

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.1108 OF 2017

AND CMP NO.5493 OF 2017

Oriental Insurance Company
Divisional Office
2nd Floor, Divya Towers,
C.S.I. School Compound,
Sevvaipettai, Salem - 2.

... Appellant

Versus

1.Sarvar Hussain

2.R.Dhanapal

M/s.Best Corporation Limited
89/2, Padmavathipuram,
Avinasi Road, Tiruppur,
Tiruppur District.

... Respondents

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.06.2016 passed in M.C.O.P.No.1264 of 2012 by the Motor Accident Claims Tribunal (Special Sub Court No.1) Salem.

For Appellant : Mr.S.Manohar
For Respondent-1 : Mr.C.Kulanthaivel

J U D G M E N T

(Judgment of the Court was made by M.GOVINDARAJ, J.)

Being aggrieved by the award passed by the Motor Accident Claims Tribunal (Special Sub Court No.1) Salem, dated 10.06.2016, in M.C.O.P.No.1264 of 2012, Oriental Insurance Company Ltd., Salem, has preferred this appeal.

2. Facts leading the appeal are that on 11.08.2012, the first respondent was riding his motorcycle, bearing Registration No.TN77-B-1080, from Vazhappadi to Salem Main Road, near Muthampatty Bus Stop, a Mahindra Max Cab, bearing Registration No.TN39-AV-7800, owned by the second respondent and insured with the appellant - Insurance Company, came in the opposite direction, driven by its driver, in a rash and negligent manner, dashed against the motorcycle, due to which, he was thrown out from the motorcycle and got grievous head injury and crush injury in the right leg below knee. In this

regard, a case in Crime No.416 of 2012 has been registered against the driver of the Maxi Cab, for offences, under Sections 279 and 338 IPC, on the file of the Vazhappadi Police Station.

3. Immediately after the accident, the first respondent / claimant was taken to Salem Government Hospital and given intensive treatment. Unable to control the bleeding in the crush injury, his right leg below knee, was amputated to save his life. After amputation, he developed the deficiency of the potential acid, leading to severe uncontrollable stomach pain and booming of stomach. Thereafter, he was shifted to Coimbatore PSG Medical College Hospital, for further treatment and during which period, he undergone emergent surgery and spent around Rs.2,00,000/-, at the time of filing of the claim petition. Cost of the artificial leg at KMCH Hospital, Coimbatore, was Rs.5,00,000/- and its life is for a period of five to seven years and after that, it has to be replaced time to time. For the injuries sustained and treatment to be taken, he claimed compensation of Rs.50,00,000/-.

4. The appellant - Insurance Company has filed a detailed counter affidavit, contending inter alia that the accident occurred in a four lane road on a National Highway. The first respondent / claimant came in the wrong side of the road, at a high speed and hit against the front right side corner of the Maxi Cab, insured with them and therefore, the accident occurred only due to the rash and negligent driving of the first respondent / claimant. Without prejudice to the above, they disputed the age, avocation and income of the injured and also the nature of injuries.

5. Before the Claims Tribunal, the first respondent / claimant, examined himself as P.W.1. P.W.2 is the Doctor, who examined the first respondent / claimant, with reference to medical records. P.W.3 is the employer of the first respondent / claimant. Apart from them, two other witnesses have been examined. Ex.P1 - First Information Report, Ex.P2 - Accident Register, Ex.P3 - Wound Certificate, Ex.P4 - Sketch, Exs.P5 and P6 - Motor Vehicles Inspector's Reports, Ex.P7 - Charge Sheet, Ex.P8 - judgment copy, Ex.P9 - Records showing treatment in Salem Government Hospital, Ex.P10 - Driving Licence, Ex.P11 - Pan Card, Ex.P12 - Bank account statements, Ex.P13 - Photographs, Ex.P14 - Registered book showing the benefits given by the Social Welfare Department, dealing with the welfare of differently abled, Exs.P15 and P16 (series) - medical bills, Ex.P17 - receipt showing the purchase of artificial leg, Ex.P18 - discharge summary, Ex.P19 - quotation for purchasing the artificial leg, Ex.P20 - Salary Certificate, Ex.P21 - Pan Card, Ex.P22 - Registration Certificate, Ex.P23 - Disability Certificate, Ex.P24 - X-Rays and Ex.P25 - Receipts, have been marked on the side of the first respondent / claimant. On behalf of the appellant - Insurance Company, Mr.Dhanasekaran, Sub-Inspector of Police,

has been examined as R.W.1. Third party documents, Ex.X1 - Authorisation Letter, Ex.x2 - Driving Licence and Ex.X3 - original medical records of the Salem Government Hospital, have also been marked.

