

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.609 of 2014

L.Narayanaraj (died)

1.N.Lakshmi@Ambikavathi

2.N.R.Manikandan

3.A.Jayalakshmi

4.R.Vimalarani

5.S.Sakila

6.N.Bhagyalakshmi

(Appellants 1 to 6 brought on record as LRs

Of the deceased sole appellant

Viz., L.Narayanaraj vide court order dated

22.02.2018 made in CMP.Nos.3703, 3704, 3705/2017

In CMA.No.609/2014).

..Appellants/LRs of sole appellant/Claimant

Vs

1.Meenakshiammal Polytechnic

C/o.M/s.Meenakshiammal Trust

641, Ramasamy Salai, K.K.Nagar

Chennai-600 078

2.The Branch Manager

New India Assurance Co.Ltd.,

Gandhi Road, Kancheepuram

..Respondents/Respondents

Prayer:- Civil Miscellaneous Appeal filed against the judgment and decree dated 11.02.2013 made in MCOP.No.92 of 2006 on the

file of learned Motor Accident Claims Tribunal, Subordinate Court, Kancheepuram.

For appellants :: Mr.N.Sankaravadivel

For respondents:: M/s.J.Chandran for R2.

R1 Exparte

JUDGMENT

The Civil Miscellaneous Appeal is filed against the judgment and decree dated 11.02.2013 made in MCOP.No.92 of 2006 on the file of learned Motor Accident Claims Tribunal, Subordinate Court, Kancheepuram, which was originally filed by the injured Petitioner.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of the petitioner in M.C.O.P.No.92 of 2006 is that on 10.12.2015 at about 11.30 a.m., as the petitioner was proceeding in a two wheeler bearing Reg.No.TN-23-Q-6572 as pillion rider in Kamarajar Street, towards Kancheepuram bus stand, the 1st respondent Lorry bearing Reg.No.TN-09-U-4537 driven in a rash and negligent manner came at high speed driving behind the two wheeler in which the petitioner was proceeding and dashed against the Motor cycle resulting in grievous injuries to the petitioner-L.Narayanraj. According to the Petitioner, the accident occurred only due to the negligence of the 1st respondent Lorry Driver. It is further averred by the petitioner that he was aged 48 years and he was carrying on rice bran business, earning Rs.10,000/- per month. Due to the injuries suffered in the accident, it resulted in amputation of his left leg below knee and dislocation of left shoulder. The petitioner was unable to carry on his business as he used to prior to the accident. This has resulted in loss of income to the petitioner. He has suffered permanent disability. Hence, the petitioner seeks a sum of Rs.12,00,000/- as compensation from the respondents, who are the owner and insurer of the offending vehicle.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 2nd respondent/Insurance company, contended that the accident did not occur in the manner as alleged by the petitioner. The accident occurred due to collision of two vehicles, but the petitioner has impleaded only the owner and insurer of one vehicle and as such, the petition

is bad for non-joinder of necessary parties. At the time of the accident, the 1st respondent vehicle driver was not having valid driving licence. As such, the 2nd respondent is not liable to pay any compensation. The claim of the Petitioner about his age, avocation and income are denied. The claim of the petitioner is exorbitant and the same is not substantiated by any documents. Thus, the 2nd respondent sought for dismissal of the Petition.

4. Before the Tribunal, the petitioner examined himself as P.W.1 and the medical expert as P.W.2, produced documents Ex.P.1 to Ex.P.22 to prove his claim. On the side of the respondents, neither oral nor documentary evidence was let in. The tribunal on the basis of available evidence on record found that the negligence of the 1st respondent vehicle driver alone caused the accident and passed the award for a sum of Rs.4,19,517/- payable by the 2nd respondent to the injured Petitioner. Being not satisfied with the quantum of the award, the Petitioner has filed the present appeal. During the pendency of the appeal, the injured petitioner died and the Legal Heirs of the Petitioner has now come on record as appellants.

5. The learned counsel for the appellants representing the injured Petitioner contends that the Tribunal ought to have fixed the monthly income of the victim at Rs.10,000/- on the basis of Ex.P.16, 17, P.18 documents. The amount awarded by the Tribunal under different heads is very low. The Tribunal failed to consider the evidence on record properly. Hence, the learned counsel for the appellants seeks to enhance the award amount by entertaining the appeal.

6. Per contra, the learned counsel for the 2nd respondent/Insurance company contends that the injured petitioner has died pending appeal and only the Legal Heirs are now conducting proceedings. The claim of the Legal Heirs is not maintainable. The 2nd respondent/Insurance company contends that the tribunal has properly appreciated the evidence on record. As such, the award passed by the Tribunal is just and proper. There is no valid ground made out by the appellants to enhance the quantum of the award passed by the Tribunal. Hence, the 2nd respondent/Insurance Company sought for dismissal of the appeal.

