

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :19.01.2017

Judgment Pronounced on : 15.09.2017

CORAM: THE HON'BLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.3467 of 2004
and CMP.No.18888 of 2004

The Branch Manager,
M/s.National Insurance Co., Ltd.,
Raja Street,
Gobichettipalayam,
Erode District.

...Appellant/3rd Respondent

Vs.

1. Marshal ...1st Respondent/claimant

2. M.Ganesan

3. Maniselvam

[R2 & R3 Ex parte before Tribunal]...2nd & 3rd Respondents/
1 & 2 Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.11.2003 in MACT O.P.No.100 of 2000 on the file of the Motor Accident Claims Tribunal at Gobichettipalayam (I Additional Principal Subordinate Judge, Gobichettipalayam).

For Appellant : Ms.N.B.Surekha

For R1 : Mr.Ma.P.Thangavel

JUDGMENT

In an accident that took place on 03.06.1998 at about 3.00 p.m., on the Sathyamangalam-Annur Road, involving a Jeep bearing Registration No. TN-38-A-9385 and a Tempo van bearing Registration No.TC Z 4577, the claimant, a passenger of the jeep suffered injuries. Challenging the award passed by the Motor Accident Claims Tribunal, the insurer of the van has preferred the appeal.

2. The facts are : The road at the place where the accident took place was running in north-south direction and the Jeep was proceeding from north to south whereas the Tempo was coming from the opposite direction. The claimant and PW-2 were two of the passengers in the Jeep, and besides them there was its driver. In the said accident, all the inmates of the Jeep had suffered

injuries, of whom the claimant had come forward with a claim of Rs.5,00,000/- for his injuries, as against which the Tribunal has passed an award of Rs.40,000/- and fastened the entire negligence on the driver of the van, whose insurer is the appellant herein. The break-up details of the compensation awarded by the Tribunal is tabulated below :

Heads of Compensation	Amount Awarded (Rs.)
Loss of income	20,000.00
Medical expenses & transportation charges	15,000.00
Pain and suffering	3,000.00
Extra nourishment	2,000.00
Total :	40,000.00

3.The learned counsel for the appellant argued that the evidence on record indicates that the driver of the Jeep had committed hara kiri by colliding with a defensively driven tempo van, invited injuries to himself and became responsible for the injuries suffered by two of his passengers which included the claimant. The Tribunal was wrong in entering the finding of negligence solely against the driver of the Tempo. The learned counsel added that the FIR of the case was registered only against the driver of the jeep, that the charge sheet was also laid against the driver of the jeep and the said driver had pleaded guilty before the Magistrate Court. In spite of this, and ignoring these pieces of evidence available on record, the Tribunal had fallen in error in holding that the driver of the tempo van was entirely negligent. Reliance was placed on Oriental Insurance Co. Ltd., V. Premlata Shukla & Others [CDJ 2007 SC 627].

4. Per contra, the learned counsel for the claimant/first respondent argued that the finding of the criminal Court, much less the factum of the driver of the jeep pleading guilty is not conclusive, and at any rate it does not bind the Tribunal and the Tribunal is under an obligation to independently evaluate the facts before it and arrive at its own conclusion as to the negligence- component that led to the occurrence of the accident. He added that the limited facts available on record indicate that it is a case of composite negligence, and it is immaterial for a third party-passenger of a jeep to prove who among the two drivers were responsible for the accident and altering the course his destiny. In all cases of composite negligence, the drivers of both the vehicles involved in the accident along with their respective owners and Insurance Companies would be jointly and severally liable to a third

party, and the claimant has the choice to choose the one from whom he prefers to seek compensation. He placed reliance on *Khenyei Vs. New India Assurance Company Ltd., & Ors.* [2015 (1) TNMAC 801 (SC)].

