

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A No.98 of 2010

The New India Assurance Co. Ltd.,
Motor III Party Claim Office,
No.45, Moore Street, Chennai-1. ... Appellant

Vs.

1.Mohan @ Mohanakrishnan

2.Mushtag Ahmed ... Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decreetal order made in MACTOP No.382 of 2006 dated 11.03.2008 on the file of Motor Accidents Claims Tribunal (Additional District and Sessions Judge, Fast Track Court-IV), Poonamallee.

For Appellant	:Mr.M.Krishnamoorthy
For R 1 & R2	:Mr.J.Mahalingam for R1 R2-Ex parte

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the order and decreetal order made in MACTOP No.382 of 2006 dated 11.03.2008 on the file of

Motor Accidents Claims Tribunal (Additional District and Sessions Judge, Fast Track Court-IV), Poonamallee.

2.The appellant is the second respondent and the second respondent is the owner of the vehicle in MCOP No.126 of 2009, on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge, Fast Track Court-IV), Poonamallee. The first respondent filed a claim petition against the appellant and the second respondent claiming a sum of Rs.29,57,000/- as compensation, however, the claim was restricted to Rs.20,00,000/-.

3.According to the first respondent/claimant, on 25.09.2005 at about 6.30 a.m., when the first respondent/claimant was riding his motor cycle bearing Registration No.TN-20-P-6376 at Chennai – Vellore by-pass road at Sunguvarchathiram, a mini lorry bearing Registration No.TN-45-P-4974 driven by its driver, in a rash and negligent manner, dashed against the motor cycle and caused accident. Due to the said impact, the first respondent/claimant sustained fracture in his both legs and head injury. Initially, he was admitted in Meenakshi Hospital, Kancheepuram for first-aid and subsequently, referred to Government General Hospital, Chennai

and he was admitted as in-patient for five times in different hospitals and during treatment, surgeries were done. Due to the accident, the claimant is totally incapacitated and he is unable to sit or stand and even unable to attend his natural call. The accident occurred only due to the rash and negligent driving of the driver of the mini lorry. Therefore, he claimed compensation against the second respondent.

4. According to the first respondent/claimant, he was working as Assistant Manager in Sun Lith Graphics, Porur, Chennai-116 and was earning a sum of Rs.9,500/- p.m. and claimed a sum of Rs.20,00,000/- as compensation for injuries sustained by him in the alleged accident. The second respondent remained ex-parte before the Tribunal.

5. The appellant/second respondent filed a counter statement and denied all the averments made in the claim petition and submitted that the accident took place only due to the driving of the driver of the mini lorry which is insured with the appellant/second respondent. In any event, the compensation claimed is excessive.

6.Before the Tribunal, the first respondent examined himself as P.W.1 and Dr.Saichandran was examined as P.W.2, Tmt.Jamunakumari, who is the employer of the first respondent/claimant was examined as P.W.3 and Dr.Saravanabavandandam was examined as P.W.4 and 15 documents were marked as Ex.P.1 to P.15. On the side of the appellant, no witness was examined and no document was marked.

7.The Tribunal considering the pleadings, oral and documentary evidence, came to the conclusion that the accident took place only due to the rash and negligent driving of the driver of the second respondent's vehicle, which was insured with the appellant and awarded a sum of Rs.9,30,000/- as compensation.

8.Aggrieved against the award of the Tribunal, the appellant/Insurance Company has preferred the present Civil Miscellaneous Appeal.

9.The learned counsel for the appellant submitted that the compensation awarded by the Tribunal is excessive and that the

Tribunal has erred in applying excessive multiplier '10' and the Tribunal ought to have rejected the disability assessed by doctors PW2 and PW3 at 65% and 30% and the same is excessive. He further submitted that the Tribunal has awarded the excess amount towards medical bills, physiotherapy, loss of amenities, pain and sufferings and mental agony.

10. Learned counsel for the first respondent/claimant submitted that due to the injuries sustained by the first respondent in the accident, he is unable to move without the help of others and hence, the disability was ascertained as 100%. He further submitted that he was repeatedly admitted in different hospitals and taking treatment as inpatient. The first respondent/claimant has proved his employment and income by examining the employer as well as the doctors. The Tribunal, after considering the oral and documentary evidence, had rightly awarded the compensation and hence, prayed for dismissal of the appeal.

