

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2018

CORAM:

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

CMA.No.185 of 2016,
CMA No.1273 of 2016 & CMP No.9808 of 2016
and CMA No.1274 of 2016 & CMP No.9809 of 2016

Karthick ... Appellant in CMA 185/2016
1st Respondent in CMA 1273/16/
Petitioner in O.P.5728 of 2011

-vs-

1. A.Arjunan ... 1st Respondent in CMA 185/16
& 2nd Respondent in CMA 1273 & 1274/16/
1st Respondent both petitioner
2. Sathish Kumar ... 1st Respondent in CMA.No.1274 of 2016/
Petitioner in O.P.No.5858 of 2011
3. United India Insurance Company Limited,
No.132, Greams Road,
Chennai 600 006. ... 2nd Respondent in CMA No.185/16
& Appellant in CMA 1273 & 1274/16/
2nd Respondent in both petitioner

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Common Judgment and decree in MCOP.Nos.5728 and 5858 of 2011, dated 27.03.2015 on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant in CMA 185/16 : Mr. F.Terry Chellaraja
1st Respondent in CMA 1273 & 1274/16

For 2nd Respondent in CMA 185/16 : Mr. P.Sankaranarayanan
& Appellant in in CMA 1273 & 1274/16

R1 in CMA.No.185 of 2016 and
R2 in CMA.No.1273 & 1274 of 2016 : No Appearance

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 all these appeals is to the common award made by the Motor Accident Claims Tribunal, (6th Judge, Court of Small Causes Court), Chennai, dated 27.03.2015, in MCOP Nos. 5728 & 5858 of 2011.

2. While the appeals in CMA Nos.1273 and 1274 of 2016 are filed by the Insurance Company, challenging the quantum of compensation, the appeal in CMA No.185 of 2016 is by the claimant in MCOP No.5728 of 2011 seeking enhancement.

3. The case of the claimants before the Tribunal is as follows:

On 05.06.2011 at about 7.30 a.m., the claimant in MCOP No.5858 of 2011 was riding a motorcycle bearing Registration No.TN-02-L-2044, with the claimant in MCOP No.5728 of 2011 as a pillion rider, near Bharat Petroleum Bunk, at Maraimalai Nagar. While so, the Eicher Lorry bearing Registration No.TN-33-AK-2449, belonging to the 2nd respondent in CMA Nos.1273 & 1274 of 2016, insured with the appellant Insurance Company, driven by one Arjunan in a rash and negligent manner and dashed against the two-wheeler, resulting in grievous injuries to both rider as well as the pillion rider. Terming the negligence of the driver of the lorry as the cause for the accident, the claimants sought for compensation of Rs.6,00,000/- each.

4. The Claim Petitions were resisted by the Insurance Company contending that the Eicher Lorry insured with the Insurance Company was not involved in the accident. It is the further contention of the Insurance Company that the rider of the two-wheeler was negligent and the said negligence was a contributory factor in causing the accident. The above plea relating to the contributory negligence was made without prejudice to the main contention as to the non involvement of the accident. The Insurance Company also disputed the nature of the injuries and the extent of disability alleged to have been caused to the claimants.

5. The Tribunal, which heard the Original Petitions, concluded that the accident took place due to the rash and negligent driving of the lorry. In coming to the said conclusion, the Tribunal took note of the contents of the First Information Report, which was marked as Ex.P1, and the evidence

of the claimants themselves. The Tribunal also took note of the fact that the appellant/Insurance Company had not let in any evidence to prove the absence of negligence on the part of the car driver.

6. On the quantum, the Tribunal awarded a sum of Rs.15,06,300/- to the claimant in MCOP No.5728 of 2011. The details of the award is as follows:

S.No.	Heads	Amount
1.	Loss of future earning capacity	Rs.14,58,000/-
2.	Loss of Income for the period of three months	Rs. 27,000/-
3.	Medical Expenses	Rs. 21,300/-

7. In MCOP No.5858 of 2011, the Tribunal awarded a sum of Rs.6,18,900/- as compensation under the following heads:

S.No.	Heads	Amount
1.	Loss of future earning capacity	Rs. 5,83,200/-
2.	Loss of Income for three months	Rs. 27,000/-
3.	Medical Expenses	Rs. 8,700/-

8. The Insurance Company has challenged the award in both the Original Petitions, while the claimant in MCOP No.5728/2011 has filed a separate appeal in CMA No.185 of 2016, seeking enhancement.

9. We have heard Mr.F.Terry Chellaraja, learned counsel appearing for the appellant in CMA No.185 of 2016 and the 1st respondent in CMA Nos.1273 & 1274 of 2016 and Mr.P.Sankaranarayanan, learned counsel appearing for the 2nd respondent in CMA 185 of 2016 and the appellant in CMA Nos.1273 & 1274 of 2016.

10. Mr.P.Sankaranarayanan, learned counsel appearing for the Insurance Company would contend that considering the nature of the injuries, the compensation awarded is on the higher side. Mr.P.Sankaranarayanan, would submit that the assessment of the disability at 50% is on the higher side. He would draw our attention to the injuries caused and submit that these injuries would not have an effect on the earning power of the claimants.