5. Admittedly, the claimant was only a passenger of a jeep and he was no way connected to the occurrence of the accident. Here, for determining whether the accident was the result of negligence of the driver of the jeep alone cannot be decided on the solitary fact of the said driver pleading guilty before a Magistrate Court. Its evidentiary value before a Tribunal is inconsequential especially when the driver of the jeep was not examined before it. The Claimant did not have an advantage to cross examine the driver of the jeep at all to facilitate the Tribunal to believe in the probability of the case of the appellant. And, the burden is on the appellant as it is the one that pleads to extricate itself from the liability. If the oral testimony of P.W.1/Claimant is perused, it is not seen that he was adequately cross examined by the appellant to fix the negligence entirely on the driver of the jeep. This leaves the Tribunal with minimal evidence to form its independent decision on negligence, and its finding based on whatever that was available before it was the most probable conclusion a Tribunal could arrive at. It is a case of composite negligence from the stand point of the third party to the accident and the principle laid down in *Khenyei* case cited by the counsel for the respondent has relevance in the context. So far as the usefulness of the authority in the online reporter CDJ 2007 SC 627 on which the appellant placed reliance is concerned, the facts of that case have an entirely different setting.

6. The learned counsel for the first respondent would next argue that the documents pertaining to medical bills and treatment covered by Ext.P-3 to P-8 and P-18 show that the claimant would be entitled for a total compensation of Rs.73,983.98/- whereas the Tribunal has awarded a consolidated compensation of Rs.15,000/- towards the medical bills cum transportation. Secondly, the Tribunal has not passed any compensation for the injuries suffered. P.W.3, the doctor who had evaluated the injury post-treatment, has deposed before the Tribunal that the claimant had suffered fractures to both his jaws that he lost clarity of speech and that he also cannot chew all kinds of food easily.

7. Again, this court finds merit in the argument of the claimant. Whatever compensation that is awarded on the head of medical expenses, is generally on the actuals subject to the proof of them having been spent. It is therefore, more in the nature of medical reimbursement and the Tribunal has little discretion in awarding it. This palpable error of the Tribunal has to be corrected, irrespective of whether the Claimant has

preferred a cross objection on this head or not. It is the failure of Tribunal's duty that this court now attempts to correct. The claimant was stated to have spent Rs.73,983.98/- Vide Ext.P3 to P8 and P-18 and there is no evidence to suspect their veracity. This has to be paid.

8. Turning to the head of permanent disability, the Tribunal has not chosen to quantify it at all. It is the primary job of a Tribunal to quantify compensation on all the heads where a claimant deserves to be compensated. In the instant case, the Tribunal has not attempted to explain why it went on a mode denying compensation for the injuries based on their effects. Here it must be emphasised that awarding compensation for an accident-victim is not an issue of juggling with numbers, but a painful experience of understanding the qualitative loss of life a victim of a road accident is forced to go through. What money can compensate it? Here in this case, a victim informs the Court that he has lost clarity of speech and cannot eat the kind of food he desires because of the fractures that he had suffered to both the jaws. Anyone who takes away the faculties or choices from one against the latter's volition is liable for reparation through compensation. Every forced degradation on quality of life including any loss of freedom of choice available to a citizen while exercising his right to live, shall have to be factored in while computing compensation awardable to a road accident-victim. The compensation awarded may be nominal or even insignificant, still it has to be paid. Taking into consideration, the nature of injuries suffered by the claimant and the effect they have had on his life, this Court considers that awarding Rs.50,000/- as compensation for injuries suffered might be appropriate. On other aspects, the award of the Tribunal is confirmed. The break-up details of the enhanced award of compensation is as below :

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Heads of Compensation	Amount Enhanced (Rs.)
Loss of income	20,000.00
Medical expenses : Rs.73,983.98 Transportation : Rs. 5,000.00	78,984.00
Compensation for the injuries suffered	50,000.00
Pain and suffering	3,000.00
Extra nourishment	2,000.00
Total :	1,53,984.98 (rounded off to Rs.1,54,000/-)

9. In essence , the appeal is dismissed, however the compensation amount is suo motu enhanced from Rs.40,000/- to Rs.1,54,000/- The appellant/insurance company is directed to pay the enhanced amount of compensation 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 claimant is permitted to withdraw the same forthwith. The claimant is directed to pay the necessary court fee for the enhanced portion of the award amount. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

1.The Judge

I Additional Principal Subordinate Judge
Motor Accidents Claims Tribunal
Gobichettipalayam.

2.The Section Officer

VR Section
High Court of Madras, Chennai - 104.

+1 cc to M/s.N.B.Surekha Advocate sr 67538

+1 cc to M/s.Ma.P.Thangavel Advocate sr 67451

CMA.No.3467 of 2004

aa06/04/2018