



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2018

CORAM:

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal Nos.799 and 800 of 2016

and

CMP.Nos.6451, 6452, 19475 & 19476 of 2016

M/s.United India Insurance Co. Ltd.,
Branch Office, Mailan Road,
Meenakshi Complex (II Floor)
Thindivanam - 604 001.

...Appellant in both CMAs/2nd Respondent

Vs

1.T.Vijayan ... 1st Respondent /Claimant
2.P.Senthamilselvan ... 2nd Respondent/ 1st Respondent
in CMA.No.799/2016

1.Parvathy ... 1st Respondent/Claimant

2.P.Senthamilselvan ...2nd Respondent/1st Respondent
in CMA No.800/2016

Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988 against the common order dated 10.04.2015 made in M.C.O.P.Nos.1390 and 1451 of 2014 on the file of the Motor Accident Claims Tribunal (Special Sub Court), Dharmapuri.

(In both the CMAs)

For Appellant : Mr.S.Arunkumar

For Respondents: Mr.A.Ilayaperumal (for R1)
R2 Not Ready

COMMON JUDGMENT

Challenging the award of the Tribunal dated 10.04.2015 made in M.C.O.P.Nos.1390 and 1451 of 2014, the appellant-insurance company has preferred these appeals.

2. Brief facts are that on 13.9.2009, the 1st respondent in C.M.A.No.799 of 2016 was riding his motorcycle bearing registration No.TN-29 H 1237 from Periyamudalipatti to Chinnankuppam along with his wife (1st respondent in C.M.A.No.800 of 2016) on the left side of Harur to Salem main road. When he was nearing Chinnankuppam Nagapatti diversion road, a Scorpio car bearing registration No.TN-07 AT 1000 driven by its driver



in a rash and negligent manner dashed against the 1st respondent. Due to the accident, both the 1st respondent sustained grievous injuries. The injured were taken to Government Hospital, Harur and had taken treatment as inpatient. Thereafter, they have been referred to Government Medical College Hospital, Dharmapuri for better treatment. Regarding the accident, a case was registered in Crime No.672 of 2009 on the file of the Harur Police Station.

3. At the time of accident, the injured Vijayan was aged 40 years and was doing agricultural operations as also working as driver and was earning Rs.12,000/- per month. The injured Parvathy, was aged 40 years at the time of accident and was doing agricultural cooly in addition she was preparing food and supplying to family members and was earning Rs.6,000/- per month. The second respondent herein is the owner of the car and the appellant is the insurer of the car. Stating that the accident occurred due to the rash and negligent driving of the driver of the car, the 1st respondent in both appeals have filed claim petitions claiming compensation of Rs.8,00,000/- each.

4. Resisting the claim petitions, the appellant-insurance company filed counter stating that when the driver of the Scorpio car was driving his car slowly and carefully by observing the traffic rules, the rider of the motorcycle came from the opposite side in a rash and negligent manner with high speed and dashed against the car and caused the alleged accident. Since the accident was caused by the rider of the motorcycle, the appellant was not liable to pay the compensation to the 1st respondent in both the appeals. The appellant also denied the age, occupation and monthly salary of the injured persons. It is stated that the total compensation claimed by the injured are highly excessive.

5. Before the Tribunal, the injured persons viz., the 1st respondent in both appeals were examined as P.W.1 and P.W.2 respectively. Dr.S.Krishnakumar was examined as P.W.3 and Exs.P1 to P22 were marked. On the side of the appellant-insurance company, nobody was examined. Ex.R1-discharge summary was marked.

6. Upon consideration of the oral and documentary evidence, the Tribunal awarded Rs.8,11,800/- in favour of the claimant in M.C.O.P.No.1390 of 2014 and Rs.4,58,000/- in favour of the claimant in M.C.O.P.No.1451 of 2014. Aggrieved by the award, the appellant-insurance company has preferred these appeals.

7.I heard Mr.S.Arunkumar, learned counsel for the appellant and Mr.A.Ilayaperumal, learned counsel for the 1st respondent in both the Civil Miscellaneous Appeals and perused the entire



materials available on record.

8. It is not necessary for this Court to narrate entire facts in detail such as, as to how the accident occurred and who was negligent and who is liable to pay compensation. It is for the reason that these things are recorded in favour of the 1st respondent/claimants and secondly, none of those findings are under challenge. Only quantum of compensation is under challenge.

