

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
C.M.A.No.2437 of 2017
and
C.M.P.No.13155 of 2017
and
Cros. Obj. No.28 of 2018

The Divisional Manager,
United India Insurance Co. Ltd.,
No.13A, Nethaji Road,
Manjakuppam,
Cuddaore - 1

... Appellant in Appeal/
2nd Respondent in Cross Objection.

Vs

1.Jagadeesh @ Jagdeesan

...1st Respondent in Appeal/
Cross Objector

2.Arun Mohan

...2nd Respondent in Appeal/
1st Respondent in Cross Objection.

PRAYER : Civil Miscellaneous Appeal filed against the order and decretal order dated 23.03.2016 made in M.C.O.P.No.95/2015 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Tindivanam.

For Appellant in appeal &
2nd Respondent in cross
objection : Mr.S.Arun Kumar

For Respondents : Mr.Um.Ravichandran
in CMA for R1 & cross objector
in Cross Objection
Mr.T.Dhanasekaran (for R2 in
CMA & for R1 in Cross Objection

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 Insurance company against the award of Rs.60,41,000/- by way of compensation for the grievous injuries sustained by the 1st respondent/claimant, a civil contractor in the accident which occurred on 22.03.2013, when he was riding his motorcycle from

Edaiyanchavadi to Pondicherry and was hit down by one JCB vehicle, belonging to the 2nd respondent and insured with the appellant/insurance company. Therefore, the claim petition.

2. On contest, the Tribunal found that the accident occurred because of the rash and negligent driving of the JCB driver and based on evidence and condition of the 1st respondent, awarded a sum of Rs.60,41,000/-. The said award is being challenged before this Court on the ground of non involvement of vehicle and other grounds.

3. Heard Mr.S.Arun Kumar, learned counsel for the appellant/Insurance company and Mr.Um.Ravichandran, learned counsel, for Ms.K.Vasanthala Mala, learned counsel for the claimant.

4. The 1st respondent sustained injuries in the accident occurred on 22.03.2013 and the same is proved by Ex.P.1-FIR; Ex.P.2-Motor Vehicle Inspection Report; Ex.P.3-Accident Register copy issued by JIPMER Hospital.

5. As far as negligence is concerned, the 1st respondent examined one Chandru, who is an eye witness to the accident. Ex.P.1-FIR has been filed against the driver of the JCB/offending vehicle and there is no contra evidence adduced on the side of the appellant/insurance company. Therefore, based on Ex.P.1 and evidence of eyewitness, the Tribunal rightly found that the accident occurred because of the rash and negligent driving of the driver of the JCB vehicle, insured with the appellant/insurance company.

6. Mr.S.Arun Kumar, learned counsel for the appellant/insurance company would submit that the vehicle, insured with the appellant/insurance company was not at all involved in the accident and it has been substituted, subsequently. The same is proved by a report submitted by the investigating officer appointed by the insurance company. In this regard, a petition has been filed to receive additional document (i.e.,) investigation report dated 30.09.2016. The said petition was already dismissed by this Court stating that the report has been prepared subsequent to passing of the award. Even though the document is taken by this Court, there is no fraud played by the 1st respondent/claimant, as Ex.P.3-Accident Register issued by the JIPMER Hospital shows that the victim was hit by JCB vehicle in the Road Traffic Accident. Relevant portion of the said register is extracted hereunder:

"6. A perusal of the medical records issued by JIPMER Medical College, where the victim was immediately admitted after accident would show that the victim was hit by a JCB vehicle. Therefore, there is absolutely no iota of evidence to come to the conclusion that there is a fraud played by the 1st respondent to make a claim against the vehicle,

which was not at all involved. Therefore, this petition is liable to be dismissed. Accordingly dismissed."

