

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.2107 of 2015 & MP Nos.1 & 2 of 2015
& CMA.No.2108 of 2015 & MP Nos.2 & 3 of 2015

The New India Assurance
V.T.B. Complex, 1st Floor, No.88
Gandhi Road, Arakonam, Vellore District
(Service through 5th Floor
Justice Basheer Building,
No.45, Moore Street, Chennai 600 001)

... Appellant/2nd Respondent
in both the Appeals

-vs-

1. M.Sudarsan 1st Respondent in CMA 2107/15
2. Sri Venkateswar Institute of Science
and Technology
Kolandalur (Post)
Tiruvallur District.

...2nd Respondent in both the Appeals

M.Mahalakshmi 1st Respondent in CMA 2108/15

(2nd Respondent set exparte in the lower
court. Hence notice is dispensed with)

Civil Miscellaneous Appeals filed under Section 173 of the Motor
Vehicles Act, 1988, against the Judgment and decree dated
27.04.2015 made in MCOP. Nos.1179 & 1180 of 2011, on the file of
the Motor Accidents Claims Tribunal, Chennai (VIth Court of
Small Causes, Chennai).

For Appellant : Mr.R. Sivakumar
(in both the Appeals)

For Respondents : Mr. S.N.Kirubanantham,
(in both the Appeals) M/s. K.Kanniah Naidu for R1
R2 - Ex-parte

C O M M O N J U D G M E N T

[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

The challenge in these appeals by the Insurance Company is to the award of the Motor Accident Claims Tribunal (6th Court of Small Causes), Chennai, made in MCOP No.1179 and 1180 of 2011, granting a sum of Rs.48,00,000/- to the claimant in MCOP No.1179 of 2011 and Rs.30,00,000/- to the claimant in MCOP No.1180 of 2011 as compensation for the injuries suffered by them in the motor accident that occurred on 21.02.2011.

2. The case of the claimants, who are husband and wife, before the Tribunal is that on 21.02.2011 at about 4.30 p.m. when claimant in MCOP No.1179 of 2011 was riding his motor cycle bearing registration No.TN 20 AF 9439 from Tiruthani to Tiruvallur along with the claimant in MCOP No.1180 of 2011 as a pillion rider, the private bus, bearing Registration No.TN 55 P 0814, owned by the 2nd respondent and insured with the appellant Insurance Company, driven by its driver in a rash and negligent manner in the opposite direction dashed against the motor cycle. As a result of the impact, both the rider as well as the pillion rider of the motor cycle were severally injured. While the claimant in MCOP 1179 of 2011, namely the rider suffered multiple fracture of the right fumur bone, a blunt injury in the right shoulder, fracture of the right collar bone, multiple fracture of the hip bone, fracture of the right hand index finger and cut injuries in the right hand middle finger along with grievous injuries all over the body. The claimant in MCOP No.1180 of 2011, the pillion rider had suffered communitied fracture of right femur bone with heavy loss of soft tissue on the right thigh, right ankle and cut injuries in the fingers.

3. The claimants would further contend that both of them had suffered great deal of pain because of the injuries caused. Apart from incurring medical expenses, they had also lost their earning power because of the immobilisation caused due to the fractures sustained in the accident. Thus, the claimants had sought for a compensation of Rs.48,00,000/- in MCOP No.1179 of 2011 and a compensation of Rs.30,00,000/- in MCOP No.1180 of 2011, in the claim petition, namely the owner of the bus remained ex-parte.

4. The Insurance Company resisted the claim petitions contending that the accident occurred due to the rash and

negligent driving of the Motor Cycle. It was also contended that the rider of the Motor Cycle did not have the valid driving license on the date of the accident. The Insurance Company also denied the age, occupation, income, nature of injuries and the details of treatment.

5. Since both the Claim Petitions arose out of the same accident they were taken up together for disposal by the tribunal. The Tribunal on a consideration of the evidence on record particularly, the FIR marked as Ex.P2 and the Rough Sketch marked as Ex.P3, concluded that the accident occurred due to the rash and negligent driving of the bus driver. The Tribunal also took note of the fact that the driver of the bus had admitted guilt before the Criminal Court as evidenced by Ex.P8. The Tribunal also held that the Insurance Company is liable to pay the compensation since the existence of insurance cover was not denied.

6. On the quantum, the Tribunal found that the claimant in MCOP No.1179 of 2011 had suffered a disability of about 65%. Insofar as the claimant in MCOP No.1180 of 2011 is concerned the Tribunal fixed the disability at 50%. The Tribunal took the monthly income of the claimant in MCOP No.1179 of 2011 at Rs.18,500/- added 50% towards future prospects, applied a multiplier of 18 and arrived at the loss of earning capacity at Rs.38,96,100/- being 65% of the total loss of earning capacity. Insofar as the claimant in MCOP No.1180 of 2011 is concerned, the Tribunal took her income at Rs.10,000/- per month adding 50% towards future prospects and applying a multiplier 18, the Tribunal arrived at the loss of earning capacity at Rs.16,20,000/- being 50% of the total loss of earning capacity. The Tribunal also awarded the amounts under the following heads as compensation.

