

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2018

CORAM

THE HONOURABLE MR. JUSTICE R. SUBBIAH
AND
THE HONOURABLE MR. JUSTICE T. RAVINDRAN

C.M.A. No. 2989 of 2014

B. Ram @ Shoban Ram
(Persistent Vegetative State)
rep by his Mother & N/f.B.Geetha

..Appellant/Petitioner

Vs.

1. Manjunath K.
2. Cholamandalam MS General Insurance Co. Ltd.
Wajeeva Corporate Centre,
III Floor, No1. Village Street,
Kadaperi Village and Post,
Nungambakkam,
Chennai - 600 034. Respondents/Respondents 1 & 2

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 19.02.2014 passed in M.C.O.P. No. 1782 of 2011 by the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai.

For Appellant :: Mr.K.Varadhakamaraj for
Mr.M. Saravanan

For Respondents:: Mr.N. Vijayaraghavan for R2
R1- Ex parte

J U D G M E N T

(Judgment of the Court was delivered by R. SUBBIAH, J.)

Not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, (IV Court of Small Causes), Chennai, in and by award dated 19.02.2014, in M.C.O.P. No. 1782 of 2011, the present appeal has been filed by the injured claimant represented by his mother, since he is in a vegetative state, seeking enhancement of the award amount.

2. Since the appeal has been filed questioning only the quantum of compensation awarded by the Tribunal, it is not

necessary for this Court to traverse into other aspects of the award.

3. The claim petition was filed seeking compensation to the tune of Rs.1,50,00,000/- for the injuries sustained by the claimant in the accident that had occurred on 24.11.2007 at about 6a.m. when he was travelling in a Tata Sumo Car bearing Registration No. KA 05 D 9724 from Bangalore to Chennai . It is the specific case of the claimant while he was travelling in the said car, it dashed against a stationed lorry, resulting in the claimant sustaining severe brain stem and multiple injuries and he has gone to deep vegetative state.

4. The Tribunal, on analysis of oral and documentary evidence, held that the 1st respondent's vehicle was responsible for the accident and awarded a sum of 87,02,000/- as compensation together with interest @ 7.5% per annum.

5. The main submission of the learned counsel for the appellant/claimant is that on account of the accident, the claimant sustained severe head injuries, right fronto temporal extradural hematoma, Fracture of right frontal bone, multiple faciomaxillary fractures, Type II Left Olecranon Fracture and loss of vision in both eyes. According to the learned counsel, the appellant has become totally immobilized and he has been reduced to a vegetative state. Further, according to the learned counsel, the Tribunal has awarded only Rs. 50,30,640/- towards "Loss of Earning Capacity" though the claimant was stated to be earning a sum of Rs. 25,399/- per month as a Senior System Engineer in Infosys Technologies Limited, Bangalore and the percentage of disability was assessed at 100% by the Doctor. Considering the young age of the claimant, the amount awarded by the Tribunal is extremely on the lower side. Moreover, according to the learned counsel, the Tribunal has not properly considered his future life as he has to be taken care of by others throughout his life. Considering all these aspects, the learned counsel would submit that the amount awarded by the Tribunal under different heads have to be appropriately enhanced.

6. Per contra, learned counsel for the 2nd respondent Insurance Company made submissions in support of the award passed by the Tribunal stating that all aspects have been taken into consideration in the right perspective and just and proper compensation has been awarded.

7. Keeping the submissions of the learned counsel on either side, we have gone through the entire materials on record.

8. Since it is admitted by the Insurance Company that the

victim has sustained 100% disability, it is not necessary to deal with the minute details of each and every injury sustained by the claimant.

9. So far as the quantum of compensation is concerned, at the time of accident, the appellant/claimant was working as a Senior System Engineer in Infosys Technologies Limited, Bangalore. Though P.W.1, the mother of the appellant has deposed that he was earning a sum of Rs. 25,399/- per month, the Tribunal, based on Ex-P31, salary slip, had fixed the monthly salary of the appellant at Rs.16,440/-. Considering the age of the victim, 50% of his income was added towards "Future Prospects" and a sum of Rs.24,660/- was arrived at, as total monthly income of the appellant. As far as the percentage of disability is concerned, it was assessed as 100% by both the Doctors, who were examined as P.Ws. 5 and 6. Moreover, an Advocate Commissioner was also appointed by the Tribunal to examine the claimant with regard to the nature of disability sustained and his report has been marked as Ex-C1. The Tribunal, taking into account, all these factors, has fixed the percentage of disability as 100%. In fact, the Insurance Company has also not disputed the disability sustained. Based on the age of the victim, namely 25 years, as found in Ex-P3 Discharge Summary, multiplier 17 was adopted by the Tribunal as per II Schedule to Motor Vehicles Act, 1988 and "Loss of Earning Capacity" was deduced as Rs. 50,30,640/-. We do not find any infirmity in the amount awarded under the said head as it is supported by evidence on record.

10. However, considering the pathetic condition of the claimant, we are of the opinion that the amounts awarded under the conventional heads could be enhanced.

