

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2017

CORAM

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.708 OF 2014 &
M.P.No.1 of 2014

The Manager
IFFCO - TOKIO
General Insurance Company Ltd.,
Chennai 600 029. ... Appellant / 2nd Respondent

-vs-

1.Thankachan ...1st Respondent / Claimant

2.S.Cheeranjivi ...2nd Respondent / 1st Respondent

Civil Miscellaneous Appeal filed under section 173 of
Motor Vehicles Act, 1988, against the Decree and Judgment made
in M.C.O.P.No.302 of 2008, dated 06.02.2013, on the file of the
Motor Accidents Claims Tribunal (Sub Court), Thiruvallur.

For Appellant : Ms.K.Saraswathi

For Respondents: Mrs.Selvi Rajesh-R1

J U D G E M E N T

S.M.SUBRAMANIAM, J.

The second respondent in M.C.O.P.No.302 of 2008, on
the file of the Motor Accidents Claims Tribunal (Sub Court),
Thiruvallur, is the appellant in the above Appeal.

2(a) The first respondent herein suffered multiple serious
injuries due to the unfortunate accident occurred on 08.08.2007
at about 18.30 hours, when he was riding a two wheeler viz.
Bajaj Chatak Scooter bearing Registration NO.TN.22-Z-2946,

proceeding towards from Avadi to Kovilpathagai, HVF Road near ATS Road Junction and at the same time the second respondent's vehicle Auto bearing Registration No.TN.02-V-3411, was driven by the driver in a rash and negligent manner endangering public safety, dashed the motor cycle driven by the first respondent/claimant.

(b) In respect of the injury sustained, the first respondent filed M.C.O.P.No.302 of 2008, claiming total compensation of Rs.15 lakhs. However, the Claims Tribunal considering the facts and circumstances of the case, partly allowed the Claim Petition preferred by the first respondent/claimant and directed the respondents jointly and severally to pay compensation/award amount of Rs.11,43,000/- with interest at 7.5% p.a., to the first respondent/claimant, as total compensation. Questioning the quantum of compensation awarded by the Tribunal, the appellant-Insurance Company, preferred this Appeal.

3.To prove the case, the first respondent/claimant, examined P.Ws.1 to 4 and marked Exs.P-1 to P-17. On the side of the respondents, they have examined the Manager of ITGI, as R.W.1 and examined one Purushothaman as R.W.2. They have also marked Exs. R-1 to R6.

4.The learned counsel appearing for the first respondent/claimant submitted that the first respondent/claimant was examined as P.W.1 and the copy of the F.I.R. was marked as Ex.P1. The F.I.R. shows that the complaint was preferred by the daughter of the first respondent/claimant on the very same day of the accident against the driver of the Auto bearing Registration No.TN.02-V-3411. The complainant was a pillion rider in the two wheeler, driven by her father, the first respondent/ claimant herein. Therefore, she was an eye witness to the accident and deposed that the Auto was driven in a great speed far behind their two wheeler and dashed against the back side of the two wheeler, which resulted in the accident and her father fell down from the two wheeler and sustained grievous injuries.

5.The learned counsel for the first respondent/claimant would submit that the appellant-Insurance Company has no material to discredit the cogent deposition of the daughter of the first respondent/claimant and further Ex.P-2, is the certified copy of the charge-sheet, which shows that the Auto Driver had driven the Auto in a great speed and dashed against the two wheeler of the first respondent/claimant. The Auto Driver/accused in C.C.No.377 of 2008, admitted his guilt with regard to the charges framed against him and paid the fine amount which was marked as Ex.P5. The certified copy of the

rough sketch marked in the criminal case also corroborates with the contents of the F.I.R. Therefore, it is submitted that the Tribunal has come to the conclusion that the Auto Driver has committed the act of negligence, resulted in the accident and therefore, he was held responsible for the cause of accident and consequently the appellant-Insurance Company is liable to pay the compensation to the first respondent/claimant.

