

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.No.1300 of 2015
and C.M.P.No.3714 of 2016

Rai Kumar ... Appellant/Claimants

Vs

1.Jaishankar

2.The Divisional Manager,
The New India Assurance Company Ltd.,
2nd floor, C.S.I. Building,
Vellore - 632 001. ... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed Under Section 173 of MV Act 1988 against the judgment and decree dated 30/11/2012 made in MCOP.No.457/2012 on the file of Motor Accidents Claims Tribunal at Vellore, Vellore District (Chief Judicial Magistrate).

For Appellant : Mr.F.Terry Chella Raja
for M/s.T.Dhanya Kumar

For Respondents: Mr.K.Padmanabhan (for R2)

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 claimant questioning the quantum of compensation of Rs.10,16,000/- awarded for the disability sustained by him in the accident occurred on 17.12.2010 in which his left leg was amputated below his knee.

2. There is no appeal by the Insurance Company questioning either the quantum of compensation or the liability, whereas, only the claimant has come before this Court challenging the inadequacy of the quantum of compensation.

3. The case of the appellant is that on 17.12.2010 at about 2.30 p.m. when the claimant was crossing the road in his two wheeler, a Bolero car bearing Registration No.TN 23 AC 6751

belonging to the first respondent came in a rash and negligent manner and hit against the claimant. Due to this, the claimant had suffered severe injuries in his head and left leg. Therefore, the claim petition. On contest, the Tribunal held that the accident had occurred due to the negligence on the part of the claimant as well as on the part of the driver of the car and hence fixed 50% negligence on the side of the claimant and 50% on the side of the driver of the car and awarded a sum of Rs.5,08,000/- towards total compensation to the claimant. Against the said award the claimant is before this Court.

4. Heard Mr.F.Terry chella Raja, learned counsel appearing for the appellant and Mr.K.Padmanabhan, learned counsel appearing for the Insurance Company.

5. A perusal of the records shows that at the time of accident, the claimant was working as P.G. Assistant, earning about Rs.10,000/- as proved by Ex.P.8. However, the Tribunal has fixed only Rs.6,000/- per month, since the connected documents have not been filed. The educational qualification of the appellant has been proved by marking Exs.P.4 and P.5 certificates. Therefore, Rs.10,000/- as claimed by the appellant has to be determined. Moreover, there is no rebuttal evidence on the side of the Insurance Company regarding the monthly income.

6. The claimant is aged about 34 years. The Constitution Bench of the Honourable Supreme Court in Syed Sadiq Vs.United India Insurance Company, reported in 2014 (1) TNMAC 459, fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008. Since, in the present case, the accident had occurred during the year 2010, even in the absence of the proof regarding his income, this Court fixes Rs.10,000/- as his monthly income.

7. As per the Constitution Bench judgment of the Honourable Supreme 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 and therefore, 40% has to be added towards future prospects and the total monthly income of the deceased is arrived at Rs.14,000/- (10,000 + 40% of 10,000).

8. The Tribunal determined the disability at 50% as per Ex.P.10 disability certificate. However, a perusal of the discharge summary Ex.P.6 indicates that the claimant's left leg has been amputated and there is an impairment of memory and slurring of speech. Therefore the claimant was advised to go for occupational therapy as well as for speech therapy. If the speech is slurred, it is due to impact of the accident affecting the brain. It is to be noted that in the accident the claimant had suffered head injury. A person who is unable to speak properly could not continue his profession as a teacher.

9. At this juncture, it is relevant to extract the discharge summary of the claimant issued by Chiristian Medical College, Vellore.

....

'Discussion

Mr.Raikumar was readmitted for completion of his rehab goals. During his last admission, he was given a temporary transtibial prosthesis. He received physical therapy, occupational therapy and speech therapy as part of rehabilitation.

.....'

10. Therefore, even though the Tribunal has determined the disability at 50% as per the medical certificate, the loss of earning capacity is 100% and therefore, 50% determined by the Tribunal towards disability/loss of earning power is set aside and the same is redetermined at 100%.

11. As per the judgment of the Honourable Supreme Court in Sarala Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), for the age of 34, the appropriate multiplier "16" has been rightly adopted by the Tribunal. Therefore, the total loss of income arrived at, is as follows:

Total Loss of Income =14,000 x 12 x 16
= Rs.26,88,0000/-.

12. The Tribunal has awarded a sum of Rs.3,00,000/- towards Medical expenses as per Ex.P.6 series and the same is confirmed; Rs.1,00,000/- towards pain and suffering is confirmed; Rs.15,000/- awarded towards extra nourishment is inadequate and the same is enhanced to Rs.50,000/-; Rs.25,000/- awarded towards Attender charges during the time of treatment is confirmed and Rs.20,000/- awarded towards loss of amenities is enhanced to Rs.1,00,000/-. No amount is awarded towards transportation and therefore a sum of Rs.25,000/- is awarded towards transportation expenses.

13. Since the claimant's left leg has been amputated, the same has to be replaced with an artificial limb. However, no amount has been awarded by the Tribunal towards artificial limb. Hence, a sum of Rs.1,00,000/- is awarded towards purchasing of artificial limb.