7.The 1st respondent/claimant is said to be a civil contractor, aged about 34 years. He sustained right fronto temporo parietal acute SDH with mass effect, basifrontal contusions, fracture skull base, orbital fracture left lateral and medial wall lacerated wound right eyelid, bilateral lung aspiration. The following surgical procedure also done on the 1st respondent/claimant:

"Right fronto temporo parietal decompressive craniectomy and evacuation of SDH done on 23.03.2013
Orif of comminuted fracture right ZMC done on 08.04.2013, Botulinum toxin injection done on 09.04.2013, Peg tube placement done on 17.04.2013, right FTP wound Re-exploration and evacuation of Haematoma done on 25.04.2013"

The discharge summaries, Ex.P.11 and Ex.P.12 issued by Global Health City would show that the 1st respondent/claimant was admitted in the hospital on 22.03.2013 and surgery was done on 25.04.2013 and he was discharged on 04.07.2013. As rightly observed by the Tribunal, Ex.P.7-Medical report would give the details of the brain injuries sustained by the 1st respondent/claimant, which has already been referred by this Court. In spite of treatment, the 1st respondent/claimant remains in a vegetative condition because of the injuries, especially, the brain injury as proved by medical reports.

8.Subsequently, the 1st respondent was admitted in East Coast Hospitals on 22.09.2013 and discharged on 24.09.2013 as proved by medical records. Even in the discharge summary dated 04.07.2013, an advice has been given to the 1st respondent to do Cranioplasty, after one month. Cranioplasty is a procedure by which a surgical repair of a defect or deformity of a skull is done. Even after discharge, the 1st respondent requires subsequent surgeries and continuous treatment. PW2-Doctor is an Orthopedic surgeon and he opined that the 1st respondent/claimant sustained 85% permanent disability, as per Ex.P.12-Disability Certificate. He deposed that the patient was brought in a wheel chair, a hole has been made in the throat by way of Tracheostomy to have respiration. Even for feeding, feeding tube has been inserted and urine is collected in a bag. Parts of the brain got destroyed and he is unable to move his legs and hands. The condition of the 1st respondent/claimant is very pathetic and he is bedridden. Though it is stated by PW2-Doctor, there is disability of 85%, when a person's brain is affected and he is unable to move his legs and hands and is unable to speak, it cannot be termed as 85% disability. It is only a vegetative state, where a person leads a life like a dead person. Therefore, this Court re-determines the disability at 100% and therefore, loss of earning power is fixed at 100%.

9.The 1st respondent is said to be a Civil Contractor, aged 34 years. To prove his income, he has filed Ex.P.19- Income tax returns. The Tribunal noted during the financial year 2006-2007, the 1st respondent's income was shown as Rs.1,03,150/-; during the financial year 2008-2009, his income was shown as Rs.1,07,050/-; during the financial year 2009-2010, his income was shown as Rs.1,18,960/-. Taking note of the actual increase in the income, as per Ex.P.9 (s)-Income tax returns, the Tribunal rightly included 15% increase for the rest of the period till the date of accident and determined the monthly income at Rs.11,400/-.

10.Though 50% has been added towards future prospects, Mr.S.Arun Kumar, learned counsel for the appellant would submit that only 40% requires to be added, as per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). Accordingly, 50% added towards future prospects is reduced to 40%. After adding 40% towards future prospects, the monthly income would be Rs.15,960/- (Rs.11,400/- + 40% of Rs.11,400/-).

11.The age of the deceased is 34 years at the time of the accident and appropriate multiplier as per the the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC) is '16'. Therefore, loss of earning due to disability would be at Rs.30,64,320/- (Rs.15,960/- x 12 x 16).

12.Medical bills:

Ex.P.14(s) are medical bills produced by the 1st respondent/claimant for taking treatment to the tune of Rs.22,50,207/-. Taking into consideration the treatment taken by the 1st respondent/claimant in various hospitals and surgeries done on him, the Tribunal rightly awarded a sum of Rs.22,50,207/- towards medical bills. Therefore, the same is confirmed.

13.Transportation:

The Tribunal taking into consideration the prolonged treatment of the 1st respondent and subsequent further treatment and the confinement of the 1st respondent to the wheel chair, rightly awarded Rs.1,00,000/- for transportation.