6. On evaluation of pleading and evidence, the Claims Tribunal, found that the driver of the Maxi Cab, bearing Registration No.TN39-AV-7800, owned by the second respondent and insured with the appellant - Insurance Company, was negligent in causing the accident and upon considering the nature of injuries and the extent of disablement to the earning capacity, quantified the compensation, at Rs.28,95,000/-, with interest at the rate of 7.5 % per annum, from the date of claim, till deposit. Apportionment of the award amount is as follows:

Loss of earning capacity	:	Rs. 12,85,200/-
Pain, Suffering and Trauma	:	Rs. 2,00,000/-
Medical Bills	:	Rs. 4,18,900/-
Loss of amenities	:	Rs. 1,50,000/-
Loss of prospects of marriage	:	Rs. 1,50,000/-
Loss of expectation of life	:	Rs. 75,000/-
Extra nourishment	:	Rs. 15,000/-
Attendant charges	:	Rs. 30,000/-
Transportation expenses	:	Rs. 10,000/-
Damages to clothes and articles:	Rs.	900/-
Disability compensation	:	Rs. 1,00,000/-
Future medical bills	:	Rs. 4,00,000/-
Loss of income	:	Rs. 60,000/-

Total	:	Rs.28,95,000/-

7. Mr.S.Manohar, learned counsel for the appellant-Insurance Company submitted that the accident was caused solely due to the gross negligence of the respondent / claimant, who was riding his motorcycle, bearing Registration No.TN77-B-1080, came to the wrong side of the road, against traffic rules and hit against the Maxi Cab and therefore, the Tribunal has failed to appreciate that the accident was caused due to the rash and negligent driving of Maxi Cab, bearing Registration No.TN39-AV-7800. He further submitted that the Tribunal has failed to give credence to the evidence of R.W.1, Sub-Inspector of Police and Ex.P4 - Rough Sketch. He also submitted that the Tribunal ought to have apportioned the degree of negligence between the driver of the Maxi Cab and the respondent / claimant atleast in the ratio of 75:25. Quantum of compensation is also questioned.

8. The learned counsel for the appellant would further vehemently contend that as per Ex.P4 - rough sketch and the evidence of R.W.1 - Special Sub Inspector of Police, accident was caused due to rash and negligent riding by the claimant. Evidence adduced, decide the negligent act of the

claimant. He would further contend that the accident had taken place purely on the negligence of the motorcycle rider and therefore, liability fastened on the driver of the Maxi Cab bearing Registration No.TN39-AV-7800 has been exaggerated. Even assuming that there was negligence on the part of the Maxi Cab driver, the degree of negligence between the driver of the Maxi Cab and the claimant ought to have been fixed in the ratio 75:25. The Tribunal has rejected the oral evidence of R.W.1 and the contents of rough sketch - Ex.P4 on flimsy reasons. The Tribunal had fixed exorbitant compensation accepting the liability of disability at 70%. Therefore, the quantum of compensation fixed by the Tribunal is also excessive and liable to be interfered with.

9. We have considered the submissions of the learned counsel for the appellant.

10. From the perusal of the materials available before this Court, it is seen that the claimant was riding his two wheeler bearing Registration No.TN-77-B-1080 on Vazhappadi to Salem Main Road, from west to east. It is the case of the claimant that vehicle bearing Registration No.TN39-AV-7800 was coming in the opposite direction from west to east and dashed against the two wheeler, which the appellant has denied and further contended that it was the rider, who caused the accident. The primary contention of the learned counsel is based on the rough sketch marked as Ex.P4. From a perusal of the rough sketch, it is seen that the claimant was riding his two wheeler on the left side of the road. The accident had taken place on the extreme left side. According to the appellant, the claimant had driven on the wrong side of the road. Appellant has contended that the accident had taken place on one way and therefore, negligence on the part of the claimant was the cause of the action. In support of his contention, he would rely on the evidence of R.W.1. But, from a perusal of the cross examination of R.W.1- Special Sub Inspector of Police, it is seen that the four lane road was under construction during the relevant point of time and before completing the work, vehicles were permitted to be plied on one side of the road. The witness viz., R.W.1 was not sure as to whether the four lane road was put to use during the relevant point of time and would state that if vehicles were permitted on one side of the road, it is possible to operate vehicles in opposite sides. The Tribunal has considered these facts and relied on the evidence of R.W.1 as well as the evidence of claimant as P.W.1. There is no independent witness to speak contra about it.