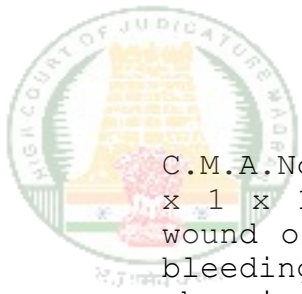
9. The learned counsel for the appellant submitted that the award of the Tribunal is contrary to law, weight of evidence and probabilities of the case. He would submit that the Tribunal failed to note that the 1st respondent in C.M.A.No.799 of 2016 sustained head injury previously and the treatment records confirm the previous history of traumatic right basal ganglial hematoma and left tibial fracture, treated for phenytoin toxicit. According to the learned counsel, the Tribunal has failed to appreciate the testimony of P.W.3-Doctor in proper manner before venturing in granting compensation. He further submitted that the Tribunal failed to note that P.W.1 has misrepresented and has erroneously obtained medical expenses of Rs.4,50,000/-. The percentage of disability assessed by the Doctor (P.W.3) is on the higher side. The learned counsel then contended that the total compensation awarded by the Tribunal qua the 1st respondent in C.M.A.No.799 of 2016 is highly excessive and the same needs interference.

10. The learned counsel for the appellant further submitted that in so far as C.M.A.No.800 of 2016 is concerned, the Tribunal erred in granting Rs.4,58,000/- without any basis for the same. He would contend that the Tribunal has failed to note the alleged injuries sustained by the 1st respondent in C.M.A.No.800 of 2016, which do not warrant multiplier method much less a sum of Rs.3,60,000/- towards disability. Thus, the award of the Tribunal is highly excessive, unjust and unreasonable.

11. Drawing my attention to the award of the Tribunal, the learned counsel for the 1st respondent/claimants submitted that the total quantum of compensation awarded by the Tribunal was just and reasonable insofar as C.M.A.No.799 of 2016 is concerned. As far as C.M.A.No.800 of 2016 is concerned, the learned counsel for the 1st respondent submitted that the Tribunal has not awarded any amount towards loss of future earning power and prayed for compensation for the aforesaid head in addition to the amounts awarded by the Tribunal.

12. C.M.A.No.799 of 2016 :

In the accident, the 1st respondent (T.Vijayan) in



WEB COPY

C.M.A.No.799 of 2016 sustained (i) a lacerated wound of about 3 x 1 x 1cm over right fore leg with fracture; (ii) a lacerated wound of about 6 x 1cm over right fore leg with fracture; (iii) bleeding from nose present with fracture of nasal bone; (iv) an abrasion of about 3 x 2cm centre of medial aspect of the left elbow joint; (v) an abrasion of about 2 x 2cm over medial aspect of the left elbow joint; (vi) a lacerated wound of about 1 x 1 ½ x ½cm over the side of nose; (vii) abrasion of ½ x ½cm over left toe.

13. Immediately after the accident the 1st respondent was admitted in Government Hospital, Harur, where from he was referred to Government Medical Hospital, Dharmapuri and had taken treatment till 14.9.2009. Thereafter, he was taken treatment at Manipal Hospital, Bangalore from 14.9.2009 to 23.9.2009. In order to undergo surgeries, the 1st respondent had again admitted in the hospital and had taken treatment as inpatient from 10.10.2009 to 21.10.2009. To establish the same, the 1st respondent has produced Exs.P3 and P4-discharge summaries. He had also produced Exs.P5 to 10-C.T.Scan report and X-rays. Thus, from the aforesaid documents, it reveals that in the accident, the 1st respondent sustained grievous injuries. P.W.3-Doctor examined the 1st respondent and issued Ex.P20-disability certificate assessing the disability at 50%.

14. The appellant contended that P.W.3-Doctor exaggerated the disability and issued Ex.P20-disability certificate. To show that the disability assessed by P.W.3 is on the higher side, nothing has been produced by the appellant. The appellant has not examined any witness. Nothing prevented the appellant from examining their own Doctor to disprove Ex.P20-disability certificate. The appellant contended that previously the 1st respondent sustained head injury and had taken treatment which would be evident from the treatment records produced by the 1st respondent.