6. With regard to the validity of the Driving Licence of the Auto Driver, it is submitted by the learned counsel that the first respondent/claimant has marked the Driving Licence as Ex.P7. That apart, the first respondent/claimant summoned the Junior Assistant of R.T.O., Anna Nagar (North West), and the said person was examined as R.W.1, who in turn deposed that the Driver of the Auto had a valid Driving Licence during the relevant point of time. Therefore, the Tribunal in its findings recorded that there was no suspicion or ambiguity with regard to the existence of valid Driving Licence of Mr. Babu, Auto Driver, more specifically, at the time of accident. Ex.P17, bears the endorsement to that effect and P.W.4 also deposed cogently. Hence, the Tribunal rightly came to the conclusion that it is not a case of violation of policy condition and therefore the question of ordering 'pay and recover' does not arise at all.

7(i) Further, with regard to the treatment undergone by the first respondent/claimant, the learned counsel submitted that as per Ex.A7, the Discharge Summary issued by Sri Ramachandra Medical Care Centre, they have diagnosed the following injuries sustained by the first respondent/claimant:

Final Diagnosis:

Right Frontoparietal Subdural Hemorrhage
Left Frontal Thin Dural Hemorrhage with underlying contusion
Cerebral Edema
Multiple Rib fractures on right side with consolidation
of both lung fields

and the CT Scan brain, which was taken 10.08.2007, revealed that there was hemorrhagic contusion in the right temporoparietal region and in the left frontal region. Bilateral subdural hemorrhage, subarachnoid hemorrhage. Pneumocephalus, diffuse cerebral edema. Multiple fracture involving petrous with squamous part of right temporal bone and right parietal bone.

(ii) Further, it is submitted that the first respondent/claimant has also taken treatment at MIOT Hospital and the said Hospital issued Discharge Summary, which was marked as Ex.P8, wherein they have stated about the treatment given to

the first respondent/claimant in the following words:

TREATMENT GIVEN:

He was evaluated in detail by Dr.Raju, Pulmonologist and treated with Nebulisation and Osxygen Inhalation.

(iii)Ex.P10 is the Discharge Summary issued to the first respondent/claimant by Sri Ramachandra Medical Centre and he was admitted as an inpatient on 14.03.2008, discharged on 18.3.2008 and took treatment for cranioplasty. Ex.P9, is also the Discharge Summary issued to the first respondent/claimant by the very same Hospital, admitted first respondent/claimant as an inpatient on 09.04.2008, undergone cranioplasty on 15.04.2008 and discharged on 25.04.2008.

(iv)The Doctor-P.W.2, who assessed the first respondent/claimant, issued a Disability Certificate, which was marked as Ex.P13, fixing 90% as partial permanent disability.

8.The learned counsel for the appellant contested the matter mainly on the ground that the owner of the auto/2nd respondent, remained exparte before the Claims Tribunal and the Appellant-Insurance Company resisted the claim by denying the negligence, more specifically on the part of the Driver of the Auto. The appellant-Insurance Company has stated that the first respondent/claimant, while driving the two wheeler was not in possession of a valid driving licence and further the Auto Driver was also not in possession of a valid Driving Licence and badge endorsement on the date of the accident. That apart, the appellant-Insurance Company resisted the claim on the ground that the Medical Bills submitted by the first respondent/claimant are exorbitant and cannot be considered in its entirety.

9.The learned counsel appearing for the first respondent/claimant vehemently opposed the contentions of the learned counsel appearing for the appellant by stating that the first respondent was working as Fitter-HS in Heavy Vehicles Factory, Avadi, and was earning the salary of Rs.17,401/- per month, at the time of accident and was leading a standard life. The learned counsel would further submit that treatments were taken for the first respondent/claimant, both at Miot Hospital and also at Sri.Ramachandra Medical Centre. Further, the medical bills produced before the Claims Tribunal by the first respondent/claimant were the actual Medical Bills and the same were not exorbitant.

