50,00,000/-. As both the claim petitions arose out of the same accident, evidence being same, they were tried together.

3. To prove the manner of accident, injuries sustained, treatment and disability resulting in loss of earning and future expenses that may be incurred, both the injured examined themselves as PW1 and PW2 respectively. PW3 is the doctor, who clinically examined the injured and issued disability certificates, Ex.X1 for Kumar and Ex.X4 for Raja respectively. PW4 is a staff of Ottobock Company, a specialised manufacturer of artificial limb. Both the injured have marked Ex.P1-copy of FIR in Crime No.346/2010 registered on the file of Kondalampatty Police Station, Ex.P2-Copy of wound certificate for Kumar, Ex.P3-Discharge summary of Kumar, Ex.P4-copy of judgment in C.C.No.405/2010, Ex.P5-photographs with negatives for Kumar, Ex.P6-Bill for artificial leg for Kumar, Ex.P7-Medical Bills of Kumar, Ex.P8-Medical Prescriptions of Kumar, Ex.P9-quotation for artificial boot for Kumar, Ex.P10-wound certificate issued to Raja, Ex.P11-Discharge summary of Raja, Ex.P12-letter sent to Ganga Hospital, Ex.P13-photographs with negatives for Raja, Ex.P14-VAO certificate, Ex.P15-Purchase bill for artificial boot for Raja, Ex.P16 - Medical Bills of Raja, Ex.P17-Medical Prescriptions of Raja, Ex.P18-Copy of G.O.(2D) No.64, Ex.X1-Disability certificate issued to Kumar, Ex.X2-Xray of Kumar, Ex.X3-X-ray receipt of Kumar, Ex.X4-Disability Certificate issued to Raja, Ex.X5-X-ray of Raja and Ex.X6 - X-ray receipt of Raja.

4. National Insurance Company, Salem, opposed the claim denying the negligence attributed to the driver of Eicher lorry bearing Registration No.TN-27 P-8070, insured with them. They further contended that the injured were unauthorised passengers

and therefore, company is not liable to pay compensation. Without prejudice to the above, they disputed the nature of injuries and the compensation claimed under various heads.

5. National Insurance Company, Salem examined RW1-driver of Eicher Lorry. RW2 official of the company, has deposed that the seating capacity of a lorry i.e. 3 in cabin. National Insurance Company has marked Ex.R1-driving licence of Kasi, driver of Eicher lorry bearing Registration No.TN-27 P-8070. Ex.R2 is the copy of the insurance policy.

6. On evaluation of pleadings and evidence, in particular, Ex.P4-judgment copy in STC No.405/2010 on the file of Judicial Magistrate No.V, Salem, the Tribunal found that Venkatesh, driver of the Eicher lorry bearing Registration No.TN-27 P-8070, has admitted his guilt and paid fine. By observing that there is no contradictory evidence, Tribunal held that the driver of Eicher lorry was negligent in causing accident.

7. On the aspect of liability, on assessment of evidence, the Tribunal, has categorically found that both the injured were load men, and after despatching Pigs at Kerala, they returned in the lorry. Therefore, the Tribunal held that they could not be termed as unauthorised passengers. Upon perusal of Ex.R2-Insurance policy for the offending vehicle, the Tribunal found that the third respondent herein, namely, Kasi, owner of the vehicle, had paid basic premium with additional premium for Workmen Compensation to two employees. As per Section 147(1) of the Motor Vehicles Act, 1988, driver, cleaner and owner of the goods or authorised representatives of owner of the goods are covered under basic premium. Insured is permitted to pay additional premium for workers, load men. Before the Tribunal, learned counsel for the injured has also elucidated the endorsement made under IMT 39, which covers legal liability to persons employed in connection with the operation and or maintaining and or loading and or unloading from motor vehicles.