14. With regard to the contributory negligence, though the appeal has been preferred by the claimant, it is seen 50% has been fixed as contributory negligence on the side of the claimant and 50% on the side of the driver of the car. The accident had occurred when the claimant was riding his two wheeler and at that time the car belonging to the first respondent insured with the second respondent driven in a rash and negligent manner hit the two wheeler causing the accident. The tribunal taking into consideration that the accident had occurred in the junction of four way, has fixed 50% contributory negligence on the claimant and 50% on the driver of the car.

15. However, it is seen that the First Information Report has been registered (Ex.P.1) against the driver of the car and he was prosecuted. P.W.1, the victim himself and P.W.2 - eye witness had categorically stated that the accident had occurred

because of the rash and negligent driving of the driver of the car and there is no rebuttal evidence on the side of the Insurance Company. In the absence of any rebuttal evidence and in view of the evidence of the victim as well as P.W.2, it has to be found that the accident had occurred solely because of the rash and negligent driving of the car and not the rider of the two wheeler. The finding of the Tribunal in this regard is set aside. It is made clear that the accident had occurred solely on account of the rash and negligent driving of the driver of the car belonging to the first respondent and insured with the second respondent. Hence, the Insurance Company is liable to pay the entire compensation to the claimant.

16.Hence, the total compensation payable in this case is Rs.33,88,000/-, rounded off to Rs.34,00,000/-.

Head	Amount (Rs.)
Total loss of income	26,88,000
Medical Expenses	3,00,000
Pain and suffering	1,00,000
Attender charges	25,000
Extra Nourishment	50,000
Loss of Amenities	1,00,000
Artificial Limb	1,00,000
Transportation charges	25,000
Total	33,88,000/-

Rounded off to 34,00,000/-

17.The amount awarded would carry interest at the rate of 7.5% per annum. The appellants shall pay the requisite court-fee, if any, within a period of two weeks from the date of receipt of a copy of this order.

18.The 2nd respondent is directed to deposit the entire amount awarded by this Court along with interest and costs before the Tribunal within a period of twelve weeks from the date of receipt of a copy of this order, after deducting the sum, if any, already deposited. On such deposit being made, the Tribunal shall transfer the same to the claimant's account through RTGS within a period of one week thereon.

19. Accordingly, the appeal is partly allowed. No costs. Consequently, C.M.P.No.3714 of 2016 is closed.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

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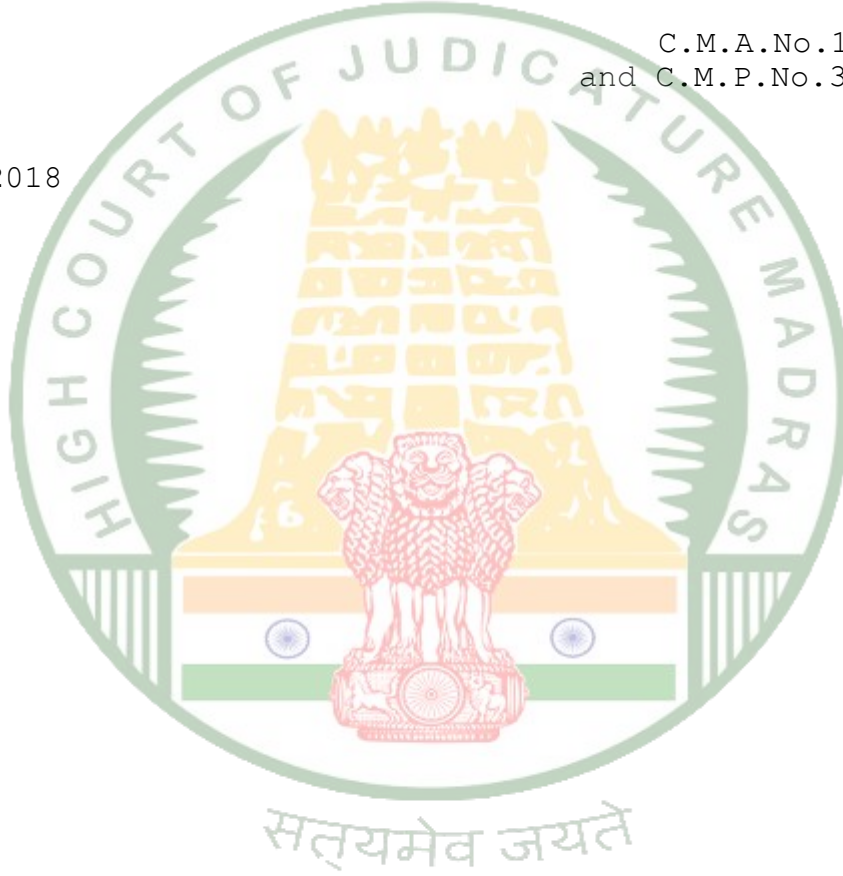
To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal
Vellore, Vellore District.

+lcc to M/s.T.Dhanya Kumar, Advocate sr.no.29493
+lcc to Mr.K.Padmanabhan, Advocate sr.no.29500

C.M.A.No.1300 of 2015
and C.M.P.No.3714 of 2016

kji(co)
nr 20/08/2018



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