

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2018

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2734 of 2006

and CMP. No. 9781 of 2006

The New India Assurance Co.Ltd.,
Branch Office, Oppanakkara Street,
Coimbatore - .

..Appellant/3rd respondent

..Vs..

1. P. Balasubramaniam ...1st Respondent/Claimant

2. S. Shankar Ganesh

3. M/s. Ravishankar Agencies

No.6, Rangasami Street,

Civil Aerodrome Post, Sitara,

Coimbatore-14

..Respondents2&3/ Respondents1&2

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree made in M.C.O.P.No. 977 of 2001 on the file of the Motor Accidents Claims Tribunal (Additional District Court (Fast Track Court No.1), Coimbatore) to set aside the same.

For Appellant : Mr. S. Manohar

For Respondents : No Appearance - R1
Exparte - RR2 & 3

J U D G M E N T

This Civil Miscellaneous Petition has been preferred against the Judgment and Decree made in M.C.O.P.No. 977 of 2001 on the file of the Motor Accidents Claims Tribunal (Additional District Court (Fast Track Court No.1), Coimbatore) to set aside the same.

The Brief facts of the leading to the claim petition is as follows:

2. On 07.03.2001 at about 11.45 a.m the petitioner was riding a Motor Cycle bearing Registration No. TN40-Z-2388 very slowly on the Ponnegoundenputhur to Senthampalayam Road from North to South on extreme left of the road. When he was proceeding near Sethupthy Thotam, at the time a Mahindra and Mahindra Van bearing registration no. TN33-C-1060 belonging to the 2nd respondent driven by the 1st respondent at a reckless hectic speed from South to North colluded against the petitioner's motor cycle all of a sudden and uncontrollably

pierced to the wrong side, resulting grievous injuries to the petitioner. For the injuries sustained in the said accident, the filed a claim petition, claiming compensation of Rs. 5,00,000/-.

3. The 3rd respondent before the tribunal/Insurance Company has filed a counter statement and denied the manner of accident stated by the claimant and further stated that the petitioner is bound to prove the same. The other aspects with regard to age, avocation, income and the injuries are also denied by the insurance company.

4. The tribunal upon analysing the documents and pleadings, has given a finding that the accident had occurred due to the rash and negligent driving on the part of the first respondent, and hence fixed the liability on the respondents 1 to 3. The tribunal has also assessed the compensation based on the evidence and documents in respect of the age, income and the disability of the claimant and awarded a sum of Rs. 2.30,000/- as compensation under various heads. Aggrieved over the said award, the Insurance Company has preferred this Civil Miscellaneous Appeal to set aside the same.

5. Heard the learned counsel for the appellant and perused the documents available on record.

6. In the grounds of appeal, the appellant has stated that the sum awarded by the tribunal at Rs.2,30,000/- is not justified when there is no proof for loss of earning capacity of the claimant and the further ground raised by the appellant is that the compensation awarded by the tribunal is not as per the II Schedule to the Act, when the claim was not made under Sec.163-A of the Act. It is further stated that the tribunal while calculating the loss of income, has not deducted any amount towards the personal expenses. Hence the present appeal has been filed to set aside the said judgment and decree.

7. The learned counsel for the appellant has argued that the sum awarded by the tribunal as compensation at Rs.2,30,000/- is very much on the higher side. The monthly income of the claimant taken by the tribunal at Rs.3,000/- is very much excessive and the same is without any substantial documents. It is further argued that the document which relied on by the tribunal to assess the disability shows only 24 %. For the said disability, the sum arrived by the tribunal at Rs.1,32,000/- as loss of income is very much excessive and not proper.

8. It is seen from the records that the learned counsel for the claimant has argued before the tribunal that the injury sustained by the claimant is grievous in nature and the surgery was also done to him and he was given treatment as inpatient from 07.03.2001 to 27.03.2001, hence the sum awarded by the tribunal for medical expenses at Rs. 90,000/- is very less. Further he argued that the tribunal has awarded a sum of Rs. 1,32,000/- by taking notional income of Rs.12,000/- is proper and reasonable.

9. On perusal of the evidence and also the facts stated in the claim petition, it is seen that the age of the claimant is stated as 45 years and the occupation as money lender. Hence, the argument advanced by the appellant that there could not be any loss of earning capacity or loss of income to the claimant, who sustained only 24% disability has to be considered. Therefore, this Court is of the view the sum awarded by the tribunal for loss of income has to be modified by fixing Rs.2,000/- per percentage for 24% disability, which would be reasonable and proper.

10. On perusal of the nature of injury and the period of treatment undergone for the surgery, the sum awarded by the tribunal for Pain and Suffering has to be properly considered, hence it is enhanced to Rs.10,000/-. With regard to the expenses incurred by the claimant, the tribunal has perused the medical bills and awarded a sum of Rs. 90,000/-, which is very much reasonable, since the claimant was taken treatment as inpatient for some period. Though it has been stated that the claimant has sustained grievous injuries and surgery was also done to him, since, the claimant except the medical bills, has failed to produce any relevant documents and evidence relating to the continuous treatment in various hospitals, it can be very well presumed that there could not any huge loss of income to the claimant as stated by him, who is a money lender by his avocation.

11. In view of the above discussion, this Court modifies the sum awarded by the tribunal as follows;

Head	Sum awarded by the tribunal	Sum modified by this Court
Loss of Income	Rs.1,32,000	Rs. 48,000 (24 x 2000)
Pain and Suffering	Rs. 8,000	Rs. 10,000
Medical Expenses	Rs.90,000	Rs. 90,000

Head	Sum awarded by the tribunal	Sum modified by this Court
Extra Nourishment	---	Rs. 15,000
Total	Rs. 2,30,000	Rs. 1,63,000/

In the result, the Civil Miscellaneous Appeal is party allowed. No costs. Consequently, connected miscellaneous petition is closed.

Accordingly, the Appellant/Insurance Company is directed to deposit the entire award amount modified by this Court, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount to the claimants bank account thro' RTGS within one week thereon. The rate of interest and the apportionment shall be the same as awarded by the tribunal.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The Additional District Judge, (Fast Track Court No.1)
The Motor Accidents Claims Tribunal ,
Coimbatore.

Copy to:
The Section Officer,
VR Section,
High Court, Madras

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A.SK (05/02/2020)

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