15. In Ex.P3, it has been mentioned that old case of post traumatic right basal ganglial hematoma and left tibial fracture, which means that due to the injuries sustained in the accident, the 1st respondent had taken treatment at Manipal Hospital, Bangalore and discharged on 23.9.2009. Therefore, the contention of the appellant that the 1st respondent sustained head injury previously which would confirm the previous history of traumatic right basal ganglial hematoma and left tibial fracture cannot be countenanced.

16. In his claim petition, the 1st respondent had stated that he was earning Rs.12,000/- per month. Since the 1st respondent has not produced any piece of paper to show that he was earning Rs.12,000/- per month, the Tribunal has fixed the



monthly income of the 1st respondent at Rs.4,000/-.

17. Though P.W.3-Doctor assessed the disability at 50%, considering the nature of injuries sustained by the 1st respondent, the Tribunal has taken the disability at 40%. Thus, taking the monthly income at Rs.4,000/- and disability at 40% and adopting multiplier 14, the Tribunal has awarded Rs.2,68,000/- towards permanent disability. Considering the nature of injuries sustained by the 1st respondent and also treatment undergone, this Court is of the view that compensation of Rs.2,68,000/- awarded by the Tribunal under the head permanent disability is just and reasonable and the same is maintained.

18. As far as medical expenses are concerned, the Tribunal observed that the 1st respondent had produced Ex.P16-medical bills. As per Ex.P16, the 1st respondent incurred a sum of Rs.4,51,138.75 and therefore, the 1st respondent is entitled to get a sum of Rs.4,50,000/- towards medical expenses.

19. The learned counsel for the appellant contended that the Tribunal ought to have rejected Serial Nos.1, 8, 11, 12, 13 in Ex.P16, which amounts to Rs.3,58,530/- as the same have nothing to do with the treatment given to the alleged injury sustained in the accident. To prove the same, the appellant has not produced any material. Equally, it is duty of the 1st respondent to produce the medical bills actually incurred.

20. On a perusal of Ex.P16-series, some of the bills are not cash bills. Therefore, the 1st respondent is not entitled to reimburse the amount mentioned in those bills. However, considering the nature of injuries sustained by the 1st respondent and also the period of treatment undergone by him in two or three spells in different hospitals, it would be appropriate to take a sum of ***Rs.1,50,000/-** towards medical expenses. Accordingly, a sum of ***Rs.1,50,000/-** is awarded under the head medical expenses.

21. The Tribunal awarded a sum of Rs.10,000/- towards transport charges, Rs.8,000/- towards loss of earning for two months, Rs.10,000/- towards extra-nourishment, Rs.25,000/- towards mental agony, Rs.10,000/- towards attender charges and Rs.30,000/- towards pain and suffering. Considering the nature of injuries and also the period of treatment undergone by the 1st respondent, the amounts awarded by the Tribunal under the aforesaid heads are maintained. Thus, the total compensation of Rs.8,11,800/- awarded by the Tribunal is reduced to ***Rs.5,11,800/-** as under:



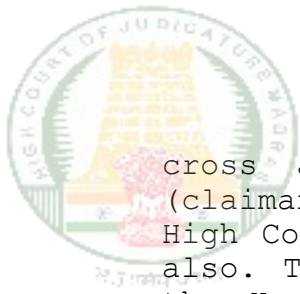
WEB COPY

Head	Rs.
Disability and loss of earning power	2,68,800.00
Loss of earning for 2 months	8,000.00
Medical expenses	*1,50,000.00
Transport charges	10,000.00
Pain and suffering	30,000.00
Extra-nourishment and damages to cloths	10,000.00
Mental Agony	25,000.00
Attender charges	10,000.00
Total	*5,11,800.00

22. C.M.A.No.800 of 2016:

In the accident, the 1st respondent (Parvathy) sustained (i) fracture of tibia and tibula of left leg; (ii) a sutured injury of about 5 x 3 x 2cm over the leg below the knee; (iii) a sutured wound of about 10 x 3 x 2cm over the right pelvic with multiple abrasions near the knee; (iv) multiple abrasions over the right arm below the elbow; (v) a lacerated injury at about 10 x 4 x 3cm over the back of the left forehead. According to the 1st respondent, immediately after the accident she was admitted as inpatient at Government Hospital, Harur on 13.9.2009 where from she was referred to Government Medical Hospital, Dharmapuri where she had taken treatment for two days i.e., on 13.9.2009 and 14.9.2009. Thereafter, she had taken treatment as inpatient at Om Sakthi Hospital, Dharmapuri from 15.9.2009 to 19.10.2009 and as outpatient at private clinics at Palacode and Dharmapuri respectively for a period of four months. To prove that the 1st respondent had sustained grievous injuries, Ex.P17-wound certificate has been produced.