8. Before the Tribunal, National Insurance Company Limited, Salem, appellant herein, has candidly admitted that owner has paid additional premium under the above said category. Upon perusal of the counter, Tribunal has also recorded that Insurance company has not raised any objection. But adduced evidence during the course of trial. Rejecting the same, the Tribunal held that National Insurance Company is liable to indemnify the owner of the vehicle and pay compensation.

9. Insofar as the nature of injuries and compensation claimed under various heads, the Tribunal has recorded as hereunder:

(i) The petitioner claims a sum of Rs.50,00,000/- as compensation for the injuries sustained by him on various heads. The petitioner had filed EX.P10, wound certificate issued by Ganga Medical Centre Hospital, Coimbatore. It reveals that the petitioner had sustained a major crush injury of Grade III B comminuted fracture both bones of right leg, closed fracture left lateral Malleolus and lacerated injury on the scalp. EX.P11, discharge summary, shows the petitioner had undergone an amputation below knee on the right lower limb, wound debridement and SSG cover right below knee stump and right thigh. The petitioner had taken treatment as inpatient from 27.05.2010 to 21.06.2010. Wound certificate classifies the above injuries as grievous. The gruesome nature of the amputation is reflected in EX.P13, photograph.

(ii) The petitioner had examined P.W.3, one Doctor Sridhar, an Orthopedic Surgeon, Professor & Head of Department of Orthopedics Trauma, Government Medical College, Dharmapuri. After examining the nature of injuries sustained by the petitioner, he had opined that for the amputation of the right limb below knee and fracture of left lateral malleoli will cause a total permanent disability of 80%. He would assess 70% for below right knee amputation and 10% for injury on the left ankle. In support of his report, he had filed Ex.X3, disability certificate and Ex.X4, X-ray. The Doctor had opined that due to the amputation in the right leg, all activities of the right leg would be impaired beyond utility.

(iii) The learned counsel for the 2nd respondent would oppose the disability-certificate, issued by PW3, contending that the doctor had not followed the guidelines and schedule of The Employees' Compensation Act, 1923 as amended by Act 45 of 2009. The Doctor instead of calculating the disability for the whole body had calculated for each part, this is quite contra to the guidelines issued by Ministry of Social Justice, Government of India. The disability for amputation below knee can be fixed at 70%, but the disability of 10% for injury on the left ankle does not sustain as the petitioner himself admits that he can walk using his left leg. So, the percentage of disability is fixed at 70%.

(iv) The petitioner had filed Ex.PI6, Medical Bills to the tune of Rs.2,21,663/- and Ex.X6, X-ray bill for 850/-. In support of the above bills the

petitioner would file Ex.P17, medical prescriptions. The learned counsel for the 2nd respondent would oppose the bills excessive. I have carefully gone through and verified the medical bills, I do not find any discrepancy. So, on the head of medical expenses a sum of Rs.2,22,000/- is considered.

(v) The learned counsel for the petitioner would contend that due to the amputation of right foot the petitioner has to use artificial limb for walking. He would examine PW4, a staff of Ottobock Company, a specialized manufacturer of artificial limb. He would file Ex.PI5, purchase bill for artificial boot, which costs Rs.1,32,600/-. Considering the nature of injury and the necessity for walking I am inclined to consider the amount towards artificial limb at Rs.1,30,000/-. This witness would further add the present artificial limb has to be periodically replaced depending upon the wear and tear. So, it is apparent that the petitioner has to purchase another set in the future.

(vi) The petitioner would contend that he was aged 20 years at the time of accident, and as a load man he was earning a sum of Rs.10,000/- per month. The petitioner failed to produce evidence for age, income and nature of work. But, in the FIR it is clearly stated that the petitioner is a trained load man for loading and unloading swine. As far as income is concern there is no evidence, so, notional income is taken and the petitioner's monthly income is fixed at Rs.4,500/-. The learned counsel for the petitioner would submit that as per Minimum Wages Act, and G.O. Issued by Government of Tamil Nadu in G.O.(2D) NO.64 dated 23.07.2009, the minimum wage for a load man is Rs.5,550/-. He would file EX.P18, copy of G.O. In this regard he would file a citation reported in 2014(1) TNMAC 473 SC, Sanjay Kumar Vs Ashok Kumar & others it was held that ...Claimant being an embroider, a skilled worker, minimum wages for skilled worker to be taken into consideration - Minimum wages for skilled worker during relevant period Rs.3589/- Apex court considering minimum wages for skilled worker, accepted claim made by claimant and fixed monthly income at Rs.4500 + 2250, taking into account loss of Future Prospects....