7. Heard both sides and perused the records carefully.

8. This is quantum appeal. The petitioner while deposing as P.W.1 clearly stated that he was proceeding as a pillion rider in the Motor cycle bearing Reg.No.TN-23-Q-6572 driven by one Manoharan at normal speed on 10.12.2005 and as they approached Kancheepuram Bus-stand, the 1st respondent Lorry bearing

Reg.No.TN-09-U-4537 came from behind at high speed and hit the backside of the motor cycle resulting in the petitioner being thrown away from the motor cycle and consequently, left wheel of the 1st respondent Lorry ran over the left leg of the petitioner. The Police also registered the case against the 1st respondent Lorry driver as evidenced by Ex.P.1-FIR. It is clear from the oral evidence of P.W.1 and the contents of Ex.P.1-FIR that the accident occurred only due to the negligence of the 1st respondent Lorry driver.

9. On the other hand, the 2nd respondent failed to examine anyone including the driver of the 1st respondent Lorry to disprove the claim of the Petitioner. As such, it is clear from the evidence let in by the Petitioner that the negligence of the 1st respondent Lorry driver alone is responsible for causing the accident. The Petitioner who deposed as P.W.1 clearly stated that due to the injuries suffered by him, his left leg below the knee was amputated and he is suffering due to the same. The Petitioner produced copy of the Accident Register as Ex.P.2 and Wound certificate as Ex.P.3 to prove the injuries suffered by him. It is clear from the said documents that the petitioner suffered severe grievous injuries. The petitioner after undergoing treatment as inpatient was discharged as per Ex.P.4 discharge summary. Even thereafter the petitioner has taken treatment as outpatient as evidenced by Ex.P.6. Thus, the petitioner has suffered grievous injuries in the accident. Admittedly as after effect of the injuries suffered in the accident, the left leg of the petitioner is amputated and consequently his normal activity is affected. The Petitioner examined the medical expert who assessed the disability suffered by the petitioner as P.W.2 and according to him, the disability suffered by the Petitioner is 65%. The said medical expert/doctor who deposed as P.W.2 stated that on physical verification and after taking Ex.P.20, Ex.P.22 - X-ray, he has assessed the disability at 65%. The disability certificate issued by him is marked as Ex.P.21. In the absence of any contra evidence to the medical expert evidence given by P.W.2, following the Ruling reported in 2017 (1) TNMAC 251, [P.Elangovan Vs. S.Murali and others], it is appropriate to fix the disability at 65%.

10. The Petitioner states that he was running rice bran business and in proof of the same, produced Ex.P.14 copy of the Firm Registration Certificate and Ex.P.15-Registration Certificate. The Petitioner also produced copy of Bank statement of account as Ex.P.16, 17 and Ex.P.18 On the basis of the same, the petitioner contends that the annual turnover was at Rs.8,67,889/-; 14,45,887/-; 13,13,416/- respectively.

11. The petitioner contends that the Tribunal failed to take into consideration the above said documents relating to the nature of business and the turnover of the rice bran business carried on by the petitioner and fixed the monthly income of the deceased at Rs.3000/- which is very low. The said contention of the petitioner appears to be justified in view of the annual turnover of the petitioner's business as found in EX.P.16, Ex.P.17 and Ex.P.18 statements. In such circumstances, it is appropriate to fix the monthly income of the deceased/injured petitioner at Rs.7000/- per month.

12. It is clear from the documents produced by the petitioner and also the oral evidence of P.W.2 doctor that the petitioner has suffered functional disability. Admittedly, the left leg of the petitioner is amputated and as such he finds it difficult to move to various places to purchase goods and to sell the same in his business place. Further it is admitted fact that the left leg of the petitioner is amputated, which will prevent him from carrying on normal business activity. Therefore, the Tribunal is justified in assessing the functional disability at 65%. The Tribunal has awarded the following amounts under different heads for the petitioner :-

Heads	Award granted by the Tribunal
1. Loss of income due to disability	Rs.2,34,000/-
2.Pain and suffering	Rs.25,000/-
3.Transport expenses	Rs. 5,000/-
4.Medical bills	Rs.1,55,517/-
Total	Rs.4,19,517/-

13. The Petitioner in his claim petition is stated to be 48 years old at the time of the accident. The Tribunal calculated the loss of income due to disability by taking the age of the petitioner as 45. Considering the nature of injuries suffered and the degree of functional disability which will prevent the petitioner from carrying on his normal activities, it will be appropriate to apply the multiplier method to calculate the compensation. As stated above, the age of the petitioner being 48 years, the correct multiplier to be applied is 13. Considering the fact that 6 persons are dependants on the petitioner, 1/4th of the income has to be deducted towards his

personal expenses. As such, the loss of income suffered by the 1st petitioner is calculated as follows:-

$$\text{Rs.}7000 \times 1/4 \text{ (1750)}$$

$$7000 - 1750 = 5250$$

$$5250 \times 65\% \text{ disability (65/100)} = \text{Rs.}3413.$$

Therefore the loss of income per year is as under:-

$$\text{Rs.}3412 \times 12 \times 13 = \text{Rs.}5,32,272/-.$$

Thus, a sum of Rs.5,32,272/- is awarded under the head "loss of pecuniary benefits". The learned counsel for the appellants submits that the petitioner underwent surgery for fixing artificial leg and sought Rs.50,000/- as compensation towards fixing of artificial leg, but no medical bill is produced for the same. Hence, this court is not inclined to award any amount towards cost of artificial leg.

