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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

CMA.No.372 of 2016
and Cross.Obj.No.34 of 2018 and
CMP.Nos. 2741 of 2016 & 10957 of 2018

CMA.No.372 of 2016

National Insurance Co.Ltd.,
Represented by its Manager,
Palaniyappa Complex,
Gobichettipalayam, Mettur Road,
Erode Post & District

...Appellant/
2nd respondent

Vs

1. M.Vimalraj
2. R.Sathiyapriya

..Respondents /Claimants/
1st respondent

Cross Objection No.34 of 2018

1.M.Vimalraj

...Cross objector/1st Respondent

Vs

1. National Insurance Company Ltd.,
Rep.by its Manager,
Palaniyappa Complex,
Gobichettipalayam, Mettur Road,
Erode Post & District.

2. R.Sathiyapriya

...Respondents/Claimant/
2nd Respondent

COMMON PRAYER: Civil Miscellaneous Appeal & Cross Objection
filed against the judgment and decree dated 21.01.2015, made in
M.C.O.P.No.959 of 2014 on the file of the Motor Accident Claims
Tribunal, Special Sub Court, Dharmapuri.



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For Appellant
in CMA/Insurance Company
and 1st respondent in
Cross Objection

: Mr.R.Sunil Kumar

For 1st Respondent in
CMA and Cross Objector
in Cross Objection

: Mr.K.Suryanarayanan for
Mr.M.Selvam R1

R2- Set exparte before the
Tribunal

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

(KRISHNAN RAMASAMY, J)

The appellant/Insurance Company has preferred the present appeal in CMA.No.372 of 2016 and claimant has filed Cross Objection No.34 of 2018 against the order of Motor Accident Claims Tribunal, Special Sub Court, Dharmapuri in MCOP No.959 of 2014 dated 21.01.2015.

2. Heard Mr.R.Sunil Kumar, the learned counsel appearing for the appellant/Insurance company and Mr.K.Suryanarayanan, the learned counsel appearing for the claimant/cross objector.

3. The brief facts of the case are as follows:-

On 11.11.2012 at Burgur Bye pass road, the petitioner was riding two wheeler bearing Reg.No.TN-24-L-1915 TVS moped slowly and carefully from east to west in the NH keeping to the left extreme left southern end of the road at that time at about 9:30 a.m. near DSP Office, the car bearing Reg.No.TN-33-AT-5902 belonging to the 1st respondent driven by its driver in a rash and negligent manner, at great speed, in opposite direction to the petitioner dashed the two wheeler with great impact and due to the accident the petitioner was thrown high in the air and fell down. Due to the accident the petitioner sustained multiple grievous injuries. After that, first aid was given at G.H. Krishnagiri and thereafter the petitioner was admitted as an inpatient at Shri Ramachandra Hospital Porur, Chennai. The following operations were done to the petitioner.

1. Open reduction internal fixation with plate OSTEOSYNTHESIS for public diastasis.
2. Open reduction internal fixation with plate OSTEOSYNTHESIS for anterior column and
3. Open reduction internal fixation with plat OSTEOSYNTHESIS for lliac wing under general anaesthesia.
4. Open reduction internal fixation with plate OSTEOSYNTHESIS



negligent driving of the driver of the Car bearing Registration No.TN33805902 and further stated that the car driver drove the vehicle with licence and also car was insured with the appellant/respondent.

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8. The Tribunal awarded a sum of Rs.37,47,000/- as compensation to the claimant. Aggrieved over the said findings and award, the appellant/Insurance Company has come forward with the present appeal.

9. Under these circumstances, the appellant raised the following issues in this appeal:-

1. Whether the Tribunal fixing the negligence on the part of the driver of the car is just and fair?
2. Whether the compensation awarded by the Tribunal is just and fair?

9.1. The main objection of the appellant/respondent was that the petitioner drove the vehicle in the wrong side and therefore the accident occurred. Further the appellant relied upon PW1's deposition.

9.1.1. PW1 during cross examination admitted that he drove the vehicle in the wrong side. Further, he stated that he took the wrong side due to the block on the left side i.e., Chennai to Krishnagiri road. Therefore all the vehicles were diverted on the same side. Therefore the petitioner contended that he drove the vehicle carefully on the left side of the road near the median. Further the Tribunal came to the conclusion that the negligence is only on the part of the car driver and not on the part of the driver of the motorcycle. Hence, Tribunal fixed the negligence on the part of the driver of the car.