(vii) I have carefully gone through the above proposition of law and reported decision. The nature of work of the petitioner is not a skilled

one, so, I am of the considered view for future prospects the G.O can be taken into account and the income of the petitioner be fixed at Rs.5,550/- per month.

(viii) The learned counsel for the petitioner would submit the reported decision our High Court in 2014 (1) TN MAC 311, where it was held that ... in fit cases multiplier method should be adopted and cases where artificial limb cannot be fixed the disability should be cent per cent.. Also, he would file the reported decision in 2014 (1) TN MAC 279 (SC) ,... wherein our Apex court had held that in exceptional and extraordinary circumstances 50% should be added along with regular income... I have carefully gone through the above two decisions and I am of the view that the case in hand is a fit case for applying multiplier method, but, considering the nature of work of the petitioner I am of the view that the principle of adding 50% towards future prospects does not apply to the case in hand. For a person of 20 years old, the correct multiplier is 18. The petitioner's monthly income is already fixed at Rs.5,550/-. No deductions is made for the petitioners own expenses. So, his loss of future earning capacity comes to (Rs.5,550/- x 12 x 18 x 70/100) Rs.8,39,160/-.

(ix) The learned counsel for the petitioner would submit that the petitioner is unmarried and to substantiate this fact he would file Ex.P14, VAO certificate to show his marital status. Also, in this regard he would submit the reported decision in 2014(1) TNMAC 311, where our High Court had held that ...Loss of Amenities - Loss of marital prospects - suitable compensation should be awarded

The Tribunal has made similar observations in MCOP No.2131/2010.

10. In MCOP No.2130/2010, the Tribunal quantified the compensation as Rs.23,05,000/- as hereunder:

Pain and Suffering	: Rs. 75,000/-
For shock and mental agony	: Rs. 25,000/-
For attender expense to one person:	Rs. 2,00,000/-
Loss of income during treatment (Rs.4,500/-x10}	: Rs. 45,000/-
Food and extra nourishment	: Rs. 7,000/-
Medical Expenses	: Rs. 2,22,000/-
For cost towards artificial limb (as per bill)	: Rs. 1,30,000/-

For cost towards purchase of artificial limb in future	: Rs. 2,60,000/-
Transportation	: Rs. 1,840/-
Loss of earning capacity	: Rs. 8,39,160/-
For loss of amenities and marriage prospects	: Rs. 5,00,000/-
Total	: Rs.23,05,000/-

11. In MCOP No.2131/2010, the Tribunal quantified the compensation as Rs.27,59,000/- as hereunder:

Pain and Suffering	: Rs. 75,000/-
For shock and mental agony	: Rs. 25,000/-
For attender expense to one person:	Rs. 2,00,000/-
Loss of income during treatment (Rs.4,500/-x10}	: Rs. 45,000/-
Food and extra nourishment	: Rs. 7,000/-
Medical Expenses	: Rs. 1,00,000/-
For cost towards artificial limb (as per bill)	: Rs. 4,00,000/-

For cost towards purchase of artificial limb in future	: Rs. 8,00,000/-
Transportation	: Rs. 1,240/-
Loss of earning capacity	: Rs. 9,05,760/-
For loss of amenities	: Rs. 2,00,000/-
Total	: Rs.27,59,000/-

12. Being aggrieved by the common judgment and decree dated 13.08.2014 passed in C.M.A.Nos.2130 and 2131 of 2010 on the file of Motor Accident Claims Tribunal (Special Sub Court No.1), Salem, fastening liability on appellant/insurance company and quantum of compensation, instant appeals have been filed on the grounds inter alia that the Tribunal ought to have dismissed the claim petitions on the ground that the claimants were unauthorised passengers. According to the company, evidence from the available materials is that at the relevant point of time, Eicher lorry was not loaded with any goods and it was empty. In the said circumstances there was no necessity or need to have load men in lorry. Hence the Tribunal ought to have held that the claimants travelled in the Eicher lorry, were unauthorised passengers and consequently should have dismissed the claim petitions.

