

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2988 of 2011
and M.P.No.1 of 2011

Divisional Manager
The New India Assurance Co.Ltd.,
No.92, G.N.Chetty Road,
Chennai

..Appellant/
2nd respondent

vs

1.Sekar .. 1st Respondent/Petitioner

2.Bashima Suban

3.Banuravi

4.Branch Manager

National Insurance Co.Ltd.,
No.62, Jawaharlal Nehru Salai,
Pondicherry

..Respondents 2 to 4/
Respondents 1,3 & 4

(2nd Respondent exparte and notice dispensed
with for him no relief is claimed against
respondents 3 & 4 are given up in the Appeal)

Civil Miscellaneous Appeal filed under Section 173 of Motor
Vehicles Act, against the order and decree dated 23.11.2010 made
in M.C.O.P.No.411 of 2005 on the file of Motor Accident Claims
Tribunal, Subordinate Court, Tiruvannamalai.

For appellants : : Mr.M.Krishnamoorthy

For Respondent(s) : : Mr.S.Kaithamalai Kumaran for R1
R2- Set Exparte before the Tribunal
R3 and R4-Given up.

J U D G M E N T

The Appellant, Insurance company has filed this appeal,
challenging the order and decree dated 23.11.2010 made in
M.C.O.P.No.411 of 2005 on the file of Motor Accident Claims
Tribunal, Subordinate Court, Tiruvannamalai.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a case of injury. The case of the Petitioner-Sekar is that on 26.09.2004 at about 3.30 a.m., while the Petitioner was driving a jeep bearing Reg.No.PY-01-P-5965 in Chengi to Tindivanam road, while going near Thotti village, a lorry bearing Reg.No.KA-01-D-6687 came at high speed, in a rash and negligent manner in the opposite direction, dashed against the jeep, in which the petitioner was going, causing him multiple grievous injuries. The accident occurred due to negligence of the above said lorry driver. The Petitioner suffered injuries in his head, left leg and all over the body. He also suffered fracture in his leg. The Petitioner, after getting first aid in Government Hospital, Chengi, underwent treatment as inpatient for 45 days in Government Hospital, Pondicherry, and thereafter, took treatment in a private hospital. For the fracture in his leg, plate was fixed and due to head injury, he is suffering from loss of memory. The Petitioner, who was aged 31 years was a vehicle driver, earning Rs.5000/- per month. Due to the injury suffered, he is unable to do any work, which he used to do earlier. Thus, the Petitioner sought for a sum of Rs.2,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 2nd respondent/Insurance company contends that the accident does not occur as alleged by the Petitioner. The age, occupation and income as claimed by the Petitioner is disputed. The Petitioner is to prove that he possessed valid driving licence at the time of the accident. In the FIR, the Lorry number is given as KA-01-D-6687 while in the Petition, it is given as KA-01-D-6689. The Lorry bearing Reg.No.KA-01-D-6687 alone was insured with the 2nd respondent and the Lorry bearing the other Registration Number is not insured with them. The Petitioner drove his jeep in a careless manner and without noticing the oncoming Lorry, went to the wrong side and dashed against the Lorry which resulted in the accident. Hence, the 2nd respondent/Insurer of the Lorry owned by the 1st respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined P.W.1 and P.W.2, produced documents Ex.P.1 to Ex.P.9 to prove his claim. The 1st respondent remained exparte. On the side of the 2nd respondent, R.W.1 and R.W.2 were examined and Ex.R.1 was produced.

5. After analyzing the evidence on record, the Tribunal found that the negligence of the 1st respondent lorry driver alone caused the accident and as the owner and insurer of the said lorry, R1 and R2 are held liable to pay the compensation of

Rs.3,92,812/- to the Petitioner.

6. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance company has come forward with this appeal.

7. The learned counsel for the appellant/2nd respondent/insurance company contends that the Tribunal failed to appreciate the evidence on record properly and passed the award granting exorbitant sum to the Petitioner. The disability assessed by the doctor is not proper and the same is to be rejected. The Tribunal adopted multiplier method to compensate the disability without any basis. The Tribunal wrongly applied multiplier 18 and the same is not correct. The amount awarded under different heads is very excessive. Thus, the 2nd respondent/Insurance company sought to set aside the award passed by the Tribunal by entertaining the appeal.

