

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 30.01.2017

Judgment Pronounced on : 03.11.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.3805 of 2004

Ilango ... Appellant/Claimant
-Vs-

1. Jayapal,
2. The Divisional Manager,
New India Assurance Co., Ltd.,
No.8, 2nd Floor, J.N.Street,
Pondicherry. ... Respondents/Respondents

Prayer:- Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988, against disallowed portion of compensation in M.A.C.T.O.P.No.18 of 2002 on the file of the Motor Accident Claims Tribunal (III Additional District Judge) Pondicherry, dated 15.11.2002

For Appellant : Mr. R.Natarajan

For Respondents : Mr.J.Chandran [for R2]
R1 - No Appearance

JUDGMENT

The claimant before the Tribunal has preferred this appeal seeking enhancement of compensation.

2. The case of the claimant is that on 13-10-2001 at about 1.15 p.m., he was traveling as a pillion rider in a two wheeler bearing Registration No.TN-25-C 6878, that the rider of the motorcycle hit a bullock-cart and in the accident, the claimant suffered head injury and also fracture to his leg. He, therefore, approached the Motor Accident Claims Tribunal seeking compensation of Rs.6,00,000/- for the injuries that he had suffered against the owner and the Insurance Company of the two wheeler in which he was traveling. The Tribunal has passed an award of Rs.1,40,500/- payable with interest at 9% per annum. The compensation awarded on various pecuniary and non-pecuniary heads of damages is tabulated as below :

Heads of Compensation	Amount Awarded (Rs.)
Permanent disability	50,000.00
Towards medical expenses	80,000.00
Loss of income for three months	10,500.00
Total :	1,40,500.00

3. The learned counsel for the appellant submitted that soon after the accident, the injured was taken to JIPMER Hospital, Pondicherry, from where he was shifted to M/s Vijaya Health Centre, Chennai, where he was treated as an inpatient for 27 days. In the course of the treatment, surgeries were performed both to his head as well as to his fractured leg. While, determining the compensation, the Tribunal had totally ignored the head injuries suffered by the claimant and the disfigurement caused to him and confined its attention only to the fracture he had suffered. PW-2, the doctor, Vide his disability certificate in Ext.P11, has determined the claimant's permanent disability at 65% whereas, the Tribunal has discounted it at 50% and computed the compensation at Rs.1,000/- for every percentage of the disability. In fitness of things, the Tribunal should have treated the disability that the claimant was forced to endure for the rest of his life as functional disability. The claimant/appellant was hale and healthy prior to the accident and he was working as Junior Assistant in a private concern but the accident has seriously impacted not just his movements, but also his general efficiency to perform. He also added that even on the heads of non-pecuniary damages such as pain and suffering, loss of amenities, for future medical treatment that was assessed, nothing has been awarded by the Tribunal. He submitted any compensation that was awarded must be just, fair and reasonable to him, the Tribunal ought not to substitute its views to the views of the medical practitioner in order to apply such techniques as would be unrealistic in the circumstances in determining compensation. He relied on the authority in V.Mekala Vs. M.Malathi & another [2014 (2) TN MAC 6 (SC)].

4. Per contra, the learned counsel for the second respondent/Insurance Company submitted that in Ext.P5, discharge certificate, issued by JIPMER Hospital, there is no mention about the head injury and in Ext.P3 discharge summary issued by Vijaya Hospital, and the appellant was only advised to walk with a walker. In other words, he would contend that while the appellant had suffered injuries, the same cannot be and should not be treated as functional disability and the Tribunal had taken into account every relevant fact and arrived at just and

fair compensation. He, however, conceded that the reasonable amount could be awarded as compensation and not on pecuniary heads.

5. The learned counsel also added that the notice on the owner is effected through paper publication on 19.01.2017 in a Tamil Daily "Dhina Boomi" and therefore in the eventuality of the Court enhancing any compensation, no liability shall be fastened on the Insurance Company for the default of the appellant in serving notice on the owner of the vehicle.

6. The appellant's grievance is all about inadequacy of compensation on the heads of loss of future earning capacity and other non-pecuniary heads of compensation. The Tribunal in its order has observed that the appellant complains of head ache; then there is a scar on the face, and these according to the Tribunal are not worthy of being compensated as they cannot be construed as disability. This approach, in the opinion of this Court puts a premium on the negligence of the tortfeasor. The primary question that should bother the conscience of the Tribunal is, "Was the victim responsible for his plight?". If negligence of a driver of a motor vehicle has caused, then to filter the consequences that a victim has suffered by its standards is plainly arbitrary. Here in this case, the victim, having suffered a head injury, contends that he experiences head ache. Does not a persistent head ache drains a victim of an accident of his efficiency to perform and to that affect his ability to employ himself alternatively? Therefore, it is necessary for a Tribunal to be sensitive to human suffering and to understand that a violator of personal right of the victim shall pay the victim. In such cases, it is better to believe the victim than the one who is either responsible for paying compensation either directly or vicariously or contractually.

7. Taking a over all view of the nature of injuries stated and their consequence complained, this Court considers it appropriate to hold that the appellant has suffered 40% functional disability. The Tribunal has reckoned his monthly income at Rs.3,500/- and given the fact he is 32 years at the relevant time, the multiplier to be applied is 16. Hence the compensation payable on the head of functional disability is (Rs.3,500 x 12 x 16 x 40%) Rs. 2,68,800/-. For pain and suffering Rs.50,000/- is awarded whereas for facial disfigurement Rs.25,000/- is awarded. For transport Rs.10,000/-, for loss of amenities another Rs.10,000/-, for assistance Rs.5,000/- and for extra nourishment Rs.10,000/- awarded. As to the other heads of compensation as awarded by the Tribunal is concerned, Rs.50,000/- granted on the head of permanent disability is modified to Rs.30,000/- for injuries. The compensation awarded by the Tribunal on the heads of medical

expenses incurred and loss of income remains the same. In all the total compensation payable is enhanced from Rs.1,40,500/- to Rs.4,99,300/- This is rounded off to Rs.5,00,000/-.

8. In the result, this appeal is allowed, and the second respondent is directed to pay the enhanced award of compensation of Rs.5,00,000/- with interest at 9% p.a, 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. Here the contention of the insurance company that it is not liable to pay interest for the period when notice was not served on the owner of the vehicle, is untenable for two reasons: First, the amount now awarded is the amount claimed; second, the owner at any rate has remained ex parte before the Tribunal and the insurance company has already stepped into the shoes of the insured. No costs. The claimant is not entitled to the interest for the period of delay in filing the appeal, if any.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

kmi/ds

To:

The III Additional District Judge,
Motor Accident Claims Tribunal, Pondicherry.

Copy to

The Section Officer,
VR Section, High Court, Madras. (2 copies)

+1cc to Mr.J.CHANDRAN, Advocate, S.R.No. 78319

+2cc to Mr.R.NATARAJAN Advocate, S.R.No. 78093

Pre-delivery Judgment in
C.M.A.No.3805 of 2004

VD(CO)
TR(09/02/2018)