

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 10.02.2017

CORAM :

THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.258 of 2001
and
Cros.Obj.No.50 of 2002

C.M.A.No.258 of 2001

1.R.Sarvathaman

2.National Insurance Co., Ltd.,
Pondicherry. Appellants

Vs.

1. A.Kannan (Deceased)
2. K.Rajarajan
3. S.Vanaja
4. K.Ravi
5. K.Bhaskar
6. K.Sankar
7. K.Saravanan
8. K.Venkatesan
9. K.Kalyanaraman

(RR2 to 9 are brought on record as LRS
of the deceased sole respondent vide order
dated 11.06.2010 made in CMP.No.757/2009)

... Respondents

CROS.OBJ.No.50 of 2002:

A.Kannan

Rep. by his Elder Son K.Rajarajan

... Cross Objector

Vs.

1.R.Sarvathaman

2.The National Insurance Co., Ltd.,
62-A Jawaharlal Nehru Street,
Pondy-1.

... Respondents

Prayer in C.M.A.No.258 of 2001:- Civil Miscellaneous Appeals
have filed under Section 173 of Motor Vehicles Act, against
the award and decree dated 30.04.2001 made in M.C.O.P.No.353
of 1997 passed by the Motor Accident Claims Tribunal,
Principal Sub-Judge, Cuddalore.

Prayer in Cros.Obj.No.50 of 2002:- Cross Objection filed under Order 41 Rule 22 of C.P.C., against the award and decree dated 30.04.2001 made in M.C.O.P.No.353 of 1997 passed by the Motor Accident Claims Tribunal, Principal Sub-Judge, Cuddalore.

C.M.A.No.258 of 2001:

For Appellants : M/s.V.S.Sowmya
For RR2 to 9 : Mr.T.M.Naveen for
M/s.K.P.Jotheeswaran

Cros.Obj.No.50 of 2002

For Cross objector : Mr.T.M.Naveen
For Respondents : Ms.V.S.Sowmya

COMMON JUDGMENT

A cyclist aged 62 years and stated to be a proprietor of a rice mill had suffered major injuries to his person when he was knocked down by a bus hit him from behind. The accident had taken place on 22.06.1996. In the accident, he had suffered head injuries, fractures all over the body, permanently lost his memory power, permanent disability in all systems and approached the Tribunal with a claim of Rs.11,00,000/-, but the Tribunal awarded a sum of Rs. 9,79,530/- payable with interest at the rate of 9% per annum.

2. PW,-3 the doctor, who assessed him, has deposed that the victim inter alia suffers loss of memory and also lack of movement of his limbs and breathing problem. Owing to fracture of the limbs, he assessed the permanent disability at 80% whereas the Tribunal has taken it at 60%. The victim of the accident was running a rice mill and the Tribunal reckoned his monthly income at Rs.10,000/- a month and arrived at the compensation for loss of earning capacity as a component of functional disability at Rs,7,92,000 [Rs.10,000x12x11x60%]. The various heads on which the Tribunal has passed an award is tabulated below:

Heads	Amount
Loss of income	7,92,000.00
Medical expenses	1,77,530.00
Pain and Suffering	10,000.00
Total	9,79,530.00

3. The learned counsel for the appellant submitted that the Tribunal has excessively generous in fixing the monthly income of the victim at Rs.10,000/- for which no document have been produced. Secondly, for someone who is stated to be running rice mill if one has to apply multiplier method it

must be reckoned only on the basis of loss of his ability to supervise. Accordingly, this artificial fixing of Rs.10,000/- must be reduced to a realistic level. So far as the claim of the claimant that he has been running rice mill is concerned all that are produced in Ext.P-86 and Ext.P-87, licenses both of which are subsequent to the date of accident.

4. There is merit in the submissions. Given the circumstances, the notional monthly income of the victim can ideally be fixed at Rs.7,500/-. The multiplier applicable is also 9. Accordingly the compensation payable on the head of functional disability of the claimant would be Rs.4,86,000/- [Rs.7500/- x12x9x60%]. For pain and suffering the claimant deserves to be awarded Rs.1,00,000/-, hence I grant the same. at Rs.1,00,000/-. So far as other non-pecuniary heads are concerned, nothing was awarded by the Tribunal on the heads of amenities, extra nourishment, assistance etc. Hence, I felt it is appropriate to grant compensation on the heads of amenities, extra nourishment and assistance, and accordingly granted Rs.50,000/- for amenities; Rs.50,000/- for assistance and Rs.10,000/- for extra nourishment. In so far as the medical expenses are concerned, I confirm the award passed by the Tribunal.

5. To conclude, this appeal is partly allowed without costs and the award amount has been revised to Rs.8,73,530/- and the same is tabulated below :

Heads	Amount enhanced (Rs.)
Functional Disability	4,86,000.00
Medical expenses	1,77,530.00
Amenities	50,000.00
Pain and suffering	1,00,000.00
Assistance	50,000.00
Extra nourishment	10,000.00
Total :	8,73,530.00

6. The appellant/Insurance Company is directed to deposit the revised award amount along with interest, less if any already deposited, within six weeks from the date of receipt of a copy of this order, and on such deposit, the respondents 2 to 9, who are the legal heirs of the deceased first respondent are permitted to receive their respective equal shares of the revised award amount with interest. In case, if the appellant/Insurance Company has already deposited the entire compensation amount awarded by the Tribunal, they are entitled to receive back the excess amount paid by them by filing an appropriate application before the Tribunal.

7. In view of the decisions arrived for the above civil miscellaneous appeal and also given the fact that the cross objector is now dead, this cross objection is liable to be dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kmi/ds

To

1. The Principal Sub-Judge,
Motor Accident Claims Tribunal,
Cuddalore.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.K.P.Jotheeswaran, Advocate, S.R.No.8736

C.M.A.No.258 of 2001
and
Cros.Obj.No.50 of 2002

BR(CO)
CA(22/08/2017)



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