23. P.W.3-Doctor examined the 1st respondent Parvathy and issued Ex.P22-disability certificate assessing the disability at 60%. Before assessing the disability, P.W.3 had also taken X-ray, which was marked as Ex.P21. In his evidence, P.W.3 deposed that the 1st respondent Parvathy was unable to stand, squat and walk due to fractures of tibia, fibula of left and injury below the knee. He further stated that the 1st respondent was unable to sit and lie in normal possession and lie down due to fracture of pelvic bone. Due to injuries over the forehead and occipital region, the 1st respondent often getting headache. Since there was injury below the elbow, it was difficult to move the right arm and hold any articles. Though it was contended by the



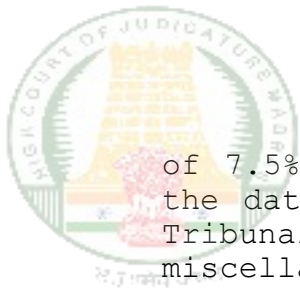
cross appeal. Without filing cross appeal, the respondents (claimants) in the appeal could pray for reliefs and that the High Court under Order 41, Rule 33 CPC could grant such reliefs also. This Court in several cases adhering to the decisions of the Hon'ble Apex Court held that under Order 41, Rule 33 of C.P.C., High Court could enhance the compensation in appropriate cases.

31. Considering the nature of injuries sustained by the 1st respondent in the accident and due to injuries, still the 1st respondent finds difficulty in doing her normal avocations even for cooking, this Court considers it appropriate to award a further sum of Rs.1,00,000/- towards loss of future earning power. Thus, the total compensation of Rs.4,58,000/- awarded by the Tribunal is enhanced to Rs.5,58,000/- as under:

Head	Rs.
Disability and loss of earning power	3,60,000.00
Loss of earning for 2 months	8,000.00
Medical expenses	10,000.00
Transport charges	10,000.00
Pain and suffering	30,000.00
Extra-nourishment and damages to cloths	10,000.00
Mental Agony	25,000.00
Attender charges	5,000.00
Loss of future earning power	1,00,000.00
Total	5,58,000.00

The Tribunal has awarded interest at the rate of 7.5% per annum from the date of petition till the date of deposit and the same is confirmed.

32. In the result, C.M.A.No.799 of 2016 is partly allowed by reducing the compensation awarded by the Tribunal from Rs.8,11,800/- to ***Rs.5,11,800/-** payable by the appellant with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of deposit. C.M.A.No.800 of 2016 is dismissed. However, the quantum of compensation awarded by the Tribunal is enhanced to Rs.5,58,000/- from Rs.4,58,000/- payable by the appellant with interest at the rate



of 7.5% per annum from the date of filing of the petition till the date of deposit. The rest of the directions given by the Tribunal are unaltered. No costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-
Assistant Registrar (CO)
Dated: 22/11/2018

***Corrected as per order
dated 31/01/2019 made in
CMA.Nos.799/16**

**Sd/ Assistant Registrar (CS I)
Dated: 26/03/2019**

//True Copy//

Sub Assistant Registrar

vs

To

1.The Motor Accident Claims Tribunal,
(Special Sub Judge),
Dharmapuri.

2. The Section Officer,
VR Section, High Court,
Madras.

**To be Substituted to the
order already despatched
On 24/12/2018**

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No. 60990

+2cc to Mr.A.Ilaya Perumal, Advocate, S.R.No. **8581 & 8582**

C.M.A.Nos.799 and 800 of 2016
and
CMP.Nos.6451, 6452, 19475 & 19476 of 2016

KJI (CO)
GN(27/11/2018)
GN(27/03/2019)