



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No. 689 of 2017

and

C.M.P (MD) No. 7139 of 2017

The Branch Manager,
The National Insurance Co.Ltd,
Anguvilas Building,
North Car Street, Nagercoil - 629 001,
Kanyakumari District. ... Appellant/Respondent No.3

Vs.

1.P.John Bronne Berg ...Respondent/Petitioner

2.T.Senthil Raja

3.Telecom District Manager
BSNL (Sivaraj Building Tower
Junction, Nagercoil,
Kanyakumari District),
at present BSNL Bhavan,
Court Road, Nagercoil-1. ... Respondents 2 and 3/
Respondents 1 and 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree made in MCOP.No.27 of 2014 dated 31.01.2017 on the file of the Motor Accident Claims Tribunal (II Addl. Sub Court), Nagercoil.

For Appellant : Mr.S.Srinivasa Raghavan

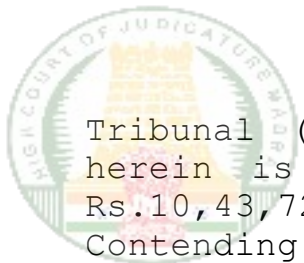
For Respondents : Mr.P.Prabhakaran for R1

Mr.M.P.Senthil for R2

No appearance for R3.

JUDGMENT

The National Insurance Company Limited has filed this Civil Miscellaneous Appeal questioning the award dated 31.01.2017 made in MCOP.No.27 of 2014 on the file of the Motor Accident Claims



Tribunal (II Addl. Sub Court), Nagercoil. The first respondent herein is the claimant. The Tribunal has awarded a sum of Rs.10,43,724/- with interest at the rate of 9% per annum. Contending that the quantum of compensation is excessive, this appeal has been filed by the insurance company.

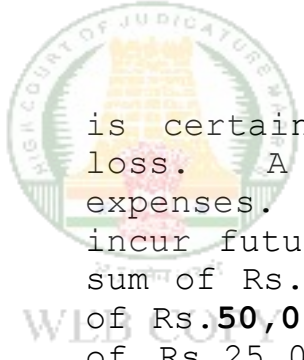
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2.The first respondent was aged about 45 years at the time of filing the petition. He is a practicing lawyer. When he was riding his bike on 28.06.2013 at about 12.30 p.m, a mahindra jeep belonging to the third respondent herein dashed against the claimant. It was driven by the second respondent herein in a rash and negligent manner. The claimant suffered grievous injuries on his right leg, left shoulder bone and other parts of the body. The accident is disabled him completely. He is not able to stand for more than 10 minutes and is not able to ride his two wheeler. He is constrained to engage auto for going to home from court. He prayed for a compensation of Rs.20,00,000/-. He examined himself as PW.1 and his doctor Mohandhas as PW.2. As many as 18 documents were marked. On the side of the appellant or the vehicle owner no evidence was adduced.

3.The Tribunal rightly held that the accident happened due to the rash and negligent driving of the driver namely, the second respondent herein. Since the vehicle was insured with the appellant, the appellant was rightly made liable. The Tribunal noted that the claimant enrolled himself as an Advocate on 28.08.2010. He met with an accident on 28.06.2013. He had put in less than three years of practice when the accident took place. Even though he claimed that he was earning a sum of Rs.22,000/- per month, there was no furnishing of proof to that effect. But, the Court chose to fix the monthly income of the claimant at Rs.15,000/-. Merely because, the claimant is an Advocate, there is no basis for fixing the monthly income at Rs.15,000/- if there is no income proof. A lawyer is a professional. Unless he is entrusted with cases either by the clients or there is referral, there is no scope for earning income. The claimant has not shown as to how even though he had not completed three years standing in the Bar he was earning Rs.22,000/- per month.

4.The Tribunal after holding that the claimant did not produce any document to show his income could not have fixed the monthly earning at Rs.15,000/-. A person can demonstrate his standing in the Bar by the number of Vakalts filed or the number of cases he has argued.