8. Per contra, the learned counsel for the Petitioner/claimant contends that the accident occurred due to negligence of the 1st respondent lorry driver and the petitioner suffered multiple grievous injuries including head injury and fracture. Due to the injuries suffered, the petitioner is unable to attend to his avocation of driving resulting in loss of income to him. As such, the tribunal has passed just and reasonable award which needs no interference. Thus the Petitioner/claimant sought for dismissal of the appeal.

9. It is only quantum appeal. Neither side contested the matter on the issue of negligence. As such, the conclusion of the Tribunal on the basis of the oral evidence of the Petitioner as P.W.1 and the contents of Ex.P.1-FIR that the negligence of the 1st respondent lorry driver alone caused the accident and as such 1st and 2nd respondent/ Insurers are liable to pay compensation is just and proper and the same needs no interference. In that circumstances, the Tribunal held that the 3rd and 4th respondents who are the owner and insurer of the jeep driven by the Petitioner are not liable to pay compensation and dismissed the petition against them. The same is also in order.

10. The Petitioner, who deposed as P.W.1 stated that he suffered fracture in his head and left leg. He took treatment in Government Hospital, Chengi and thereafter as inpatient in Government Hospital, Pondicherry for 40 days, where, he underwent two surgeries to rectify the fracture in his left leg. Subsequently, the Petitioner was taking treatment in Spot Hospital, Chennai, where he underwent three more surgeries in his left knee cap. According to the Petitioner, he has to undergo further treatment and another surgery in his left leg. To prove the nature of injuries suffered by him, the Petitioner produced Ex.P.2-Wound Certificate. To prove the injuries suffered and the disability occurred due to the injuries, the Petitioner examined the doctor as P.W.2 and he stated that on

personal examination and by taking Ex.P.9-x ray, assessed the disability suffered by the Petitioner at 40%. According to P.W.2, he found due to the fracture in the left thigh, the Petitioner finds difficulty in sitting down and bending his left leg. The disability certificate issued by P.W.2 is produced as Ex.P.8.

11. The Tribunal also pointed out that on the basis of Ex.P.5 that the Petitioner took treatment as inpatient in Spot Hospital, Chennai, at different points of time and underwent surgery. Thus, it is clear that the petitioner suffered fracture as well as grievous injuries. The doctor assessed the disability suffered by the Petitioner at 40%. In the absence of any contra evidence to the version of P.W.2, the Tribunal is not justified in reducing and fixing the disability at 35%. Hence, this court is of the view that the assessment of P.W.2 is to be accepted in toto and as such, the disability suffered by the Petitioner is fixed at 40%.

12. The Petitioner stated that by working as a driver, he was earning Rs.5000/- per month. The driving licence of the Petitioner is produced as Ex.P.7. However, there is no proof for the monthly income of the Petitioner. The Tribunal fixed the monthly income of the Petitioner at Rs.3500/-. However, considering the fact that the Petitioner was a driver, it would be appropriate to fix the monthly income at Rs.4000/-. The Petitioner having suffered fracture could not have attended to his driving work atleast for 6 months. Hence, the loss of income is calculated at Rs.4000 x 6 months = Rs.24,000/-.

13. The Petitioner having suffered 40% disability, it is appropriate to compensate him at the rate of Rs.2000/- per percentage . As such, the compensation for disability is provided as Rs.2000 x 40% = Rs.80,000/-.

14. The Petitioner having taken continuous medical treatment, produced Ex.P.5-Medical Bills. Thus, for medical expenses, Rs.80,000/- is provided. Further, it is clear from the evidence of P.W.1 and P.W.2 that the Petitioner is in need of future medical treatment. As such, towards future medical expenses, Rs.15,000/- is provided.

15. Considering the nature of injuries suffered and the period of treatment undergone in the hospital as inpatient as well out patient, the petitioner would have suffered lot of pain and suffering. As such, it would be appropriate to award Rs.35,000/- towards "Pain and suffering" compensation instead of Rs.20,000/- provided by the Tribunal.

16. Likewise, the amount provided under Extra Nourishment and Attender charges is fixed as Rs.10,000/- each and further sum of Rs.10,000/- is provided towards Transport Charges.

17. The Petitioner having suffered 40% disability, faces continuous inability to perform his normal activity. Thus, towards loss of amenities, Rs.30,000/- is provided.