Heading	OP No.1179 of 2011	OP No.1180 of 2011
Medical Expenses	Rs. 7,16,200/-	Rs. 2,07,000/-
Loss of Income for 3 months	Rs. 55,500/-	Rs. 30,000/-
Transportation	Rs. 50,000/-	Rs. 20,000/-
Extra nourishment	Rs. 20,000/-	Rs. 50,000/-
Attender Charges	Rs. 25,000/-	Rs. 25,000/-
Damage to clothes	Rs. 5,000/-	Rs. 5,000/-

Heading	OP No.1179 of 2011	OP No.1180 of 2011
Loss of Future Earning Capacity (Sundarsan 18,500 + 50% fp x 12 x 18 x 65%) (Mahalakshmi 10,000 + 50% fp x 12 x 18 x 50%)	Rs.38,96,100/-	Rs.16,20,000/-
Future Medical Expenses	Rs. 61,000/-	Rs. 70,000/-
Loss of Unborn child		Rs. 2,50,000/-
Loss for chance of conceiving and shock in abortion	-	Rs. 2,50,000/-
Treatment taken for child birth	-	Rs. 5,00,000/-
Total	Rs.48,28,800/-	Rs.30,27,000/-

The Tribunal rounded off the compensation to Rs.48,00,000/- for the claimant in MCOP No.1179 of 2011 and Rs.30,00,000/- to the claimant in MCOP No.1180 of 2011.

7. Aggrieved, the Insurance Company has come forward with these appeals.

8. We have heard Mr.R.Sivakumar, learned counsel appearing for the Insurance Company and Mr.S.N.Kirubanantham, learned counsel appearing for Mr.Kanniah Naidu, for the 1st respondent/claimant in both the appeals. Notice to the 2nd respondent the owner of the bus is dispensed with considering the fact that it remained ex-parte before the Tribunal.

9. Mr.R.Sivakumar, learned counsel appearing for the Insurance Company would vehemently contend that the claimants have not established that there was any loss of earning capacity due to the accident. Contending that the Tribunal had awarded huge amounts as compensation based on its surmises and conjuncture, Mr.R.Sivakumar, would seek a reduction of the award. He would fault the Tribunal for awarding compensation for loss of Unborn child at Rs.2,50,000/-, Loss for chance of conceiving and shock in abortion at Rs.2,50,000/- and Rs.5,00,000/- for treatment taken for child birth, according to Mr.Sivakumar, these heads of compensation are unknown in the field of motor accident compensation.

10. Per contra, Mr.S.N.Kirubanantham, learned counsel appearing for the claimants would contend that the fact that the claimant in MCOP No.1180 of 2011, suffered an abortion, due to the accident is borne out by evidence. He would also point out that there is enough and more evidence to establish the fact that the claimant in MCOP No.1180 of 2011 had suffered

difficulties in conceiving because of the accident. He would also contend that the very nature of the injuries would show that there would be a definite impact on the loss of earning power by the claimants.

11. We have considered the rival submissions.

12. The conclusions of the Tribunal on the question of negligence, in our considered opinion, do not call for any interference inasmuch as the same is based on valid documentary evidence in the form of the Criminal Court proceedings where the driver of the bus had admitted guilt. We therefore confirm the findings of the Tribunal on the question of negligence.

13. As regards quantum, we find that the compensation awarded by the Tribunal for Medical Expenses, Loss of Income during treatment period, transportation, extra nourishment, attender charges, damage to clothing and future medical expenses is just and reasonable and we do not see any reason to interfere with the same.

14. On the question of loss of future earning capacity Mr.R.Sivakumar, would raise a specific contention that the claimant in MCOP No.1179 of 2011 is continuing in the same job even after the accident, therefore, he is not entitled to seek compensation for earning loss of capacity. In view of the said statement made by him, we had required the claimant in MCOP No.1179 of 2011, who is the 1st respondent in CMA No.2107 of 2015 to produce his bank statement as well as the evidence of termination of his service. Pursuant to our direction, the claimant has produced his Bank Statement as well as the Certificate from the Bank, stating that the account is not operational after 30.12.2013. The relieving letter issued by the employer has also been produced. These documents would show that the claimant / 1st respondent in CMA No.2107 of 2015 has been discharged from service because of the disability suffered by him in the accident.

