

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on: 29.11.2016

Judgment Pronounced on: 04.08.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.3130 of 2009 & MP.No.1 of 2009
and Cros.Obj.No.158 of 2010

CMA.No.3130 of 2009 :

National Insurance Co., Ltd.,
No.40, Periyar Veethi,
Tuticorin.

.. Appellant

Vs.

1. Selvaraj,

2. M/s.Sri Shanmuga Ware Housing System (P) Ltd.,
408/3, Bye Pass Road,
Madathur, Tuticorin.

3. The Managing Director,
Tamil Nadu State Transport Corporation,
(Madurai) Division No.IV,
Bye Pass Road, Madurai.

.. Respondents

Cros.Obj, No.158 of 2010 :

Selvaraj

.. Cross Objector/1st Respondent in CMA

Vs.

1.National Insurance Co., Ltd.,
No.40, Periyar Veethi,
Tuticorin.

2.M/s.Sri Shanmuga Ware Housing System (P) Ltd.,
408/3, Bye Pass Road,
Madathur, Tuticorin.

3. The Managing Director,
Tamil Nadu State Transport Corporation,
(Madurai) Division No.IV,
Bye Pass Road, Madurai.

.. Respondents

Prayer in CMA.No.3130 of 2009 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 22.07.2009, made in M.A.C.T.O.P.No.228 of 2007 on the file of Motor Accident Claims Tribunal cum Additional District Court, (Fast Track Court No.4), Coimbatore at Tiruppur.

Prayer in Cros.Obj No.158 of 2010 : Cross Objection filed under Order 41 Rule 22 of CPC to set aside the order and decree dated 22.07.2009 made in MCOP.No.228 of 2007, on the file of the Motor Accident Claims Tribunal/Fast Track Court No.IV at Tiruppur and to enhance the compensation amount claimed by the cross-objector / 1st respondent herein with interest and costs.

In CMA.No.3130 of 2009:

For Appellant : Mr.S.Vadivel
For R1 : Mr.Ma.Pa.Thangavel
For RR2 & 3 : No Appearance

In Cros.Obj.No.158 of 2010:

For Cross Objector : Mr.Ma.Pa.Thangavel
For R1 : Mr.S.Vadivel
For RR2 & 3 : No Appearance

COMMON JUDGMENT

This appeal is preferred by the second respondent in M.C.O.P.No. 228 of 2007 on the file of Motor Accident Claims Tribunal cum Additional District Court, (Fast Track Court No.4), Coimbatore, challenging both the quantum of compensation as well as liability to pay it.

2.1. The claimant is stated to be self-employed and engaged in steel-fabrication for his avocation, aged 47 years at the time of accident, while travelling in a bus bearing Registration No.TN 58 N 0425 belonging to the third respondent suffered injuries, when a lorry bearing No.TN 69 F 8007 belonging to the second respondent and insured with the appellant collided with it. In the said accident, the appellant suffered fracture to his right upper arm and right elbow. The claimant approached the Tribunal with a claim of Rs.15,00,000/-.

2.2. The claimant was stated to be earning Rs.10,000/- per month at the relevant time when the accident took place. PW-3, the doctor, who examined him has assessed his permanent

disability at 74%.

3. Passing an award for Rs.9,00,703/- payable with interest at 7.5% per annum, the Tribunal held:

- So far as negligence is concerned, the Tribunal has entered a finding that the lorry driver's negligence alone had caused the accident and accordingly held that both the second respondent, the owner of the lorry, and the appellant with whom the lorry was insured were jointly and severally liable for the payment of compensation.
- On the head of loss of future earning power, the Tribunal arrived at the compensation payable at Rs.4,84,380/- by fixing a notional monthly income of Rs.4,500/-, applied a multiplier of 13 and reduced it to 69% which it reckoned as the permanent disability that the claimant had suffered. The compensation awarded on various heads of pecuniary and non-pecuniary heads are tabulated below:

Heads	Amount Awarded (Rs.)
Loss of future earning power	4,84,380.00
Pain and sufferings	15,000.00
Extra Nourishment	10,000.00
Transportation	3,800.00
Damage to clothes	200.00
Medical Expenses	3,87,323.00
Total	9,00,703.00

4. While, appellant challenges this award (a) regarding fixing the liability entirely on the lorry and (b) the quantum of compensation more particularly that awarded on the head of loss of earning power and excess claim of medical expenditure, the claimant has come forward with the cross-objection No.158 of 2010 seeking enhancement of compensation.

