

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2018

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THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.M.A.No.2728 of 2017
and C.M.P.No.15357 of 2017

M/s.Reliance General Insurance
Company Limited,
Anna Nagar,
Chennai - 600 040.

.. Appellant

Vs

1. Prathap (died)
2. S.Thenmozhi
3. M.Lalitha, W/o.Late Mannan
(R3 brought on record as LR of the
deceased R1 viz., Prathap vide Court
order dated 30.07.2018 made in
CMP Nos.12307 to 12309 of 2018 in
CMA No.2728 of 2017

... Respondents

PRAYER: This Civil Miscellaneous appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the order made in MCOP No.75 of 2013 dated 12.04.2016 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Poonamallee.

For Appellant : Mr.M.B.Raghavan

For Respondents : for R3
R1-Died
R2-Set exparte

JUDGMENT

The Civil Miscellaneous appeal has been filed against the order made in MCOP No.75 of 2013 dated 12.04.2016 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Poonamallee.

2. The Insurance Company has come forward with this appeal questioning the quantum of compensation awarded by the Tribunal in favour of the 1st respondent / claimant.

3. The claim petition was filed by the 1st respondent /

claimant contending that on 01.01.2013 at about 10.50 a.m when he was riding his bicycle in Porur Kundrathur road near Gerugambakkam Burial ground, a eicher van bearing Reg. No.TN10 R 9039 was driven by its driver in rash and negligent manner and dashed against the bicycle driven by the 1st respondent / claimant. In the impact, the claimant sustained grievous injuries in his leg. According to the claimant at the time of accident he was 21 years old. He was hale and healthy and engaged himself in coolie work. He would further contend that he was earning a sum of Rs.400/- per day. By reason of the amputation in his leg, he lost his income as well as his future prospects including marital prospects. Therefore, the Claim petition was filed by the claimant against the respondents in the claim petition who are the owner of the vehicle and the Insurance Company with which the Van was insured. The claimant claimed a sum of Rs.10,00,000/- as compensation.

4. The claim petition was resisted by the Insurance Company by contending that the driver of the Van was driving a vehicle slowly and cautiously, however, the cyclist/claimant had suddenly darted across the road which resulted in the accident. Therefore it was contended that the claimant had adequately contributed to the accident. The Insurance Company also questioned the compensation claimed by the claimant as onerous. Further, the Insurance Company disputed the age and income of the claimant.

5. Before the Tribunal, the claimant examined himself as CW1 and Dr.Subramanian as CW2, Ex.C1 to C6 were marked on behalf of the claimant. On behalf of the respondent in the claim petition neither a witness was examined nor any document was marked.

6. The Tribunal by taking into account, the First Information Report registered against the driver of the Van and the deposition of claimant himself has concluded that due to the rash and negligent driving of the van, the accident had occurred. This aspect of the finding is not questioned by the Insurance Company in this appeal.

7. The Tribunal had taken into account, the injuries sustained by the claimant which are spoken to by CW2 / Doctor. According to CW2, the claimant was admitted in Rajiv Gandhi Government General Hospital, Chennai from 01.01.2013 to 28.01.2013 for about 28 days as inpatient. Further, the claimant sustained "Crush injury left foot with (left lower limb) below knee amputation left side". The Tribunal also taken into account, the various other injuries sustained by the claimant and the impact that had caused on his personal life, which were spoken to by CW2. Therefore, taking into account,

the deposition of CW1 and CW2 and the fact that there is no contra evidence adduced by the respondents in the claim petition. The Tribunal awarded compensation of Rs.7,44,500/- as detailed below:

S.No	Heads	Compensation Rs.
1	Partial injury	1,80,000/-
2	Pain and Sufferings	1,00,000/-
3	Extra nourishments	20,000/-
4	Loss of Income during treatment	1,05,000/-
5	Future loss of income	3,00,000/-
6	Loss of cloth and other expenditures	1,500/-
7	Transportation	25,000/-
Total		7,44,500/-

8. The learned counsel appearing on behalf of the appellant would merely contend that the compensation amount of Rs.7,44,500/- which awarded by the Tribunal is in the higher side.

9. It is also contended by the learned counsel for the appellant that the amount awarded under various heads is not justified in the facts and circumstances have require deduction.

10. On the contrary, the learned counsel for the respondent / claimant would contend that the claimant, a young boy at the age of 21, had got his left leg amputated in the fateful accident. The respondent was young and energetic youth who lost his prime life due to accident. By reason of the accident, the future life of the respondent/claimant has been shattered into pieces. Under the above circumstances, the amount of compensation awarded is fair and reasonable and it does not require any interference.

11. Heard the arguments of the learned counsel appearing on either side.

12. It is an unfortunate case where the dreams and aspirations of a young boy, aged about 21 years, has been shattered into pieces due to the injury sustained by him in the road accident. Due to the impact of the injuries sustained by the claimant, his future prospects, including marital prospects had been adversely affected. By reason of the amputation of the left leg below knee, the suffering that would by confronted by the claimant cannot be simply described. The pain and sufferings, he would have undergone physically, future cannot be

measured by any yard stick. The Tribunal taking into account of the above aspects the awarded amount is just and reasonable compensation. In fact, the Tribunal did not award any amount towards future medical expenses for the claimant. The Tribunal has been carried away by the fact that the claimant had taken treatment in a Government Hospital. Be that as it may, the injuries sustained by the claimant there would be necessity in future for him to take treatment which would be the consequences of the injury sustained by him in the road accident. Unfortunately, the claimant has not come forward with any Cross appeal for enhancement. In any event, taking into account, the amputation of left leg below knee suffered by the claimant, the Tribunal has awarded a sum of Rs.7,44,500/-.

13. In that view of the matter, I do not find any reason to interfere with the award passed by the Court below. Therefore, this Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

14. The Insurance Company is directed to deposit the entire award amount with interest and costs, if not already deposited, within a period of eight weeks from the date of receipt of copy of this order. On such deposit the claimants are entitled to draw the said amount by filing appropriate application with accorded interest.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To
The Motor Accident Claims Tribunal,
II Additional District Court, Poonamallee.

Copy To
The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.Varadha Akamaraj, Advocate SR.No.64798

+1cc to MB.Gopalan Associates, Advocate SR.No.65157

C.M.A.No.2728 of 2017
and C.M.P.No.15357 of 2017

RSV(CO)
GMY(22/11/2018)