9.1.2. The respondent's main allegation against the petitioner was that the accident occurred due to the negligence on the part of the petitioner. In order to prove the statement they have not examined any witness including the local Sub Inspector of Police of the jurisdiction Police Station who was the investigating officer. Further they have not examined the Highway Authorities in this regard in order to prove whether the road on the left was blocked or not. Hence, the statement of the respondent is only a mere statement in the counter which was not proved in accordance with law. Therefore, we also hold that the accident occurred only due to the negligence on the part of the driver of the car. Hence we uphold the findings of the Tribunal with regard to the fixing of the negligence on the part of the driver of the car.

9.2. The Tribunal awarded a compensation of Rs.37,47,000/- in favour of the petitioner. In the present appeal appellant



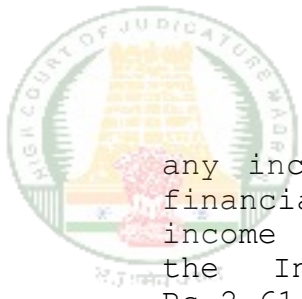
challenged the said award of the Tribunal. Therefore we have to decide in the present appeal whether the quantum of award fixed by the Tribunal is correct or not.

9.2.1. At the time of accident the petitioner was aged about 29 years. As per Ex.P2 and Ex.P3 the age of the petitioner was mentioned as 28 years and 29 years respectively. The Tribunal fixed the age of the injured as 29 years on the basis of the discharge summary. We also agree with the same. Due to the said accident, the petitioner sustained injuries and undergone the following operations.

1. Fracture Right Pubic with Pubic Diastalsis with ilium Fracture - ORIF with Recon Plating
2. Fracture Both Bone Fore Arm - ORIF with Plare osteocynthesis
3. Bixolumnar Communicated Fracture of Right Acetabulum - ORIF with Plare Osteosynthesis.

10. In this regard PW2, Doctor was examined and according to PW1 the disability was 75% and disability certificate was marked as Ex.P.34 and X-ray was marked as Ex.P.36. After the perusal of these documents and the judgment of this Hon'ble Court reported in 2013(2) TNMAC 583, National Insurance Co.Ltd., Vs G.Ramesh the Tribunal fixed the disability as 75% to determine the compensation to the petitioner. We also accept the disability of the petitioner as 75% for the purpose of determination of compensation.

11. According to the injured he had very good opportunities to work in abroad as well as in India. In this regard PW1 marked Ex.P.17 to Ex.P30. We also perused all these documents which are all pertaining to the salary statement, job offer in India and abroad and income tax returns filed by the injured. The appellant furnished the income tax details of the petitioner from the year 30.03.2005 to September 2008, on perusal of the Exhibits and the statement filed by the petitioner it appears that the injured was working continuously till September 2008 and thereafter he produced before trial Court Ex.P.27,28 & 29 which are all pertaining to job offer and service contract for six months at Saudi Arabia. All these offer and contract was filed up to 30.06.2010. It is an admitted fact that the petitioner was not working anywhere from July 2010 to November 2012. Under these circumstances, the Tribunal fixed a sum of Rs.20,000/- per month as salary for the purpose of calculation of income of the injured. However, we feel that the income fixed by the Tribunal was not proper without considering the Ex.P.18 to Ex.P29. These exhibits speak about the salary drawn by the injured from the year 2008 to 2010 and the offer letter and service contract of the injured. It is important to note here that though the petitioner claims was that he was working from September 2008 to 30.06.2010 in India, however he has not filed



any income tax return for the income earned in India for the financial year 2008-2009 and 2009-2010. However he has filed income tax return for the financial year 2007-2008 and as per the Income Tax return the injured was earning about Rs.2,61,000/- per annum. Hence it is appropriate to take the income of the injured which was legally disclosed in the IT returns as Rs.2,61,100/- per annum as base income of the year 2007-2008 and thereafter it is also necessary to give some increase based on inflation index and up to the date of accident i.e., November 2012. Therefore we intend to apply the inflation index issued by the Central Board of Direct Taxes.

12. The CBDT vide Notification No.370142 (E) (No.26/2008) (F.No.370/42/3/2008-TPL) dated 13.06.2008 specifies the cost of inflation index as mentioned in column No.3, for the financial year mentioned in the corresponding entry in column No.2 in the below said tabular column:-

S.No.	Financial Year	Cost of Inflation Index
1	2001-2002	100
2	2002-2003	105
3	2003-2004	109
4	2004-2005	113
5	2005-2006	117
6	2006-2007	122
7	2007-2008	129
8	2008-2009	137
9	2009-2010	148
10	2010-2011	167
11	2011-2012	184
12	2012-2013	200
13	2013-2014	220
14	2014-2015	240
15	2015-2016	254
16	2016-2017	264
17	2017-2018	272
18	2018-2019	280