11. Relying on the judgment of NEW INDIA ASSURANCE COMPANY LTD., VS. GOVINDAMMAL [2016 (1) TNMAC 145 (DB)] the Tribunal has held that the proceedings before the Claims Tribunal are summary in nature and it is suffice to consider whether there is any preponderance of probability, as to the manner of accident, as detailed in the claim petition and

strict proof of evidence is not required. In the absence of any rebuttal evidence, the finding of the Tribunal regarding negligence cannot be termed as perverse or it is not a case of no evidence.

12. Further, the Tribunal has also considered the evidence of R.W.1 with respect to the admission of guilt by the driver of the vehicle bearing Registration No.TN39-AV-7800. He would depose that the charge sheet was filed after investigation and the Driver of the Maxi Cab had admitted the guilt. The judgment of the Criminal Court which is marked as Ex.P8 and Ex.P7 clearly goes to show that the driver of the vehicle bearing Registration No.TN39-AV-7800 has admitted his guilt and was found guilty. As per the judgment of the Criminal Court, he has paid the fine also. In such circumstances, the contention of the learned counsel for the appellant that the driver of the vehicle bearing Registration No.TN39-AV-7800 and rider of the two wheeler namely, the claimant, both contributed to the case of accident cannot be accepted. The appellant has failed to prove the same, through acceptable evidence. In such circumstances, we accept the findings of the Tribunal that the driver of the Maxi Cab bearing Registration No.TN39-AV-7800 belonging to the second respondent alone caused the accident and therefore, the owner of the vehicle, covered by the insurance policy and the appellant-insurance company are liable to pay the compensation.

13. In so far as the quantum of compensation is concerned, the Tribunal fixed the liability at 70% based on Ex.P9 - summary of treatment issued by Government Hospital, Salem and Exs.P15, 16, 17, 18, 23 and 24 marked by the claimant. The evidence adduced by the claimant that initially he was treated at Government Hospital, Salem and thereafter, treated at P.S.G. Hospital, Coimbatore and that his leg was amputated, consequent to the accident occurred on 11.08.2012, is categorically proved. Ex.P24 - X-ray clearly shows that the right leg was amputated below the knee. It is substantiated by the evidence of the Doctor P.W.3. By the injury caused in the accident, the claimant, who is a driver by profession, has been incapacitated to drive the vehicle in future. In such cases, the Hon'ble Supreme Court has held that the functional disability is 100%. Therefore, the finding of the Tribunal that on the basis of Ex.P23-disability certificate, Ex.P17-receipt for purchasing artificial limb and Ex.P14-register book issued by the Social Welfare Department, the disability fixed at 70% is very reasonable and not excessive. The age of the claimant was fixed at 26 based on the driving license marked as Ex.P10. Even though the employer of the claimant P.W.2 had let in evidence that the claimant was drawing a salary of Rs.18,500/- after deduction, the Tribunal has taken monthly salary at Rs.6,000/-, as per the various judgments rendered on this point and also awarded 50% towards future prospects. Thus, the monthly salary was arrived at Rs.9,000/-.

Therefore, we cannot hold that the income fixed by the Tribunal at Rs.6,000/- per month and Rs.9,000/- by adding 50% of the future prospects is erroneous.

14. Fixation of loss of income at Rs.12,85,200/- applying multiplier "17" corresponding to the age of the claimant following the judgment of the Hon'ble Supreme Court in SARLA VERMA (SMT) AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER [2009 (6) SCC 121] SARLA VERMA (SMT) AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER [2009 (6) SCC 121] is correct, and does not require any interference. The Tribunal has also awarded a sum of Rs.2,00,000/- towards pain and suffering; Rs.1,50,000/- towards loss of amenities; Rs.1,50,000/- towards loss of prospects of marriage; and Rs.1,00,000/- towards permanent disability. As stated supra, functional disability is 100% and therefore, the Tribunal has fixed Rs.1,000/- per percentage and fixed Rs.1,00,000/- under the head permanent disability. It cannot be said that it is excessive.