15. We are, therefore, unable to accept the submission of Mr.R.Sivakumar, that there is no loss of earning capacity. We have already extracted the injuries suffered by him in the accident. The Tribunal has come to the conclusion that the partial permanent disability/functional disability, insofar as the claimant in MCOP No.1179 of 2011 is concerned is about 65%. In coming to the said conclusion the Tribunal has relied upon the evidence of the Doctor who was examined as P.W.4. The nature of the injuries, namely a Grade III B Fracture of distal femur, bicolloneal fracture of acetabulum right and Brachial Palsy injury, would definitely have an impact on the earning power of the injured person. From the evidence on record, it is

seen that the claimant in MCOP No.1179 of 2011 was working as a System Administrator earning about Rs.18,500/- per month. It is also seen that there is a reduction in his right hip movement and right elbow movement as well as reduction in the knee flexion to an extent of 30 degrees. Claimant in MCOP No.1179 of 2011 was directed to appear before the Medical Board constituted by the Rajiv Gandhi Government General Hospital, Chennai, by order dated 19.04.2018, pursuant to the same, he had appeared before the Medical Board on 06.07.2018 and the Medical Board has certified his permanent disability at 65%. We, therefore, do not find any reason to interfere with the conclusion of the Tribunal that the functional disability would be 65%. The Tribunal has adopted 50% towards future prospects. The same is not in consonance with the larger Bench Judgment of the Hon'ble Supreme Court in National Insurance Company Ltd., Vs. Pranay Sethi reported in 2018 (1) LW 331.

16. We, therefore adopt future prospects at 40%. The Tribunal has adopted 18 as multiplier and the same should have been 17 considering the age of the claimant in MCOP No.1179 of 2011. Thus worked the loss of earning capacity would be

$$\text{Rs.25,900/-} \times 12 \times 17 \times 65\% = \text{Rs.34,34,340/-}.$$

17. Insofar as the claimant in MCOP No.1180 of 2011, the Tribunal has taken her monthly income at Rs.10,000/- added 50% towards future prospects and as worked out the loss of earning capacity at Rs.16,20,000/- for the 50% functional disability. Considering the nature of injuries and the occupation of the injured claimant, namely a tailor, we see no reason to interfere with the fixation of the functional disability by the Tribunal. At the same time, as already pointed out the future prospects should have been taken only at 40% and not 50%. Therefore, the loss of earning capacity for the claimant in MCOP No.1180 of 2011 would be

$$\text{Rs.14,000/-} \times 12 \times 18 \times 50\% = \text{Rs.15,12,000/-}$$

18. Coming to the contention of Mr.R.Sivakumar, relating to the compensation awarded on the heads of loss of Unborn child, Loss for chance of conceiving and shock in abortion and Treatment taken for child birth, we are unable to sustain the award of the Tribunal on these heads. A victim of a motor accident can be compensated for the loss suffered due to the injuries in the accident, at the same time, the compensation cannot be granted on the above heads which are nebulous. There is no direct evidence to show that the claimant had lost the ability to conceive due to the injuries caused in the accident.

19. We do not find any expert evidence on the question except the evidence of the claimant. We do not think that there is any justification for awarding a huge sum of Rs.10,00,000/-

on the unconventional heads based on the interested testimony of the claimant herself. We, therefore, set aside the award on the heads of loss of unborn child, Loss for chance of conceiving and shock in abortion and Treatment taken for child birth.

20. We have already found that awards under the other heads made by the Tribunal are just and reasonable. In view of our finding that the loss of future earning capacity needs to be reworked and reduced. Hence, the award of the Tribunal reworked as follows:-

Heading	OP No.1179 of 2011	OP No.1180 of 2011
Medical Expenses	Rs. 7,16,200/-	Rs. 2,07,000/-
Loss of Income for 3 months	Rs. 55,500/-	Rs. 30,000/-
Transportation	Rs. 50,000/-	Rs. 20,000/-
Extra nourishment	Rs. 20,000/-	Rs. 50,000/-
Attender Charges	Rs. 25,000/-	Rs. 25,000/-
Damage to clothes	Rs. 5,000/-	Rs. 5,000/-
Loss of Future Earning Capacity (Sundarsan 25,900/- x 12 x 17 x 65%) (Mahalakshmi 14,000/- x 12 x 18 x 50%)	Rs.34,34,340/-	Rs.15,12,000/-
Future Medical Expenses	Rs. 61,000/-	Rs. 70,000/-
Total	Rs.43,67,040/-	Rs.19,19,000/-

21. In view of the above, the appeals are partly allowed, the award of the Tribunal in MCOP 1179 of 2011 is modified and reduced to Rs.43,67,040/- (Rounded off to Rs.43,67,000/-) and to Rs.19,19,000/- (Rounded off to Rs.19,20,000/-) in MCOP No.1180 of 2011. The awards will carry interest at 7.5% per annum from the date of petition till date of deposit. There shall be no order as to costs.

22. The Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited within a period of six (6) weeks from the date of receipt of a copy of the judgment. On such deposit, the claimants will be entitled to withdraw the compensation.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

To
Sub Assistant Registrar

The Motor Accidents Claims Tribunal
With Court of Small Causes,
Chennai.

+2cc to Mr.R.Sivakumar, Advocate, S.R.No.68070 & 68071

+1cc to Mr.K.Kanniah Naidu, Advocate, S.R.No.68451

+1cc to Mr.A.N.Purosuthaman, Advocate, S.R.No.68452

CMA.No.2107 of 2015 & MP Nos.1 & 2 of 2015
& CMA.No.2108 of 2015 & MP Nos.2 & 3 of 2015

GJ(CO)
GSP(14/11/2018)

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