

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.12.2018
CORAM:
THE HONOURABLE MRS.JUSTICE R. HEMALATHA
C.M.A.No.3101 of 2008
and
M.P.No.1 of 2008

The New India Assurance Co. Ltd
Cuddalore _ N.T.

... Appellant/2nd Respondent

..Vs..

1. Nagarajan 1st Respondent/Petitioner
2. N.ChandrasekaranRespondents/1st Respondent
(second respondent was ex-parte before
the lower Court)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment in M.C.O.P.No.543 of 2005, dated 25.04.2007 on the file of the Motor Accident Claims Tribunal (I Additional Subordinate Judge), Cuddalore.

For appellant : Mr.K.Padmanabhan
For Respondents : Mr.L.Rajasekar - for R1
: R2- Ex-parte

JUDGMENT

The New India Insurance Company Limited, Cuddalore has filed the present appeal, questioning the quantum of compensation award passed by the tribunal in M.C.O.P.No.543 of 2005, on the file of the Motor Accidents Claims Tribunal, I Additional Subordinate Judge, Cuddalore. The first respondent/claimant filed the above M.C.O.P.No.543 of 2005, for claiming compensation of Rs.10,00,000/- for the injuries sustained by him in a road accident took place on 15.12.2004.

2. The case of the first respondent/claimant is as follows:

On 15.12.2004, the first respondent/claimant was riding his motor cycle bearing Registration No.PY-01-Z-4291 on Cuddalore, Kattukuppam Main Road, and at about 8.30 a.m., a speeding lorry bearing Registration No.TN-60-707, belonging to the second respondent, hit the motorcycle as a result of which, the first

respondent/claimant sustained injuries all over his body. Immediately he was rushed to Mahathma Gandhi Medical College Hospital, Kattukuppam, Pondicherry.

3. According to the first respondent/claimant, he was aged 30 years on the date of accident and was working as a Medical Officer in Mahathma Gandhi Medical College Hospital, earning a sum of Rs.20,000/- per month. The specific contention of the first respondent/claimant is that the rash and negligent driving of the driver of the second respondent was the cause of the accident and that since the second respondent has insured his vehicle with the present appellant, both of them are jointly and severally liable to pay compensation amount to the first respondent/claimant.

4. The trial Court after analysing the evidence on record awarded a compensation of Rs.6,80,000/- under various heads, which are extracted hereunder:

S.Nos.	Heads	Amount granted
1.	Future Loss of Income	2,50,000/-
2.	Permanent Disability	3,00,000
3.	Loss of Income	50,000/-
4.	Pain and Sufferings	30,000/-
5.	Extra Nourishment	20,000-
6.	Medical Expenses	30,000/-
	Total	6,80,000/-

5. The learned counsel for the appellant would contend that when the first respondent/claimant has sustained fracture of both bones on his right leg as per the medical records, the tribunal awarded an exorbitant amount of Rs.3,00,000/- under the head of permanent disability and a sum of Rs.2,50,000/- under the head of future loss of income that too, after adopting a multiplier method. He would further contend that a huge amount of Rs.50,000/- is awarded for loss of income, especially when there is no proof to show that the first respondent/claimant was not paid any salary during his leave period. The specific contention of the appellant/claimant is that the tribunal without assigning any reason has awarded a sum of Rs.30,000/- towards pain and sufferings and Rs.20,000/- towards extra nourishment and Rs.30,000/- for medical expenses.

6. It is pertinent to point out that the first respondent/claimant did not adduce any medical bills to show that he has actually incurred an expenditure of Rs.30,000/- towards his treatment. In such circumstances, the tribunal was wrong in awarding a sum of Rs.30,000/- towards medical expenses.

7. Dr.S.K.I.Raju (P.W.2) has assessed the partial permanent disability of the first respondent as 45%. The learned counsel appearing for the appellant would contend that P.W.2 is a General Physician and he cannot speak anything about restriction of movement of right knee and joint and that the percentage of disability assessed by P.W.2 is also on the higher side.