11. It is seen that the Tribunal has awarded a sum of Rs. 1,00,000/- for "Extra Nourishment". Considering the long duration of treatment undergone by the victim, the same is enhanced to Rs.2,50,000/-. Considering the age of the victim, the sum of Rs.2,00,000/- awarded towards "Loss of Marital Life" is enhanced to Rs.5,00,000/-. From the materials on record, it could be easily inferred that the victim has to be taken care of throughout his life either by his parents or by any third party. Therefore, owing to this fact, the sum of Rs. 3,60,000/- awarded by the Tribunal towards "Attender Charges" is enhanced to Rs.5,00,000/-. Likewise, the sum of Rs.3,60,000/- awarded towards "Physiotherapy" is enhanced to Rs.6,00,000/-. As far as the amounts awarded under other heads are concerned, they are confirmed. Thus, the award of the Tribunal, to the tune of Rs.87,02,000/- is hereby enhanced to Rs.95,31,162/- as detailed below, which in our considered opinion, would be just and reasonable compensation:

Loss of Earning Capacity	::	Rs. 50,30,640/-
Transport to Hospital	::	Rs. 2,00,000/-
Extra Nourishment	::	Rs. 2,50,000/-
Damage to clothes	::	Rs. 1,000/-
Shock and Mental Agony	::	Rs. 2,00,000/-
Loss of Marital Life	::	Rs. 5,00,000/-
Attender Charges	::	Rs. 5,00,000/-
Loss of Expectation of life	::	Rs. 2,00,000/-
Loss of amenities	::	Rs. 2,00,000/-
Future Medical Expenses	::	Rs. 10,00,000/-
Physiotherapy	::	Rs. 6,00,000/-
Medical Expenses	::	Rs. 3,49,522/-
Pain and suffering	::	Rs. 5,00,000/-
Total	::	Rs. 95,31,162/-

12. In the result, the Civil Miscellaneous Appeal is partly allowed enhancing the compensation awarded by the Tribunal from Rs.87,02,000/- to Rs.95,31,162/- with interest @ 7.5 per annum. No costs.

13. The 2nd respondent Insurance Company is directed to deposit the entire award amount, as per the modified award passed by this Court, with interest and costs before the Tribunal within a period of 4 weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant/claimant is permitted to withdraw the same.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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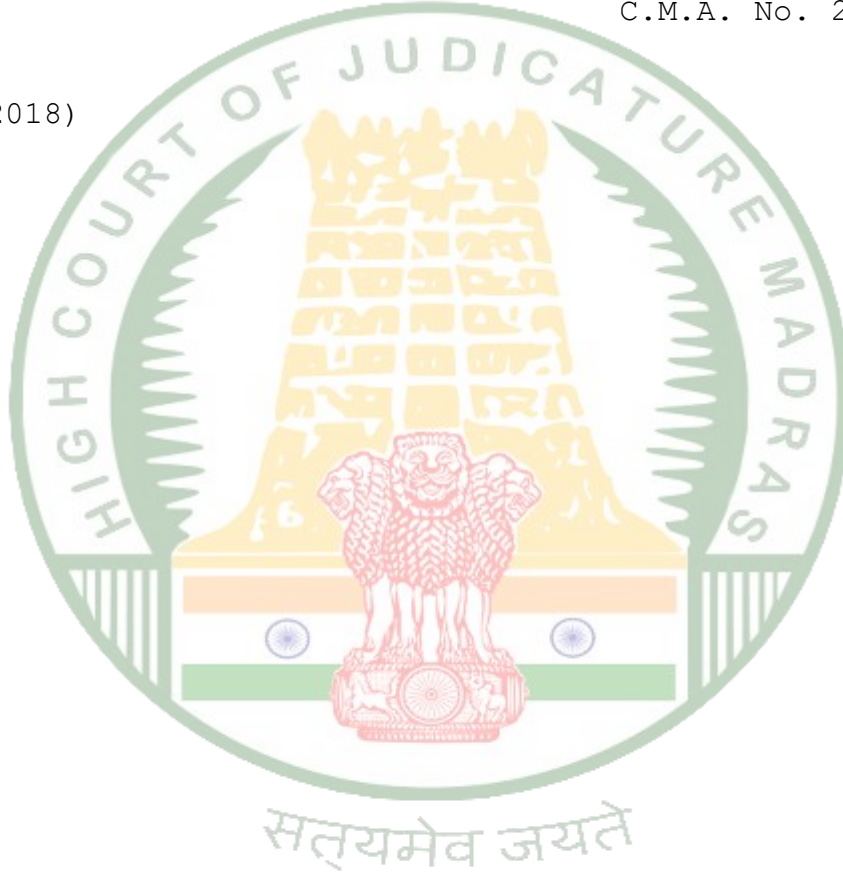
1.The MACT (IV Court of Small Causes),
Chennai.

2.The Record Keeper,
VR Section, High Court,
Madras (2 Copies)

+1cc to MR.M.Saravanan, Advocate SR.No.4051

C.M.A. No. 2989 of 2014

AK(CO)
GN(28/02/2018)



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