10.Further, it is contended that the Doctor who was

examined as P.W.2, assessed the partial permanent disability of the first respondent at 90% and the disability certificate was marked as Ex.P13.

11.We carefully heard the submissions made by the learned counsel appearing on either side and also perused the material available on record.

12.The learned counsel for the appellant seeks to attack the Award in respect of quantum of compensation awarded by the Claims Tribunal, the present Appeal has to be examined in that perspective only. Undoubtedly, the first respondent sustained grievous injuries, including that of (i) Right Frontoparietal subdural hemorrhage (ii) Left Frontal sub Dural Hemorrhage (ii) Cerebral Edema (iv) Multiple rib fractures on right side with consolidation of both lung fields and (v) Disfigurement of the head and blood in all over the body. Further, Ex.P8 is the Discharge Summary issued by the Miot Hospital, which shows that the first respondent/claimant was admitted as an inpatient on 28.12.2007 and discharged on 31.12.2007 and he was treated with Nebulisation and Oxygen inhalation. Ex.P9 is the discharge summary, issued by Sri Ramachandra Medical Centre, wherein it was stated that the first respondent/claimant was admitted as an inpatient from 09.04.2008 to 25.04.2008 and undergone cranioplasty on 15.4.2008. Ex.P10 is the Discharge Summary issued by Sri.Ramachandra Medical Centre and he was admitted as an inpatient from 14.3.2008 and discharged on 18.3.2008, and took treatment for Cranioplasty.

13.The disability certificate was marked as Ex.P13 and the Doctor who was examined as P.W.2, assessed the partial permanent disability of the first respondent at 90%. The first respondent had also undergone intensive medical treatment including high-tech surgeries for his head injury. However, the Tribunal reduced the percentage of disability from 90% to 60% and accordingly awarded a sum of Rs.1,000/- per 1% of disability, towards the loss of earning capacity and accordingly awarded Rs.60,000/-. In respect of the Medical Bills, the Tribunal had accepted the medical expenses and the other medical charges sustained by the first respondent/claimant and accordingly, awarded the same. Therefore, this Court is of the firm view that the Tribunal was right in awarding the compensation based on Ex.P12-Medical Bills.

14.That apart, the first respondent-claimant sustained head injury causing partial permanent disability and he had also undergone surgeries for the same. On a perusal of the nature of the head injury sustained by the first respondent/claimant and the frequent treatments taken by the first respondent as

inpatient shows that the medical bill amount of Rs.10,30,000/- can never be exorbitant. Further, the first respondent had taken treatment in Sri.Ramachandra Medical Centre and at Miot Hospital and it is needless to state that it is highly expensive to take treatment in such reputed hospitals. Since the first respondent sustained head injuries, one can expect that the injured should be hospitalized, where adequate medical and infrastructure facilities are available. Therefore, considering the nature of injuries sustained by the first respondent/claimant, the arguments advanced by the learned counsel for the appellant deserve no consideration, as they lack merit and this Court is of the view that the Tribunal has not committed any error in awarding Rs.10,30,000/- towards the medical bills, more specifically, under Ex.P12.

15. In support of the arguments advanced by the learned counsel for the appellant that the quantum of compensation awarded by the Claims Tribunal is excessive, this Court is inclined to cite relevant paras from the judgment of the Hon'ble Supreme Court in the case of (Rajesh and others Vs. Rajbir Singh and others) reported in (2013) 2 TN MAC 55 (SC) ; -

"3. In Nagappa v. Gurudayal Singh and Others, 2003(1) R.C.R.(Civil) 258 , it has been held by this Court that the main guiding principle for determining the compensation is that it must be just. It has also been held that the award must be reasonable. Some of the relevant parameters in that regard arise for consideration in this case.

7. The expression 'just compensation' has been explained in Sarla Verma's case (supra), holding that the compensation awarded by a Tribunal does not become just compensation merely because the Tribunal considered it to be just. 'Just Compensation' is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well-settled principles relating to award of compensation. After surveying almost all the previous decisions, the Court almost standardised the norms for the assessment of damages in Motor Accident Claims.

