IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 25.11.2016

Judgment Pronounced on : 03.11.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.Nos.2470 & 2471 of 2009
and MP Nos.1 & 1 of 2009

The United India Insurance Co. Ltd.,
No.38, Anna Salai, Chennai- 2. ... Appellant in both CMAs

Vs.

1.A.Suresh ... 1st Respondent in CMA.No.2470 of 2009
2.B.Komala ... 1st Respondent in CMA.No.2471 of 2009
3.N.Balachandar ... 2nd Respondent in CMA.No.2471 of 2009
4.T.Ganesan ... 2nd Respondent in CMA.No.2470 of 2009 and 3rd Respondent in CMA.No.2471 of 2009

[T.Ganesan remained Ex-parte before the trial Court]

Common Prayer : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 14.07.2008 made in MACT.OP.Nos.5526 of 2003 and 5558 of 2003 respectively on the file of the Motor Accidents Claims Tribunal, (V Judge, Court of Small Causes), Chennai.

In both CMAs:
For Appellants : Mr.M.Krishnamoorthy

In CMA.No.2470 of 2009:
For Respondents : Mr.R.Kalaiarasan
for N.M.Muthuraj [R1]
R2 - No appearance

In CMA.No.2471 of 2009:
For Respondents : Mr.R.Kalaiarasan
for N.M.Muthuraj [R1 & R2]
R3 - No appearance

JUDGMENT

One Naresh, an engineering graduate was riding his motor cycle with his friend Suresh as pillion on 02.7.2003 at Jawaharlal Nehru Road, Ashok Nagar, Chennai, and his travel was cut-short, when a tanker lorry owned by Ganesan and insured with the appellant dashed against the motorcycle, killing its rider

Naresh and grievously injured the pillion rider Suresh. For the injuries suffered by him, Suresh preferred a claim for Rs.17.0 lakhs as compensation in his MCOP.5526/2003, whereas parents of Naresh moved the Tribunal in MCOP.5558/2003 with a claim of Rs.25,00,000/-. Both the petitions were tried together.

2. For the injuries suffered by Suresh, he was awarded Rs.10,07,000/- and for the death of Naresh, his parents were awarded Rs.14,15,000/- as compensation. The liability was mulcted jointly and severally on the owner of the offending lorry as well as its insurer, the appellant herein. There is also a direction that the sum awarded would carry an interest at 7.5% per annum.

3. Challenging the quantum of compensation awarded as excessive, the insuance company of the lorry has preferred these two appeals. It essentially questioned what it perceives as irrationality in fixing the monthly income of the victim.

4. CMA. No.2270 of 2009 (MCOP No.5526 of 2003):
This pertains to the injury suffered by Suresh, the pillion rider. The break-up details of the award of compensation awarded to Suresh in MCOP.No.5526 of 2003 reads as under:

Heads of compensation	Amount Awarded (Rs.)
Loss of earning from 02.7.2003 to 01.7.2004	75,000.00
Transport charges	20,000.00
Extra nourishment	20,000.00
Damages to clothes	2,000.00
Medical Expenses & future medical expenses	1,00,000.00
Mental Agony	1,50,000.00
Attendant charges	50,000.00
Future transport charges	40,000.00
Pain and suffering	1,50,000.00
Permanent disability	50,000.00
Loss of earning power	3,50,000.00
Total :	10,07,000.00

5. The learned counsel for the appellant argued that the compensation awarded by the Tribunal does not reflect a rational nexus to the injuries suffered and their consequences. On all heads of non-pecuniary damages, the Tribunal has shown an undue

generosity in awarding compensation. So far as future transport expenses is concerned, it has granted Rs.40,000/-when P.W.3, the doctor who assessed the disability of the claimant has not indicated any need for future treatment anywhere in the testimony. Again the Tribunal has awarded for pain and suffering as well as for mental agony separately and in each of the heads it has awarded Rs.1,50,000/-. So far as loss of earning power is concerned, the Tribunal has not stated the basis for arriving at the said sum. It is not made clear whether it has applied the multiplier method or merely granted a lumpsum amount as compensation as if it is some sort of exgratia paid.

6. Per contra, the learned counsel for the first respondent (in CMA.No.2470 of 2009) submitted that on the head of msedical expenses alone, the respondent has produced Exts.P-3, P-4, P-6 and P-8 medical bills that totals to Rs.1,19,885.40 However, the Tribunal has discounted some amount and reduced it to a mere Rs.1,00,000/- and also clubbed the future medical expenses to it. On the head of mental agony, the Tribunal has taken into consideration the disfiguration of his left arm to a substantial part and this cannot be related to pain and suffering. Everyday when the respondent stands before the mirror and looks at his ugly, if not horrifying left hand, he is sure to lose confidence to face the public. So far as transport is concerned, admittedly, he was under prolonged treatment and could not attend the office for about 18 months and it will be too difficult to meticulously preserve all the bills paid for commutation from home to hospital and back. On the head of loss of earning power, the respondent/claimant was barely 22 years when the accident occurred. He was earning Rs.4,500/- per mensum and lost a great deal of prospects of a bright career with the effective loss of one of his hands. The P.W.3 has assessed the permanent disability at 50% and given the income that he had been making as per Ext.P11 salary certificate and applying 18 as multiplier which is appropriate to his age, the loss of future earning capacity would be [Rs.4500/- x 12 x 18 x 50%] Rs.4,86,000/-. However, the Tribunal has granted only Rs.3,50,000/-.

