

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.10.2018

CORAM

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

CMA.No.3185 of 2007

The Divisional Manager,
The New India Assurance Co. Ltd.,
Jawaharlal Nehru Street, PondicherryAppellant/2nd Respondent

Versus

1.Govindaraj (Deceased)

2. T.Damodharan1st Respondent/Claimant
(The second respondent remained exparte in
the lower court and hence notice dispensed with
for him in the above appeal)2nd Respondent/1st Respondent

3.G.Saraswathi

4.S.Banumathi

5.Neelavathi

6.R.Kalavathi

7.G.Sundaramoorthi
(Respondents 3 to 7 are brought on record as LRS
of the Deceased R1 as per the order of this Court
dated 30.10.2018 and made in M.P.3/2010 in
C.M.A. 3185/2007)Respondents 3 to 7

Prayer : Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act 1988, against the Judgment and Decree
made in M.A.C.T.O.P.No.957 of 2002 on the file of the Motor
Accidents Claims Tribunal (II Additional District Judge) at
Pondicherry dated 28.03.2006.

For Appellant : Mr.M.Krishnamoorthy

For Respondents: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the Judgment and Decree made in M.A.C.T.O.P.No.957 of 2002 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge) at Pondicherry dated 28.03.2006.

2. The brief facts leading to the claim application are as follows:

On 07.08.2002, at about 10.30 hrs., when the petitioner was walking in the extreme left side of the Pondy-Villupuram main road from west to east at Kandamangalam. At that time, a lorry bearing Registration No.TN.02/H.1911 came in the back side, in a rash and negligent manner and dashed against the petitioner. As a result, the petitioner sustained grievous injuries and also permanently disabled. The petitioner has claimed a sum of Rs.2,00,000/- as compensation.

3. The second respondent/appellant herein the counter statement denied the facts stated by the claimant in the claim application and stated that the petitioner has to prove the mode of accident and he further stated that the sum claimed by the petitioner is huge. It is the averments of the respondent that the driver of the vehicle was not having valid driving license at the time of the accident and the said document was also not furnished. There was also no Fitness Certificate and permit to ply the vehicle on the date of the accident. The sum claimed by the petitioner and also interest at 12% are very much objected by the respondent.

4. The Tribunal after analyzing the evidence and documents placed before the same, has given a finding that the driver of the first respondent caused the accident by his rash and negligent driving. The Tribunal has also awarded a sum of Rs.1,45,928/- under various heads as follows:

Heads	Sum awarded by the Tribunal (Rs.)
For loss of income	1,31,328.00
For Transport charges	1,000.00
For partial loss of income	3,600.00
For Pain and Sufferings	10,000.00
Total Compensation	1,45,928.00

Aggrieved against the said liability, the second respondent Insurance Company has preferred this appeal.

5. In the grounds of appeal, the appellant has stated that the Tribunal has awarded an excessive amount of Rs.1,45,928/- for the fracture injury. The disability taken by the Tribunal at 38% is excessive. That apart, the monthly income taken at Rs.3,600/- for a person, who was 60 years at the time of the accident and by applying the multiplier are all not proper and justifiable.

6. The learned counsel for the appellant submitted that when there are only two fracture injuries, the assessment of the disability by the Doctor at 60% and the consideration of the Tribunal at 38% is excessive. The sum calculated by taking his age, monthly income and occupation are all without any evidence and documentary proof.

7. It is seen that the sum awarded by the Tribunal for the loss of income is very much reasonable. Further, the Tribunal has not awarded any sum for extra nourishment, for amenities and for attendant charges. Hence, the appeal preferred by the appellant/Insurance Company has to be dismissed.

8. On perusal of the records, it is observed that the petitioner has sustained grievous injuries. There is a fracture injury in the 3rd and 5th metacarpal of right hand and fracture of proximal phalanx of right middle finger. It is also observed that P.W.2/Doctor was examined before the Tribunal who has issued the disability certificate by observing the nature of treatment and the disability sustained by the claimant, has stated that there is a mall-union of 5th metacarpal bone; the measurement of the fiber of the left hand is reduced; the movement of the fingers in the right hand is also restricted. Hence, it is clear that the said two fractures resulted the disability and loss of power in his right hand.

9. On perusal of the claim application, it is seen that the claimant was doing his work as a mason and the injury that he sustained in his hands are very much hindrance to his earning power. Hence, the disability arrived by the Tribunal at 38% as against the disability assessed by the doctor at 60% is very much reasonable. It is argued by the appellant that the determination of future income by adopting the multiplier method is not justified, in view of the nature of injuries sustained by the petitioner. It is argued by the appellant that there is a disability at 38%, the future loss of income has to be calculated by taking 1000 per percentage. Accordingly a sum of Rs.38,000/- (38x1000) would be reasonable for future loss of income.

10. On a perusal of the evidence and the facts, it is seen that the claimant is 60 years and he sustained injuries in his right hand and P.W.2 has also stated that his movement is restricted due to the injuries. Hence, this Court by taking into consideration the occupation of the claimant as mason, is inclined to fix Rs.1,500/- per percentage to arrive loss of future income of the claimant. Accordingly, this Court granted a sum of Rs.57,000/- (38x1,500) to the claimants for loss of income.

11. This Court finds that the sum of Rs.10,000/- awarded by the Tribunal for pain and suffering is very much reasonable and when it is observed that the petitioner has sustained 38% disability, this Court finds that it would be proper if a specific sum is awarded for attendant charges. Accordingly, a sum of Rs.10,000/- is awarded for attendant charges. It is also seen that no sum has been awarded for extra nourishment and the same is considered by granting a sum of Rs.10,000/-. This Court has considered the fact that the claimant has sustained 38% disability, whose occupation is also a mason, necessarily a reasonable sum has to be awarded for the 'loss of amenities' and accordingly this Court finds that a sum of Rs.10,000/- would be reasonable amount and the same is granted.

The amount modified by this Court under various heads is as follows:

Heads	Sum Awarded by the Tribunal (Rs.)	Sum Modified by this Court (Rs.)
Loss of Income	1,31,328.00	57,000.00
Pain and Sufferings	10,000.00	10,000.00
Transport Charges	1,000.00	1,000.00
Partial loss of Income	3,600.00	3,600.00
Attendant Charges	-	10,000.00
Extra Nourishment	-	10,000.00
Loss of Amenities	-	10,000.00
Total	1,45,928.00	1,01,600.00

12. In view of the said modifications, this Civil Miscellaneous Appeal is partly allowed. No costs.

13. From the modified award amount, the 3rd respondent, who is the wife of the deceased is permitted to withdraw Rs.50,000/- along with interest and from the remaining award amount, the

respondents 4 to 7 are entitled to equal share. Accordingly, the respondents 4 to 7 are permitted to withdraw a sum of Rs.12,900/- each with interest.

14.The appellant/Insurance Company is directed to deposit the entire award amount, in respect of above Appeal as per the modified award passed by this Court, with interest and costs, before the Tribunal, 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, the Tribunal is directed to transfer the said amount to the savings bank account of the claimants through RTGS within one week thereon as per the apportionment ordered by this Court.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

gbi

To

1. The Motor Accidents Claims Tribunal
(II Additional District Judge)
Pondicherry.

+1 CC to Mr.M.Krishnamoorthy, Advocate sr 77454.

CMA.No.3185 of 2007

VD(CO)
SP(20/02/2020)