15. Underlying principle discussed in the above decisions is with regard to the duty of the Court to fix a just compensation and it has now

become settled law that the Court should not succumb to niceties or technicalities, in such matters. Attempt of the Court should be to equate, as far as possible, the misery on account of the accident with the compensation so that the injured/the dependants should not face the vagaries of life on account of the discontinuance of the income earned by the victim.

20. The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santhosh Devi (supra). We may therefore, revisit the practice of awarding compensation under conventional heads: loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of L 2,500/- to L 10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In Sarla Verma's case (supra), it was held that compensation for loss of consortium should be in the range of L 5,000/- to L 10,000/-. In legal parlance, 'consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the

compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium.

16. With regard to the just compensation, the followings judgments are relevant :-

(i) In Mr. R.D. Hattangadi vs M/S Pest Control (India) Pvt. Ltd. Reported in AIR (1955) S.C. 755, the Hon'ble Apex Court held as follows:-

" In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards. "

(ii) In Common Cause, A Registered vs Union Of India, reported in (1999) 6 SC.C. 667, the Hon'ble Supreme Court held as follows:-

"The object of an award of damages is to give the plaintiff compensation for damage, loss or injury he has suffered. The elements of damage recognised by law are divisible into two main groups : pecuniary and non-pecuniary. While the pecuniary loss is capable of being arithmetically worked out, the non-pecuniary loss is not so calculable. Non-pecuniary loss is compensated in terms of money, not as a substitute or replacement for other money, but as a substitute, what McGregor says, is generally more important than money: it is the best that a court can do. In Re: The Medianna (1900) A.C. 1300, Lord Halsbury L.C. observed as under:

"How is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by arithmetical calculation establish what is the exact sum of money which would represent such a thing

as the pain and suffering which a person has undergone by reason of an accident...But nevertheless the law recognises that as a topic upon which damages may be given."

17. In yet another decision in Divisional Controller, Ksrtc vs Mahadeva Shetty And Anr reported in (2003) 7 S.C.C. 197, at para No.17, the Hon'ble Supreme Court held as under :-

"Broadly speaking, in the case of death basis of compensation is loss of pecuniary benefits to the dependants of the deceased which includes pecuniary loss, expenses, etc. and loss to the estate. Object is to mitigate hardship that has been caused to the legal representatives due to sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring value of human life and measure of damage cannot be arrived at by precise mathematical calculation; but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor it should be a source of profit of the person in whose favour it is awarded."

Further, in paragraph No.15 of the said judgment, it is held as follows:-

"15.....Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested

on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non- arbitrary. If it is not so it cannot be just."

18.The Tribunal considering the fact that the first respondent/claimant was working as Fitter-HS in Heavy Vehicles Factory, Avadi, and was earning the salary of Rs.17,401/- per month and also considering other aspects, awarded a total compensation of Rs.11,43,000/-. Therefore, in all respects, the findings of the Tribunal are candid and convincing.

19.Therefore, we are of the opinion that there is no infirmity in the quantum of compensation awarded by the Claims Tribunal and we are safely considering the same as a just compensation in accordance with the established principles laid down by this Court and the Hon'ble Apex Court. Consequently, we do not find any merit in this Appeal.

20.In the result, C.M.A.No.708 of 2014 is dismissed as devoid of merit and the award passed in M.C.O.P.No.302 of 2008, dated 06.02.2013, by the Motor Accidents Claims Tribunal (Sub Court), Thiruvallur, is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpa

To

1.The learned Judge,
Motor Accidents Claims Tribunal (Sub Court),
Thiruvallur.

+1cc to Mr.Krishnamoorthy, Advocate, S.R.No.16130
+2cc to Mr.Selvi Rajesh, Advocate, S.R.No.15806

C.M.A.No.708 OF 2014

TM(CO)
RS(13/04/2017)