7. Weighing the rival contentions, this Court finds that the arguments advanced by the learned counsel for the appellant has been reasonably met. First, Suresh as P.W.1 has produced the medical bills and salary certificate and there has not been any pointed cross-examination challenging their genuineness. The only focus in the cross-examination was about defending the negligence of the driver of the lorry and not about the quantum of compensation sought. The victim is a B.B.A graduate and a monthly salary of Rs.4,500/- can never be termed excessive by any standards. Therefore, even de hors Ext.P-11, it must be

held that Rs.4,500/- p.m. as salary for a BBA graduate is just and reasonable. The compensation awarded on this head by the Tribunal Rs.3,50,000/- and in terms of percentage of disability, it may work about to 36% functional disability. On wieghing the evidence, this Court considers that the extent of functional disability at 40% would be ideal and accordingly the compensation payable on the head of loss of earning capacity is (Rs.4500 x 12 x 18 x 40%) Rs.3,88,800/- and rounded to Rs.3,90,000/-.

8. So far as the compensation awarded on the head of mental agony is concerned, admittedly, claimant's left hand was smashed in the accident and it looks ugly. Will a young man of 22 years have the same level of confidence to face the world when one of his prime part of the body does not help attracting people? It then requires enormous amount of self motivation to acquire his level of confidence atleast partially back and this effort was necessitated by the negligence of the driver of the insured. Necessarily this has to be compensated. Disfiguration per se is another head and this too has to be compensated. Clubbing the both, the compensation paid on this head can be justly fixed at 50,000/-. On the head of pain and suffering, the Tribunal has awarded Rs.1,50,000 but on this head, this Court considers that Rs.1,00,000/- for hospitalisation of 34 days would be appropriate. So far as medical bills are concerned, already for no valid reason, the Tribunal has reduced about Rs.19,885/-, and this has be granted and rounded off to Rs.1.20 lakhs. Towards furture medical expenses Rs.25,000/- may have to be granted. So far as future transport expenses, this Court considers that this may not be necessary. Compensation awarded for attendant charges too is reduced to Rs.20,000/-. In all compensation to which the claimant is entiteld to is Rs.8,72,000/-

9. CMA.No.2471 of 2009 (MCOP.No.5558 of 2003):
This relates to the death of the rider of the motor cycle, Naresh. The total compensation awarded is Rs.14,15,000.00 and the break-up runs as below :

Heads of compensation	Amount Awarded (Rs.)
Towards pecuniary loss (loss of dependency)	13,20,000.00
Funeral expenses	10,000.00
Loss of love and affection	35,000.00
Loss of expectation to life (future prospects)	50,000.00
Total :	14,15,000.00

10. The learned counsel for the appellant was chiefly concerned about the compensation awarded on three heads namely loss of expectation of life and compensation awarded towards loss of dependency to the family. The learned counsel submitted that the loss of expectation of life will not accrue to the estate of the vicitm. So far as the compensation awarded on the head of loss of dependency or support to the family is concerned, the Tribunal has fixed the monthly income of the deceased notionally at Rs. 15,000/-, and for someone who is only an Engineering College student this amount, going by 2003 standards, is excessive.

11. The learned counsel for the respondents 1 & 2 (in CMA.No.2471 of 2009) contended that the victim was good in sports, that Ext.P-21 is a sports certificate supports it, that he would have had greater opportunity to get into lucarative career if he had been allowed to live. Further, the Tribunal has fixed the multiplier as 11, when as per Sarla Verma dictim read with Amrit Bhanu Shali & others Vs.National Insurance Co. Ltd.,& Others, it should be 18. Besides, he should also be entitled to a 50% enhancement towards future career prospects.

12. Even if this Court were to consider that the objection of the appellant as to the potential income of the deceased fixed by the Tribunal at Rs.15,000/- a month has a merit, and if his monthly income is reckoned at Rs.10,000/- only, after providing 1/3rd towards his personal expenses, the balance which he would have given his family would be about Rs.6,650/-. At 18 as multiplier, the compensation payable would have been (Rs.6,650 x 12 x 18) Rs.14,36,400/-. However, the Tribunal has awarded only Rs.13,20,000/- Therefore this Court do not find anything irregular in the compensation awarded on this head. On other heads too, this court finds the compensation awarded is in order.

13. To conclude, I find no meirit in the contention of the appellant and the appeal in CMA.No.2470 of 2009 is partially allowed and the compensation awarded by the Tribunal is reduced from 10,07,000/- to Rs.8,72,000/- and the appellant is directed to deposit the revised award amount of Rs.8,72,000/- within a period of six weeks from the date of receipt of a copy of this order, if not already deposited and the claimant is permitted to withdraw the same forthwith. In case, the said award of the Tribunal has already been deposited into the MACT Court, then the appellant is permitted to withdraw the excess amount lying in Court deposit to that of the revised amount. In so far as the appeal in CMA.No.2471 of 2009 is concerned, the appeal is dismissed and the appellant is directed to deposit the entire award amount that has been awarded by the Tribunal along with accrued interest, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this

order, whereupon the claimants are permitted to withdraw their respective shares in the ratio as it was done by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To:

1. The Motor Accidents Claims Tribunal
   Court of Small Causes No.V,
   Chennai.

2. The Record Keeper,
   VR Section,
   High Court, Madras.

+2ccs to N.M.Muthuraj, Advocate, S.R.No.78181 & 78182
+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.78072

CMA.No.2470 & 2471 of 2009

VGII(CO)
CS/05/02/2018