5.1 The learned counsel for the appellant submitted that the accident had taken place at about of the middle of the road involving vehicles coming from opposite directions and in fitness of things the Tribunal should have held that it was a case of contributory negligence and should not have let itself guided solely by the FIR where the driver of the lorry was stated to be a party in negligence. Secondly, at the relevant time when the accident took place the bus in which the claimant was a passenger had no permit to ply along the route where the

accident took place, and this was established by the evidence of R.W.1, an official from the office Transport Commissioner, who the Insurance Company examined. Thirdly, when one of the vehicle involved in the accident is jointly in negligence with the other vehicle of which alone the appellant is a insurer the entire liability cannot be fastened on it.

5.2. On the head of quantum, the learned counsel submitted that the Tribunal should have relied on the the scheduled percentage of disability under the Workmen Compensation Act, and if so assessed the functional disability determined at 69% is on the higher side. Second, in Ex.P-7 series supporting medical expenses, Item 1 for Rs.1,32,950/- is repeated again as Item 43. If so deducted the amount awardable on the head of the medical expenses must be reduced to Rs.2,54,373/-.

6. Per contra, the learned counsel for the claimant contended that given the nature of injuries, the Tribunal omitted to assess the extent of permanent injury suffered by the claimant in the context of functional disability that he has suffered by factoring in the nature of his avocation. If it was so done, it should have quantified the extent of permanent disability at 100%. Second, the Tribunal also had arbitrarily fixed the notional income of the claimant at Rs.4,500/- p.m., when in fitness of things should have fixed at Rs.10,000/- p.m. Third, the Tribunal has not adequately appreciated the fact that the claimant had undergone as many as six surgeries followed by further follow-ups, but on the head of pain and suffering the Tribunal has granted a paltry Rs. 15,000/- as compensation. Similarly the award of Rs.3,800/- for transportation is too unrealistic and it too required a just enhancement.

On contributory negligence & liability:

7. In the counter filed by the second respondent, the driver of the bus was alleged to be entirely negligent in causing the accident. This is diluted now when the appellant attempts to attribute contributory negligence on the part of the driver of the bus. In aid of this argument, the appellant relies on Ext.B2, the rough sketch prepared by the investigating agency while investigating into the criminal angle of the accident. There are two aspects that are required to be made clear: (a) From the claimant's point of view it is a case of composite negligence as he was only a passenger in the bus and was not a driver; (b) That a rough sketch prepared during investigation of a criminal case does not carry with it proof of its contents and it has to be independently proved. At any rate, the line of cross examination of P.W.1, the only witness on both sides to speak about the accident, ignored the very point that the appellant now contends; (c) That the bus was plying without a

permit to travel along the route in which the accident took place is in essence a distraction from the core issue, for the case is one of composite negligence and the claimant is a passenger and not the driver of the bus, nor the claim is made against the insurer of the bus. For the above said reasons, this Court finds no merit in the contention of the appellant on this issue and accordingly the same is rejected and the finding of the Tribunal is confirmed.

On quantum of compensation

8. At the outset it must be observed that in the counter of the second respondent/appellant, to deny compensation to the victim of the accident has gone to the extent of alleging that the claimant has suffered injuries not in the accident that he alleged but elsewhere. The implication is that the claim is a false claim. Now, has it been able to prove that there was no such accident as alleged, or even remotely able to establish that the claimant might have suffered injuries to his person on occasions other than the accident? It has not. It has not even attempted to do it. Appellant must understand that it is a nationalised insurance company and that it owes a duty to the citizen of this country to be fair in all circumstances. To insult a victim of a road accident, whose future was caused for no fault of his, with allegation as wild as the one it invented is plain human indignation. One expects greater responsibility from nationalised insurance companies when it defends a claim before the Tribunal.