11. Per contra, Mr.F.Terry Chellaraja, learned counsel appearing for the claimants would contend that the Tribunal was justified in fixing the percentage of disability at 50%. He would also fault the Tribunal for not granting any amount towards pain and suffering, attender charges, extra nourishment, loss of amenities, etc.

12. We have considered the rival submissions.

CMA No.1274 of 2016

13. This appeal is against the award in MCOP No.5858 of 2011. As per the discharge summary, which has been marked as Ex.P8, the injuries suffered are fracture of the shaft of the right femur bone and it is seen that the claimant was hospitalised from 05.06.2011 to 18.07.2011. Since no proof was produced to show the monthly income of the claimant, the Tribunal took the notional income at Rs.9,000/- per month. The Tribunal awarded a sum of Rs.21,000/- representing the income for a period of three months, as loss of income during the treatment period.

14. The Tribunal found that the right femur bone union has been fixed with a long plate and screws and there is a mal-union causing right thigh stiffness due to muscle contraction. The Tribunal also found that the right knee movement is restricted to 30 degrees and there is a mild limp in the walking of the claimant. The Tribunal also found that the claimant would experience pain while climbing steps. Taking into account the avocation of the claimant as a painter, the Tribunal has taken the disability at 20%. And adding 50% towards future prospects and applying a multiplier of 18, the Tribunal arrived at the loss of earning power Rs.5,83,200/-.

15. Though Mr.Sankaranarayanan, learned counsel would contend that the Tribunal should have added only 40% towards future prospects, we do not propose to disturb the award on that ground, since we find that the Tribunal has not awarded any amount for pain and suffering, attender charges, extra nourishment, transportation etc. We find that the deduction of 10% in future prospects and addition on the above heads would result in a very minor difference in the total compensation. We therefore do not propose to interfere with the award of the Tribunal. The Appeal in CMA No.1274 is dismissed, confirming the award of the Tribunal.

16. As regards the above appeals, the Tribunal has fixed the disability at 50% and has added 50% towards future prospects. Mr.Sankaranarayanan, would vehemently contend that the fixation of the disability at 50% is on the higher side, considering the nature of the injuries. He would also fault the Tribunal for adding 50% towards future prospects, relying upon the judgment of the Larger Bench of the Hon'ble Supreme Court in National Insurance Company Ltd., Vs. Pranay Sethi reported in 2018 1 LW 331.

17. Contending contra Mr.F.Terry Chellaraja, learned counsel appearing for the claimant would submit that the Tribunal erred in fixing the monthly income at Rs.9,000/-. From the discharge summary, we find that the injuries suffered are grievous injuries, namely fracture of the right ring finger, the fracture of skull bone, nerve palsy, bilateral nerve paresis and right eye injury, resulting in immobility of the right upper eyelid. The Tribunal has taken into account these injuries and concluded that the functional disability would be 50%. Except the fracture in the right ring finger, the other injuries appear to be lacerated injuries, which may not have a felling effect on the earning power of the claimant.

18. We are therefore of the considered opinion that the functional disability could be taken at 35% instead of 50%, as fixed by the Tribunal. No exception could be taken to the fixation of the monthly income at Rs.9,000/-, since the claimant himself had claimed that he was earning only Rs.9,000/- working as a salesman in Reliance Diary Food Limited. Adding 40% towards future prospects, the monthly income for the purposes of calculating the loss of earning capacity could be Rs.12,600/-. Applying a multiplier of 18, the total loss of earning capacity would be

$$\text{Rs.9,000/-} + \text{Rs.3,600/-} \times 12 \times 18 \times 35\% = \text{Rs.9,52,560/-}$$

19. The Tribunal has awarded a sum of Rs.21,300/- towards medical expenses and Rs.27,000/- towards loss of income during the treatment period. The said awards are confirmed. The Tribunal has not awarded any amount towards transportation, extra nourishment, attender charges and pain and suffering. Admittedly, the claimant was inpatient for nearly three months. Therefore, we award a sum of Rs.10,000/- towards transportation, Rs.10,000/- towards extra nourishment, Rs.15,000/- towards attender charges (Rs.5,000 x 3) and Rs.15,000/- towards pain and suffering. Thus the total award works out to Rs.10,50,860/-.

20. For the foregoing reasons, the appeal in CMA No.1273 of 2016 is partly allowed and the award of the Tribunal is reduced to Rs.10.50,860/- with interest at 7.5% per annum from the date of petition till date of payment. CMA No.185 of 2016 is dismissed. Considering the circumstances, we do not impose costs in these appeals. Consequently, the connected miscellaneous petitions are closed.

21. 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 are permitted to withdraw the entire amount.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

jv

To

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

+3cc to Mr.M.Malar, Advocate, S.R.No.75121, 75120 & 75123

+2cc to Mr. P.Sankaranarayanan, Advocate, S.R.No.74799, 74298

CMA.No.185 of 2016,
CMA No.1273 of 2016 & CMP No.9808 of 2016
and CMA No.1274 of 2016 & CMP No.9809 of 2016

VD(CO)
CS/21/01/2019

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