

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
C.M.A.No.1507 of 2018
and
C.M.P.No.11992 of 2018

The Branch Manager,
M/s.Reliance General Insurance Company Limited,
Sri Lakshmi Complex,
1st Bharathi Street, Omalur Main Road,
Swarnapuri,
Salem 636 004. ... Appellant/ 3rd respondent

Vs

1.C.Ramesh ... 1st Respondent / petitioner

2.T.Suresh

3.N.Thangavel ... Respondents 2&3 / Respondents 1 & 2

PRAYER : Civil Miscellaneous Appeal filed against the Judgment and Decree made in MCOP.No.3388 of 2013, dated 20.07.2017, on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Krishnagiri.

For Appellant : Mr.M.B.Raghavan

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the insurance company, against the award of Rs.14,91,000/- granted as compensation towards the disability sustained by the 1st respondent/claimant, due to the injuries suffered by him in the accident, which occurred on 14.08.2011, when he was travelling as a pillion rider in the motorcycle, which was hit down by the lorry belonging to the 3rd respondent herein and insured with the appellant/ insurance company.

2.Heard Mr.M.B.Gopalan, learned counsel appearing for the appellant, who questions only the quantum of compensation awarded by the Tribunal. Therefore, this

Court is not going into the issue of negligence. He would submit that 50% functional disability determined by the Tribunal is on the higher side and therefore, he seeks to reduce the compensation awarded by the Tribunal.

3.The 1st respondent/claimant sustained grievous injuries leading to amputation of lower leg and he was referred to Medical Board, which opined 85% partial permanent disability as per Ex.C1. Based on that the Tribunal determined the loss of earning power at 50%. It is true that Employees' Compensation Act speaks about 50% disability in the case of amputation. However, the Medical Board constituted by the Krishnagiri Government Hospital itself opined that 85% partial permanent disability was sustained by the claimant. Though there is no proof with regard to the avocation of the claimant as driver by producing driving license, still with the amputated leg, it may not be possible for the claimant to do any normal work. Therefore, this Court instead of 50% of loss of earning power re-determines the same at 60%. The Tribunal determined the monthly income at Rs.8,000/- as per Ex.P.5-Salary Certificate, (i.e.,) Rs.5,000/- per month as salary and Rs.100/- batta per day and therefore, the Tribunal rightly determined the monthly income at Rs.8,000/- and the same is confirmed.

4.The Tribunal based on the law which was in force at the time of disposal of the claim petition, added 50% towards future prospects. However, in view of the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), 40% has to be added towards future prospects as per the age of the claimant and his avocation as a private driver. After adding 40% towards future prospects, the monthly income would be at Rs.11,200/- (Rs.8,000/- + 40% of Rs.8,000/-).

5.The Tribunal adopted right multiplier of "18" as per the age of the victim. Therefore, the loss of income would be at Rs.14,51,520/- (Rs.11,200/- x 12 x 18 x 60 /100).

6.Medical expenses:

The Tribunal awarded a sum of Rs.29,000/- under this head. The same is confirmed.

7.Nutrition charges:

The Tribunal awarded a sum of Rs.5,000/- under this head. The same is confirmed.

8.Transportation charges:

The Tribunal awarded a sum of Rs.5,000/- under this head. The same is confirmed.

9.Pain and sufferings:

The Tribunal awarded a sum of Rs.75,000/- under this head. The same is reduced to Rs.50,000/-.

10.Loss of amenities and enjoyment of life:

The Tribunal has awarded a sum of Rs.75,000/- under this head. The same is reduced to Rs.50,000/-.

11.Damages to clothing and articles:

The Tribunal has awarded a sum of Rs.1,000/- under this head. The same is confirmed.

Head	Amount (Rs.)
Total loss of income	1451520
Medical expenses	29000
Nutrition charges	5000
Transportation charges	5000
Pain and sufferings	50000
Loss of amenities and enjoyment of life	50000
Damages to clothing	1000
Total	1591520

12.Hence, the total compensation payable in this case is Rs.15,91,520/- rounded off to Rs.15,91,500/-.

13.The interest awarded by the Tribunal at the rate of 9% per annum is very high. Therefore, this Court reduces the same to 7.5% per annum.

14.Though the appeal has been preferred by the insurance company against the award of Rs.14,91,000/-, the facts and circumstances enable this Court to enhance the compensation. Accordingly, award of the Tribunal (i.e.,) Rs.14,91,000/- is enhanced to Rs.15,91,500/-, invoking Order 41 Rule 33 of CPC and Section 151 of CPC and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are benevolent in nature and what is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by the claimants, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC). Therefore, in an endeavour to do complete justice, this Court has enhanced the compensation.

15.Since even without notice to the claimant the enhancement has been made in favour of the claimant in the appeal filed by the insurance company at the time of

admission itself, there is no occasion for the claimant to note the enhancement. Therefore, copy of this order is directed to be sent to the claimant free of cost. The claimant is directed to pay the requisite court-fee, if any, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order.

16. The appellant Insurance Company is directed to deposit the entire award amount, with interest and costs, as per the modified award passed by this Court, after deducting the amount already deposited, if any, 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 same to the bank account of the claimant, through RTGS, within a period of one week thereon. If the requisite court-fee is not paid by the claimant, the Tribunal is directed to deduct the requisite court fee from the compensation awarded to the claimant and thereafter, transfer the remaining award amount to the account of the claimant.

17. Accordingly, this appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (Ccc)

//True Copy//

Sub Assistant Registrar

sai

To
The Special Sub Judge
(Motor Accident Claims Tribunal),
Krishnagiri.

2.C.Ramesh S/o.Chandrasekar,
[Native of Post office Road,
T.B.Road, Kuppam Post,
Land Mandal, Chittoor District.]
Now residing at
Chinnamattarapalli Village & post,
Krishnagiri Taluk & District.

COPY TO:
THE RECORD KEEPER,
VR SECTION,
HIGH COURT
MADRAS

+1 Cc to M/S.M.B.GOPALAN ASSOCIATES Advocate SR.NO. 46675
C.M.A.No.1507 of 2018

NRJK (cO)
ASK (04/09/2018)