13. As per inflation index for the financial year 2008-2009 cost of inflation index will be 137 and 2012-2013 cost of inflation index will be 200 therefore the income of the injured will be Rs.3,81,167/- = $261100 \times 200/137$. Therefore we determine



the income of the injured at the time of accident as Rs.3,81,167/-

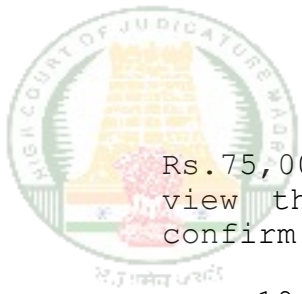
14. Future Prospects:- Since the injured sustained 75% disability and due to the said disability the injured is not in a position to work, therefore we have decided to apply multiplier method and also to apply future prospects as held by the Supreme Court of India in the case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12. The age of the injured was 29 years at the time of accident, the Tribunal had wrongly fixed the future prospects as 50% instead of 40%. So we set aside the addition of 50% towards future prospects and we add 40% towards future prospects as held by the Supreme Court of India in the case of Pranay Sethi (cited supra). Thus 40% of Rs.3,81,167/- will be a sum of Rs.1,52,467/- is added to the salary of the deceased towards future prospects. Therefore, the income of the deceased along with future prospects will be a sum of Rs.5,33,634/-

15. Before applying the multiplier it is just and necessary to deduct income tax from the loss of income which is liable to be payable by the injured. In the present case, the income of the injured along with Future Prospects is a sum of Rs.5,33,634/-. For the said amount the injured is liable to pay tax of Rs.36,727/-. After deducting the income tax the net loss of income for the injured will be a sum of Rs.4,96,907/- p.a. In the light of the reported decision in the case of Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC, for the age group between 26 to 30 years old, the multiplier to be adopted is '17'. Therefore the total loss of income will be Rs.84,47,419/- (Rs.4,96,907 x 17). As stated above we intend to take disability as 75%. Thus applying 75% of the total income (i.e.,) Rs.84,47,419 x 75% will be the loss of income. Therefore the annual loss of income of the injured will be Rs.84,47,419 x 75% = 63,35,564. Therefore the Net loss of income will be a sum of Rs.63,35,564/-

16. The Tribunal awarded a sum of Rs.1,00,000/- for pain and suffering, however we feel it is too high. Hence we reduce it to Rs.50,000/-

17. The Tribunal awarded a sum of Rs.60,000/- for temporary loss of income. Since we have applied the multiplier method it is not necessary to award anything towards temporary loss to the injured. Therefore we set aside Rs.60,000/- awarded towards "Temporary loss of income".

18. The Tribunal awarded Rs.3,50,000/- towards medical expenses, Rs.60,000/- towards Attendant charges, Rs.16,000/- towards transportation, Rs.20,000/- towards nutrition and



Rs.75,000/- towards mental agony. Since this Court is of the view that the said amounts awarded are just and proper, we confirm the same.

19. Hence the total compensation payable to the claimant is as hereunder.

Head	Amount
Disability	Rs.63,35,567/-
Pain and suffering	Rs.50,000/-
Extra nourishment	Rs.20,000/-
Transport to hospital	Rs.16,000/-
Attender charges	Rs.60,000/-
Medical expenses	Rs.3,50,000/-
Mental Agony	Rs.75,000/-
Total	Rs.69,06,567/-

20. The Insurance Company is directed to deposit the entire amount awarded by this Court, along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal shall transfer 50% of the amount to the claimant's bank account through NEFT or RTGS within a period of one week thereon and balance 50% to be deposited in any one of the Nationalised Banks, in interest bearing Fixed Deposit for five years and the claimant is permitted to withdraw the quarterly interest from the said deposit. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. The claimant/cross objector is directed to pay the requisite court fee if any, within a period of two weeks from the date of receipt of a copy of this order.

21. Accordingly, CMA.No.372 of 2016 is dismissed. Cross.Obj.No.34 of 2018 is partly allowed by enhancing the award of the Tribunal from Rs.37,47,000/- to Rs.69,06,567/- with interest and costs. Consequently, connected miscellaneous petitions are closed. No costs.

dpq

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar



To
The Special Subordinate Judge,
The Motor Accident Claims Tribunal,
Dharmapuri.

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Copy to:
The Section Officer,
V.R.Section,
High Court,
Madras.

+1cc to Mr.R.Sunil Kumar, Advocate, S.R.No.70518

+1cc to Mr.M.Selvam, Advocate, S.R.No.70228

CMA.No.372 of 2016
and
Cross.Obj.No.34 of 2018
and
CMP.Nos. 2741 of 2016 & 10957 of 2018

SSI (CO)
KAK(08/02/2019)