9. On quantum, one aspect can be decided straight away: That a sum of Rs.1,32,950 has been claimed twice and has also been awarded twice. This double claim must be set right and this sum should be deducted. Accordingly, the amount awardable on the head of medical expenses is corrected to (Rs.3,87,323 - Rs.1,32,950) Rs.2,54,373/-.

10. Turning to the prominent head of compensation viz., loss of earning capacity, the Tribunal on the basis of evidence before it has reckoned the disability of the claimant as a functional disability and estimated it at 69% as against 74% as determined by P.W.3. Reckoning his monthly income at Rs.4,500/- and adopting 13 as appropriate multiplier, it assessed the compensation payable at [Rs.4,500x12x13x69%] Rs.4,84,380/- It justified his assessment on the basis of the evidence of doctor, P.W.2, who has deposed that the claimant has suffered crushed injury on his right hand, right from his right shoulder, that his humerus bone and muscle have been crushed and that his humerus bone was broken into several pieces and there were fracture of elbow and his right ulna, that both his elbow as well as the broken ulna have malunited. In the result, hand looked absolutely deformed and his right hand could not be used

for any purpose. Now, it is not disputed that the appellant was not engaged in the business of steel fabrication. It is next to impossible for someone with the kind of injuries that he had suffered to continue engage in the same avocation in which he was engaged before the accident, and given a fact that he was 47 years old, it would also be extremely difficult for him to shift to any other avocation and engage in the same lucratively. If so viewed, the argument of appellant seems to carry little merit. But, on the contrary the claimant has been able to impress upon the Court of just need to interfere with the award of this kind.

11. This Court, taking into consideration the nature of injury suffered fixes the functional disability of the victim at 90%. As to the notional monthly income as has been fixed by the Tribunal, I do not find the same to be excessive. Accordingly, the compensation payable on this head is [Rs.4,500x12x13x90%] Rs.6,31,800/-. For pain and suffering, I enhance it to Rs.1,00,000/-; and for disfigurement I grant Rs.50,000/-. On the other heads the amount awarded by the Tribunal is confirmed. The compensation now determined by this Court is tabulated below :

Heads	Revised Amount (Rs.)
Loss of future earning power	6,31,800.00
Pain and sufferings	1,00,000.00
Extra Nourishment	10,000.00
Transportation	3,800.00
Damage to clothes	200.00
Medical Expenses	2,54,373.00
Disfigurement	50,000.00
Total	10,50,173.00

In final, the award amount determined by the Tribunal is enhanced from Rs.9,00,703/- to Rs.10,50,173/-. This is payable with interest at 7.5% per annum.

12. In the result, the appeal is dismissed and the cross-objection is partly allowed. The appellant/insurance company and the second respondent are jointly and severally liable and accordingly are directed to deposit the enhanced award of compensation along with the accrued interest, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this order and the claimant is permitted to withdraw the same forthwith. The cross-objector/claimant is

directed to pay the necessary court fee if any, for the enhanced portion of the amount. The claimant is not entitled to the interest of award during the delay period in filing the cross objection. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

kmi/ds

To:

1. The Motor Accident Claims Tribunal cum
Additional District Court,
(Fast Track Court No.4), Coimbatore at Tiruppur.

2. The Section Officer,
V.R.Section, High Court, Madras - 104.(2 copies)

+1 CC to Ms.S. Vadivel, Advocate sr 56205.

+1 CC to M/s. Ma.P. Thangavel, Advocate sr 56388.

C.M.A.No.3130 of 2009

SS(CO)
SP(17/01/2018)

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