15. It could also be seen that at the time of accident the claimant was only 26 years of age and had dreams to settle down in life and marriage proposals were going on, at the relevant point of time. Since he had suffered amputation in the leg, prospects of getting marriage would have been affected. Further, the claimant has been deprived of pleasures on account of the injuries sustained by him. In view of the loss of leg, it is very difficult to get suitable match and therefore, the award made under the head loss of prospects of marriage and loss of amenities and enjoyment of life are very much justified.

16. From the evidence of the Doctor as well as the claimant and Ex.P14, Ex.P17, Ex.P23 and Ex.P24, it could be seen that he has to depend on the artificial limb and has to undergo pain and suffering throughout his life. The evidence further goes to show that the artificial limb already fixed has caused injuries and pain in his right leg. The Doctor has opined that he has to change the artificial limb at least thrice in his lifetime, which would go to show that the claimant/respondent has to bear all the shortcomings and pain throughout his life. In such circumstances, the award under this head is also very much justified. Other than this, the Tribunal has awarded medical expenses, future medical expenses and attendant fees. We find the amount awarded on these heads is not excessive, but reasonable. Therefore, we do not find any reason to interfere with the findings of the Tribunal and the quantum of compensation and accordingly, the award dated 10.06.2016 passed in M.C.O.P.No.1264 of 2012 by the Motor Accident Claims Tribunal (Special Sub Court No.1) Salem, is confirmed.

17. In fine, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar(cS V)

//True Copy//

Sub Assistant Registrar

TK

To
The Motor Accident Claims Tribunal
(Special Sub Court No.1)
Salem.

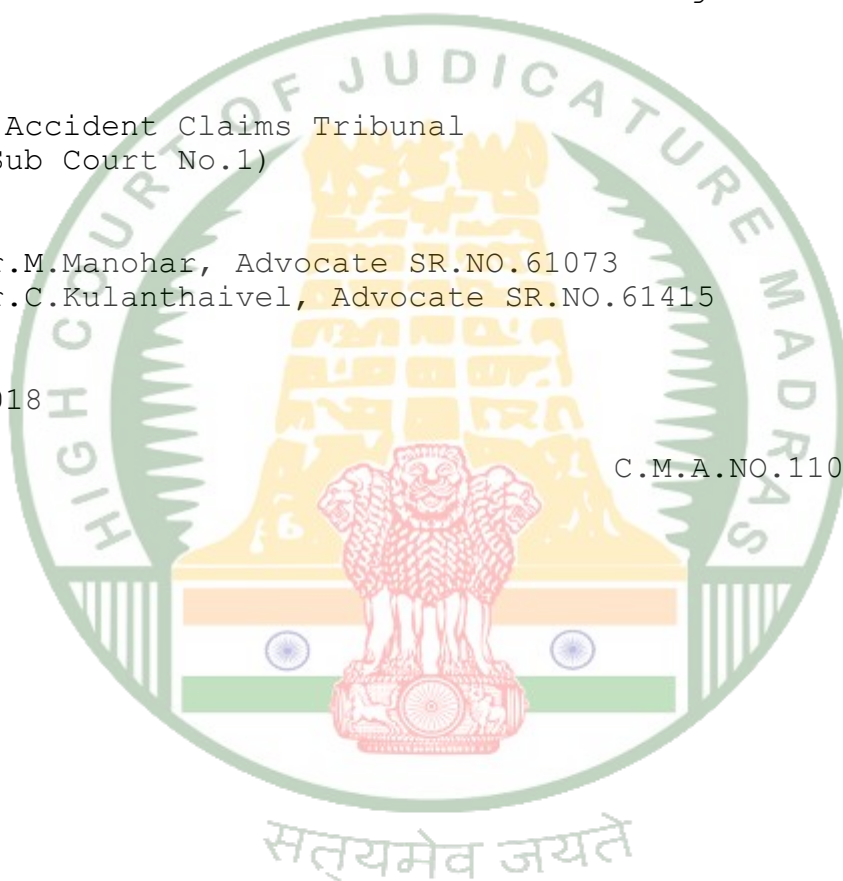
+1cc to Mr.M.Manohar, Advocate SR.NO.61073

+1cc to Mr.C.Kulanthaivel, Advocate SR.NO.61415

NRL(CO)

sm:25.9.2018

C.M.A.NO.1108 OF 2017



WEB COPY