14.Pain and suffering:

Serious injuries have been caused, especially brain injuries to the 1st respondent/claimant and he is in a vegetative state, inspite of many operations performed on him. Therefore, the Tribunal following the judgment of the Division Bench of this Court in New India Assurance Company Limited Vs. E.Ponnuram, reported in 2013 (1) TN MAC 47, rightly awarded Rs.2,00,000/- towards pain and suffering. The same is confirmed.

15.Extra nourishment:

The Tribunal considering the nature of injury as proved by Ex.P13 and use of tubes for feeding, relying upon the judgment of this Court in Anita Gupta Vs. Kamlesh and others reported in 2011 (1) TN MAC 762, rightly awarded Rs.1,00,000/- towards extra nourishment.

16.Loss of amenities:

The 1st respondent is in a vegetative state, because of the brain injury caused to him. His mobility is almost nil and he cannot move his hands or legs and he has to be brought in a wheel chair. He has lost all the amenities in life. Therefore, Rs.2,00,000/- awarded towards loss of amenities is very low and the same is enhanced to Rs.3,00,000/-.

17.Future Medical Expenses:

As far as future medical expenses is concerned, the Tribunal awarded only Rs.2,00,000/-. As already noted the 1st respondent is in a vegetative state. Even his discharge summary Ex.P.12 would show that the 1st respondent requires Cranioplasty after one month. The 1st respondent also requires continuous treatment. Hence, Rs.2,00,000/- awarded by the Tribunal under this head is enhanced to Rs.4,00,000/-.

18.Attendant charges:

Because of the injuries, the 1st respondent is in a vegetative state, which is nearly coma stage. In a similar case, the Hon'ble Supreme Court in Kavitha Vs Deepak and others, reported in 2012 (2) TNMAC 362 awarded a sum of Rs.6,00,000/-, under the above head, awarding a sum of Rs.2,000/- per month for 25 years. However, in the referred case, the accident occurred on 02.05.2004, whereas in the present case, the accident occurred on 22.03.2013 and it is impossible to get an attendant for a sum of Rs.2,000/- per month. Hence, ends of justice requires award of Rs.3,000/- per month for 25 years and therefore, a sum of Rs.9,00,000/- is awarded towards attendant charges.

Head	Amount (Rs.)
Loss of earning capacity	3064320
Medical bills	2250207
Transportation	100000
Pain and suffering	200000
Extra nourishment	100000
Loss of amenities	300000
Future medical expenses	400000
Attendant charges	900000
	7314527

19.Hence, the total compensation payable in this case is Rs.73,14,527/- rounded off to Rs.73,00,000/-.

20.The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed. The claimant is directed to pay the additional court fee for the enhanced amount, if any.

21.The insurance company is directed to deposit the entire award amount along with interest and costs (except for future medical expenses of Rs.4,00,000/-), 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. Since future medical expenses is uncertain and it has to be spent in future, no interest would be payable for the sum of Rs.4,00,000/-. On such deposit being made, since the 1st respondent has already spent for medical expenses and continues to spend for treatment, a sum of Rs.40,00,000/- is ordered to be withdrawn by the claimant and the Tribunal is directed to transfer a sum of Rs.40,00,000/- to the bank account of the claimant through RTGS within a period of one week thereon. The balance award amount with interest and costs is directed to be deposited in any one of the nationalised bank in interest bearing deposit at least for a period of five years, which can be renewed if the party so wishes. The wife of the claimant is permitted to withdraw interest accruing on such deposit once in three months.

22.Accordingly, C.M.A.No.2437 of 2017 is dismissed. Cros. Obj. No.28 of 2018 is partly allowed, enhancing the award of the Tribunal from Rs.60,41,000/- to Rs.73,00,000/- with interest. Consequently, connected miscellaneous petition is closed. No costs.

sai

Sd/-

सत्यमेव जयते
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District Judge,
(Motor Accident Claims Tribunal),Tindivanam.
2. The Section Officer, VR Section, High Court, Madras
+ 1 cc to M/s. S. Arunkumar, Advocate Sr.35057
+ 1 cc to MR. U.M. Ravichandran, Advocate Sr.34901

C.M.A.No.2437 of 2017

GP (CO)

EU (06/08/2018)

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