5.In this case, those statistics are completely absent. The claimant ought to have been away from Court for three months as a nearest of this accident. The Court has awarded a sum of Rs.45,000/- as a compensation for being forced to be away from regular court work

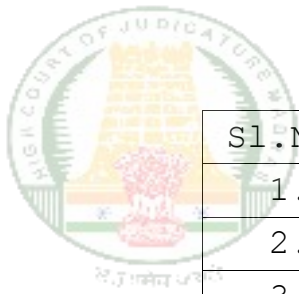


is certainly reasonable though not on the ground of pecuniary loss. A sum of Rs.1,69,724/- was incurred towards medical expenses. This is also reasonable. The claimant is likely to incur future medical expenses also. The Tribunal has awarded a sum of Rs.30,000/- under that head. I am of the view that a sum of Rs.50,000/- can be awarded. Towards pain and suffering, a sum of Rs.25,000/- was awarded. This can be enhanced to a sum of **Rs.50,000/-**. Towards loss of amenities personal belongings, a sum of **Rs.3,000/-** was awarded. For extra nourishment and transportation charges, a sum of **Rs.15,000/-** was awarded. This is also reasonable.

6.Further a sum of Rs.7,56,000/- has been awarded towards loss of future earnings by adopting multiplier method and by taking Rs.15,000/- as the monthly income. This is not only excessive but also without any basis. Only in case of functional disability, the multiplier method can be adopted while computing the compensation in injury cases. If a manual worker has suffered any physical injury, then certainly multiplier method can be adopted. In the present case, the claimant has suffered an injury on his right leg. This is certainly tragic. But, it would not affect his professional prospects in the manner portrayed by the claimant.

7.The claimant submits that he is not able to stand for a long time. In this regard, let me refer to an advocate by name, Mr.Ramasamy, who on account of dog-bite had suffered paralysis in both his legs. He is presently practicing not only in the District Court, Madurai but also before the High Court, Madurai Bench. He would before commencing the arguments request the Court to allow him to address by sitting in his wheel-chair. Therefore, if the claimant has any difficulty to stand, he can address the Court without getting up. The physical posture of the the advocate is really irrelevant. What matters is the respect and courtesy shown by the counsel towards the Court. My senior late Thiru.P.Krishnamoorthy of Pondicherry towards the close of his career would address the Court sitting in his chair only. I have seen the legendary Vasant Pai address the Court with force and vehemence and raise his voice without raising his body from the chair. Therefore, inability to stand for more than 10 minutes cannot be construed as a functional disability.

8.Therefore, I am constrained to interfere with the award of compensation under this head. However, the claimant has pointed out that he has to engage auto for going from home to court. Therefore, the claimant would certainly incur an extra expenditure on this account. Therefore, the pecuniary impact caused by the accident is assessed at Rs.2,56,000/-. Therefore, the compensation payable to the claimant is re-worked as under :



Sl.No.	Heads	Amount in Rs.
1.	Pecuniary loss	Rs.2,56,000/-
2.	Loss of earnings	Rs.45,000/-
3.	Medical expenditure	Rs.1,69,724/-
4.	Future medical expenses	Rs.50,000/-
5.	Pain and sufferings	Rs.50,000/-
6.	Loss of amenities	Rs.3,000/-
7.	Extra nourishment	Rs.15,000/-
	Total	Rs.5,88,724/-

9.The compensation payable to the claimant is reduced from Rs.10,43,724/- to Rs.5,88,724/-. The appellant is directed to deposit the said amount with interest at the rate of 7.5% per annum within twelve weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same.

10.This Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal (II Addl. Sub Court),
Nagercoil.

+ 1 cc TO Mr.M.P.Senthil , Advocate in SR No. 83201
+ 1 cc TO Mr.P.Prabhakaran , Advocate in SR No. 83086
+ 1 cc TO Mr.S.Srinivasa Raghavan , Advocate in SR No. 83081

Skm

AE/SKN RSK/SAR3/04.12.2017/4P/5C

**C.C.M.A. (MD)No.689 of 2017
and
C.M.P (MD)No.7139 of 2017
20.10.2017**