11. I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent and perused all the materials available on record.

12. The only question to be decided in this Civil Miscellaneous Appeal is whether the compensation awarded by the Tribunal is excessive or not. According to the learned counsel for the appellant, the Tribunal has applied wrong multiplier '10' and awarded Rs.4,80,000/- towards loss of future earning capacity which is excessive. The first respondent/claimant has deposed as PW1 and examined the doctors as P.W.2 and P.W.4. He has produced the discharge summaries as well as two C.T. Scan report vide, Exs.P7 and P15 and he has also produced two disability certificates to prove his disability at 65% in respect of Ortho injury and 30% in respect of Neuro disability. The Appellant has not produced any contrary evidence to disprove the case of the first respondent/claimant. The Tribunal, taking into consideration the above facts held that the first respondent/claimant is entitled to compensation for future earning capacity. The first respondent/claimant was aged about 45 years at the time of accident. Therefore, awarding compensation for loss of earning capacity is not excessive. The first respondent/claimant has produced Ex.P8-Medical Bills, P9-Bill receipts, P10-Doctor

prescriptions and medical slips, wherein it is seen that the first respondent/claimant has spent the amount towards medical expenses and physiotherapy. Therefore, the Tribunal has awarded a sum of Rs.1,50,000/- towards medical expenses, based on the production of bills and hence, the same is confirmed. The Tribunal has awarded a sum of Rs.40,000/- each towards pain and suffering and mental agony. Considering the injuries sustained by the first respondent/claimant, the amount of Rs.40,000/- awarded by the Tribunal under the head 'Pain and Suffering' is just and proper and the same is hereby confirmed. This Court is of the view that the amount of Rs.40,000/- awarded under the head 'mental agony' is excessive and the same is hereby set aside. Except this modification, all other heads are hereby confirmed.

13. In view of the above modification, this Court modifies the award of the Tribunal by reducing the compensation, as below:-

S.No	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Loss of future earning capacity	4,80,000	4,80,000	confirmed
2.	Medical Expenses	1,50,000	1,50,000	confirmed
3.	Physiotherapy expenses	1,00,000	1,00,000	confirmed

4.	Transport for past and future	10,000	10,000	confirmed
5.	Extra nourishment	10,000	10,000	confirmed
6.	Pain and Sufferings	40,000	40,000	confirmed
7.	Mental agony	40,000	-	Set aside
	Total	9,30,000	Rs.8,90,000	By reducing a sum of Rs.40,000/-

14. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, reducing the award of the Tribunal from Rs.9,30,000/- (Rupees Nine lakhs Thirty Thousand only) to a sum of **Rs.8,90,000/-** (Rupees Eight Lakhs Ninety Thousand only) along with interest at the rate of 7.5% per annum from the date of petition till date of deposit and proportionate costs;

(ii) The first respondent/claimant is directed to submit his Savings Bank Account Detail along with the copy of his passbooks to the Tribunal **forthwith**;

(iii) The appellant/Insurance Company is directed to deposit the modified award amount along with accrued interest and costs, less the amount deposited, if any, to the credit of M.C.O.P.No.382 of 2006, on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge, Fast Track Court-IV) at Poonamallee,

within a period of **twelve weeks** from the date of receipt of a copy of this judgment;

(iv) On such deposit, the Tribunal is directed to transfer the modified award amount along with accrued interest and costs directly to the Personal Savings Bank Account Number of the first respondent/claimant, through RTGS/NEFT system, after getting his Account Details, within a period of **two weeks thereafter**; and

(vi) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

Index : Yes/No

04.04.2016

Internet : Yes/No

kal

V.M.VELUMANI,J.

kal

To

- 1.The Motor Accidents Claims Tribunal
(Additional District and Sessions Judge,
Fast Track Court-IV) at Poonamallee,
- 2.The Section Officer,
V.R.Section,
High Court, Madras.

C.M.A No.98 of 2010

04.04.2016

<http://www.judis.nic.in>