13. It is further contended that admittedly, at the relevant time, four persons travelled in the Eicher lorry, when the permitted capacity of the Eicher lorry was only 3, and therefore there is a violation of policy conditions.

14. It is the further contention that the Tribunal has failed to note that Eicher lorry was returning from kerala. The owner of the Eicher lorry has not obtained any interstate permit enabling the Eicher lorry to ply into Kerala and thereby violated the terms and conditions of the policy and permit. The appellant has clearly raised this ground in the additional counter and proved through oral evidence of RW2. But the Tribunal has not considered the said defence in a manner known to law and not given any finding.

15. It is the further submission of the learned counsel for the appellant/insurance company, that the Tribunal has failed to consider that RW1, driver of the Eicher lorry and the owner of the Eicher lorry were colluding with the claimants to get compensation. In spite of pointing out the same, the Tribunal, merely on sympathetical grounds, held the appellant liable to pay compensation to the claimants.

16. Though Mr.S.Vadivel, learned counsel for the appellant/insurance company reiterated the above said grounds and sought for exoneration, going through the common judgment in entirety, this court is unable to accept the said contentions that the Tribunal has committed any error in fastening liability on National Insurance Company Ltd, Salem, the appellant herein. The Tribunal has extensively considered the oral and documentary evidence adduced by both parties and in particular, entries made in Ex.R1-driving licence and Ex.R2-insurance policy for the offending vehicle.

17. First respondent in both the claim petitions/third respondent in the appeals/owner of the vehicle, has candidly admitted that the injured were load men. He has further added that he was doing business of selling swines to kerala and after unloading and while returning, the vehicle met with accident and the load men sustained injuries. Contention that the seating capacity of the lorry was three in the cabin and that therefore, the injured cannot seek for compensation against the insurance company, has been categorically found to be untenable for the reason that the first respondent/owner has paid additional premium for the workers, which has been taken note of. Contention collusion is untenable and not, substantiated. Added further, when the insurance company in its counter affidavit has not raised any objection, the same cannot be accepted, at the appellate stage. Without any pleadings, evidence cannot be adduced and therefore Tribunal cannot be found fault, in eschewing evidence.

18. Indian Motor Tariffs IMT 39 deals about legal liability to persons employed in connection with the operation and/or

maintaining and/or Loading and/or Unloading of Motor Vehicles. Liability fastened on appellant/insurance company does not require reversal. However, going through the award in each case, we are of the view that compensation awarded under certain heads requires to be reduced.

19. For instance, in M.C.O.P.No.2130/2010, the Tribunal has awarded Rs.2,00,000/-, under the head attendant charges, which in our considered view, is excessive and the same requires reduction. Considering the nature of injury sustained by the injured, we deem it fit to reduce the same to Rs.50,000/-. The Tribunal has awarded Rs.5,00,000/- for loss of amenities and marriage prospects. The same, is slightly on the higher side. Hence, we are inclined to reduce the same to Rs.4,00,000/- (Rs.1,00,000/- for loss of amenities and Rs.3,00,000/- for loss of marriage prospects). Compensation, awarded under other heads, interest awarded and costs, is just and reasonable and hence confirmed. The compensation now determined on appeal is Rs.20,55,000/-. Therefore, there shall be a reduction of compensation by Rs.2,50,000/-.