14. The learned counsel for the appellants sought for enhancement of the quantum of award and relied upon the Ruling reported in 2014(1) TN MAC 459(SC) [Syed Sadiq etc., vs. Divisional Manager, United India Insurance Co.Ltd.,] to contend that disability assessed by doctor at 65% to lower limb and functional disability must be looked sensitively. Considering the nature of surgery underwent by the petitioner and the period of treatment, the petitioner would have definitely required an attender; further due to loss of left leg, his life style being affected, he would have suffered lack of amenities. As such towards cost of attender charges and loss of amenities, a sum of Rs.25,000/- in total, is awarded by this court. As far as amount awarded by the tribunal under the heads Pain and suffering; transport expenses and Medical bills, this court feels it just and proper and hence the same are confirmed. Thus the modified compensation granted by this court is as shown below:-

Heads	Award granted by the Tribunal	Award granted by this court
1. Loss of income due to disability	Rs.2,34,000/-	Rs.5,32,272/-
2.Pain and suffering	Rs.25,000/-	Rs. 25,000/-
3.Transport expenses	Rs. 5,000/-	Rs. 5,000/-
4.Medical bills	Rs.1,55,517/-	Rs.1,55,517/-
5.Loss of amenities and Attender charges	---	Rs. 25,000/-
Total	Rs.4,19,517/-	Rs.7,42,789/-

In the result,

- (i) This Civil Miscellaneous Appeal is Allowed;
- (ii) The Appellants/Legal Heirs of the Petitioner in M.C.O.P.No.92 of 2006 are entitled to Award amount of Rs.7,42,789/- as compensation.
- (iii) The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of deposit.
- (iv) The 2nd respondent/Insurance Company is directed to deposit the entire award amount along with proportionate cost and interest, less the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this order;
- (v) The Appellants are entitled to withdraw their respective share along with proportionate accrued interest as shown hereunder:

1st appellant/wife-40%;
2nd appellant/son-20%;
Petitioners 3 to 7-10% each.

The Tribunal shall follow the appropriate procedure for disbursal of the amount to the appellants.

- (vi) The appellants are directed to pay the required court fee for the enhanced award amount within one week from the date of getting the copy of the order of this court.

- (vii) No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

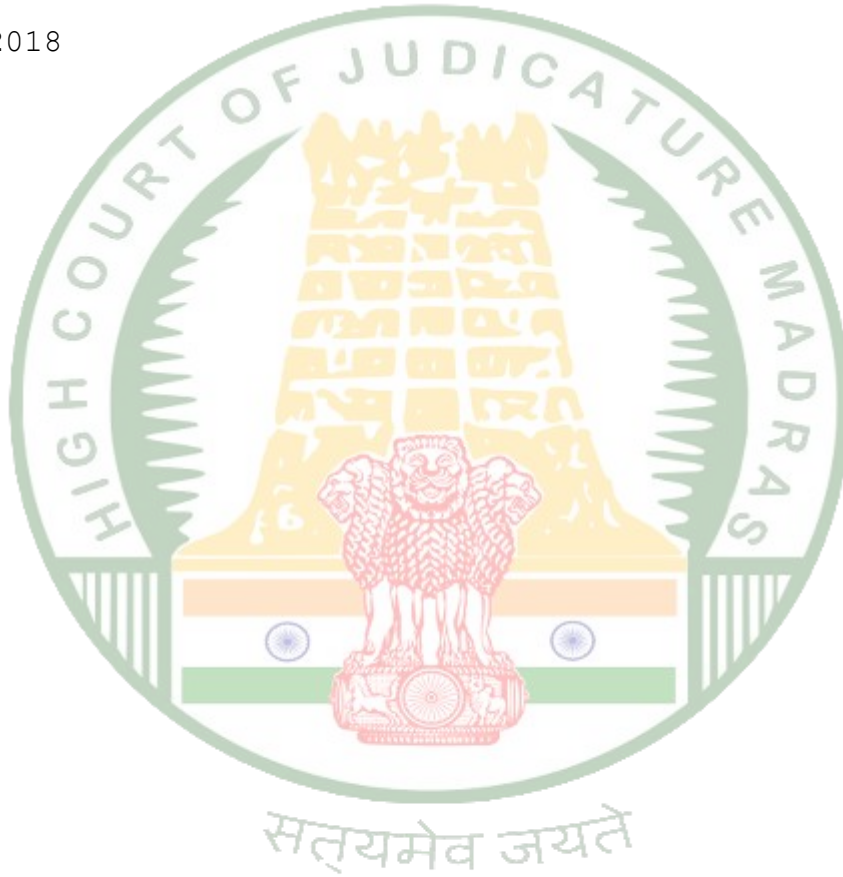
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To
1.The Subordinate Judge,
The Motor Accidents Claims Tribunal,
Kancheepuram.

+1cc to Mr.N.Sankaravadivel, Advocate in sr.no.25820
+1cc to Mr.J.Chandran, Advocate in sr.no.26843

C.M.A.No.609 of 2014

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