8. A perusal of the records shows that there is a fracture of both bones on the right leg of the injured and Dr.S.K.I.Raju has assessed the partial permanent disability as 45%. Though a general medical practitioner is a qualified person and his opinion cannot be ignored or negated just for the mere reason that he is not an orthopaedic surgeon. Therefore I do not find any reason or justification in the contention of the learned counsel appearing for the appellant. In the absence of any contra evidence, the percentage of disability assessed by P.W.2 is taken up for calculating loss of earning capacity. Since, there is no functional disability, applying multiplier method is not warranted and awarding a sum of Rs.2,000/- per percentage for partial permanent disability would meet the ends of justice. Thus, a sum of Rs.90,000/- (45 X 2000) towards partial permanent disability is awarded.

9. Apart from this, the first respondent/claimant is entitled to a sum of Rs.10,000/- for pain and sufferings, Rs.5,000/- for transportation and Rs.5,000/- for extra nourishment. The total compensation which can be awarded to the first respondent/claimant is Rs.1,10,000/- which shall carry interest at the rate of 7.5% per annum.

10. The quantum of compensation awarded by the tribunal defies logic and is totally unacceptable. This Court takes serious exception to this award and keeping in mind the nature of injury the victim has suffered, the award seems to be totally disproportionate and shocking. Such abnormally high award does not augur well for a judicial officer.

11. With the above observations, the appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

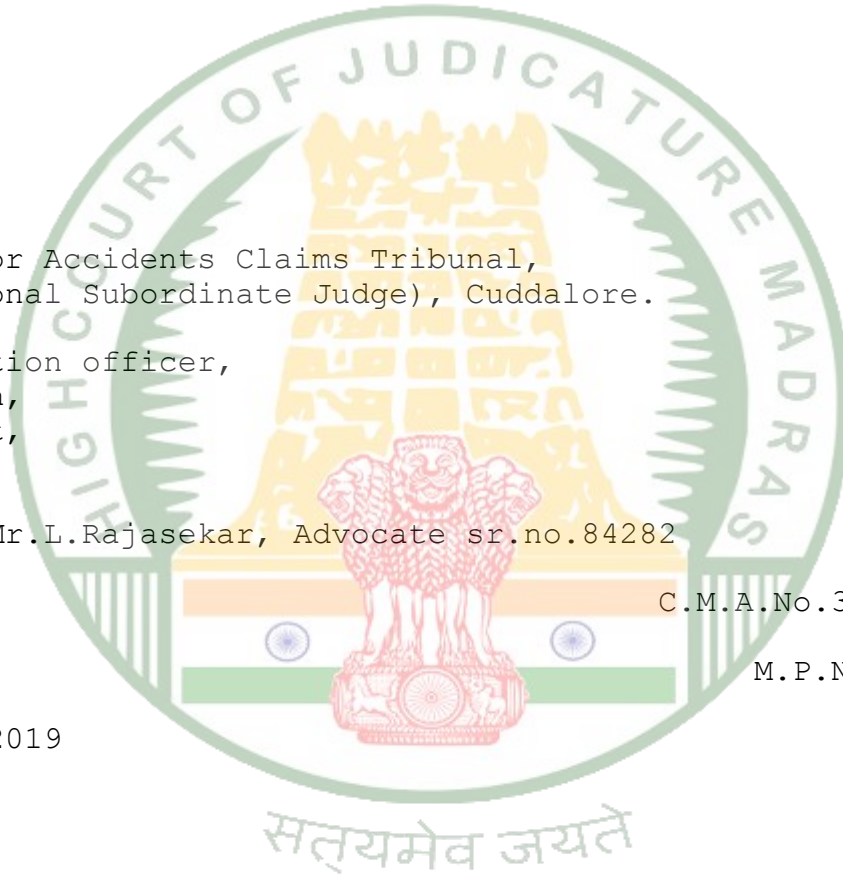
1.The Motor Accidents Claims Tribunal,
(I Additional Subordinate Judge), Cuddalore.

2.The Section officer,
VR Section,
High Court,
Madras.

+1cc to Mr.L.Rajasekar, Advocate sr.no.84282

C.M.A.No.3101 of 2008
and
M.P.No.1 of 2008

nr 06/03/2019



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