18. In such circumstances, the modified compensation amount granted by this court is as under:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Loss of income (during the period of treatment)	2,49,900	24,000/-
2.	Disability	---	80,000
3.	Medical bills	78,512	80,000
4.	Future medical expenses	15,000	15,000
5.	Transport expenses	5,400	10,000
6.	Extra nourishment	2,000	10,000
7.	Loss of amenities	20,000	30,000
8.	Attender charges	2,000	10,000
9.	Pain and suffering	20,000	35,000
	Total	3,92,812/-	2,94,000

Thus, the total award amount is Rs.2,94,000/- with interest at 6 % per annum.

19. In the result, the Civil Miscellaneous Appeal is Allowed.

(i) The award amount is reduced to Rs.2,94,000/- from Rs.3,92,812/-.

(ii) The award amount will carry interest at the rate of 6% from the date of petition till the date of realisation;

(iii) This court by order dated 19.09.2011 in M.P.No.1 of 2011 in CMA.No.2988 of 2011, directed the appellant/Insurance company to deposit a sum of Rs.2,50,000/- with proportionate interest and cost, deducting the amount already deposited to the credit of MCOP.No.411 of 2005. Hence, the appellant/Insurance company is directed to satisfy the award of this court and shall withdraw the excess sum, if any, in deposit.

(iv) The injured 1st respondent/claimant is entitled to

withdraw the amount awarded by this court along with accrued interest, less the amount, if any already withdrawn.

(v) The Tribunal shall pass necessary orders following the appropriate procedure for disbursal of the award amount.

(vi) No costs. Consequently connected MP is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nvsri

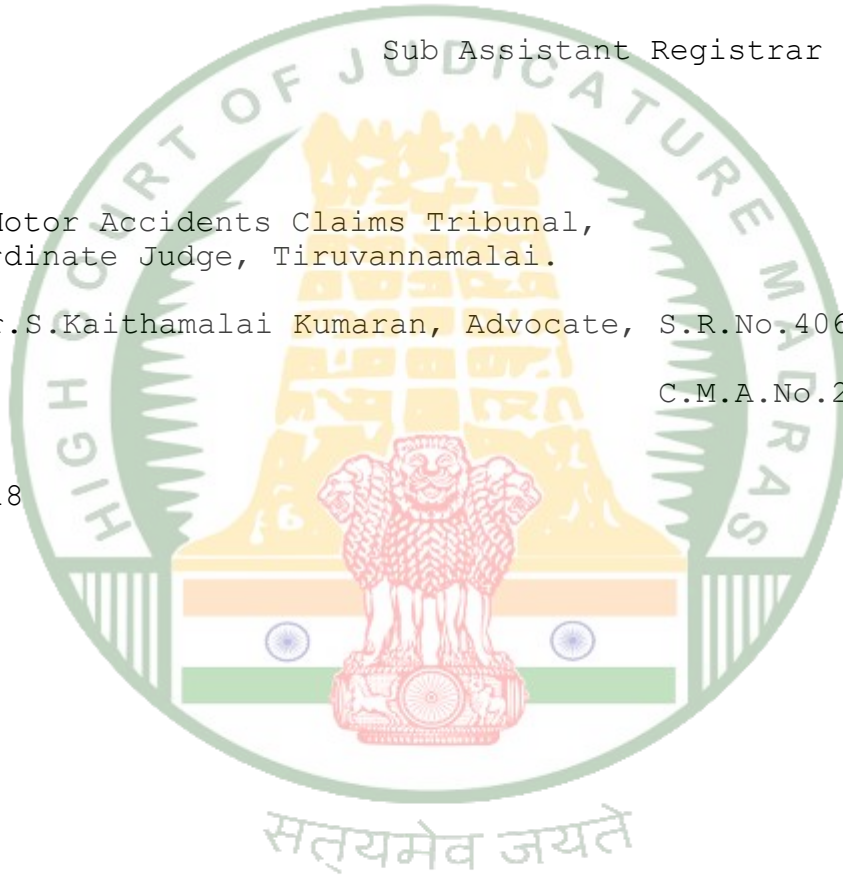
To

1. The Motor Accidents Claims Tribunal,
Subordinate Judge, Tiruvannamalai.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.40687

C.M.A.No.2988 of 2011

GJII(CO)
CS/11/09/18



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