20. In M.C.O.P.No.2131/2010, the Tribunal has awarded Rs.2,00,000/-, under the head attendant charges, which in our considered view, is excessive and the same requires reduction. Considering the nature of injury sustained by the injured, we deem it fit to reduce the same to Rs.50,000/-. Compensation, awarded under other heads, interest awarded and costs, is just and reasonable and hence confirmed. The compensation now determined on appeal is Rs.26,09,000/-. Therefore, there shall be a reduction of compensation by Rs.1,50,000/-.

21. Learned counsel for the appellant/insurance company submitted that the appellant/insurance company has deposited Rs.10,00,000/- each, in both the MCOPs. Hence, we direct the appellant/National Insurance Company to deposit the balance amount with interest at the rate of 7.5% to the credit of MCOP Nos.2130/2010 and 2131/2010, within a period of four weeks from the date of receipt of a copy of this judgment. We further hold that interest component will not be applicable for future expenses for artificial limb. Respondents 1 and 2 in the appeal/claimant in each appeal, is permitted to withdraw, after making necessary applications before the Tribunal.

Both the appeals are allowed in part, to the extent indicated above. However, there shall be no order as to costs in the appeals. Consequently, the connected civil miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

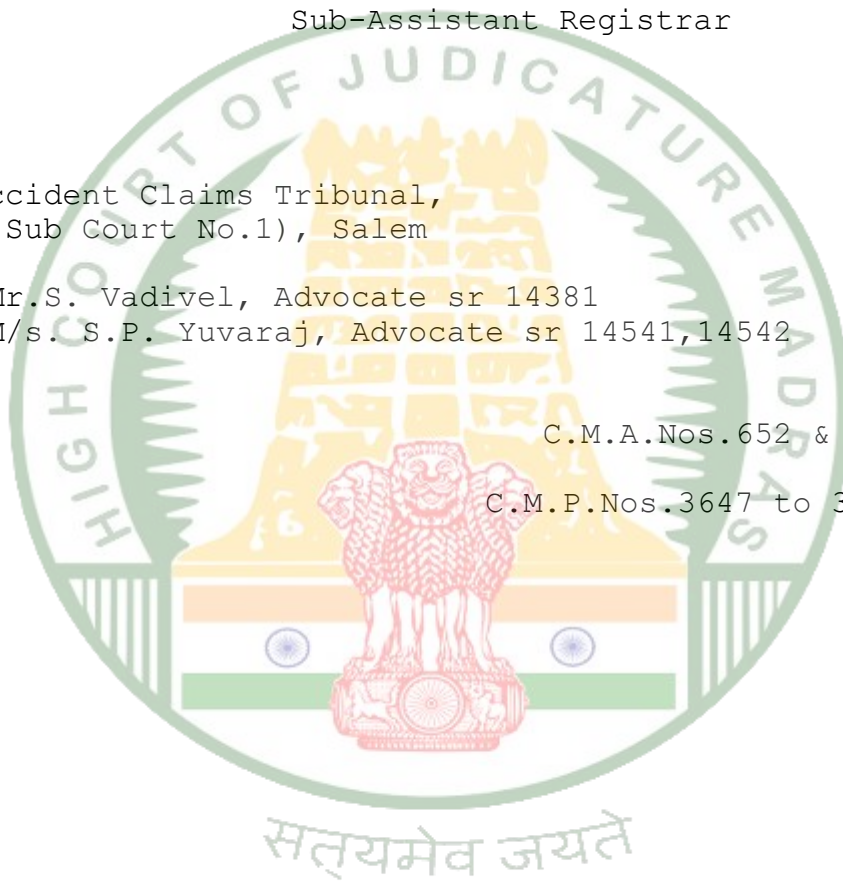
To
Motor Accident Claims Tribunal,
(Special Sub Court No.1), Salem

+1 CC to Mr.S. Vadivel, Advocate sr 14381

+2 CC to M/s. S.P. Yuvaraj, Advocate sr 14541,14542

C.M.A.Nos.652 & 653 of 2017
and
C.M.P.Nos.3647 to 3649 of 2017

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