

IN THE JUDICATE OF MADRAS HIGH COURT

DATED : 02.02.2018

CORAM

THE HON'BLE MR.JUSTICE R.SUBBIAH

and

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

C.M.A.No.2126 of 2012

and

C.M.P.No.7832 of 2016

1.G.K.Chellaiah (Deceased)

2.Mrs.C.Munammal

3.Mrs.C.Malarvizhi

4.Mr.C.Vinothkumar

5.Mr.G.Kamatchi

... Appellants/Petitioner

(appellants 2 to 5 were brought on record

as LR's of the deceased 1st appellant vide order

of Court dt 22.02.2017 in CMP.20780/2016)

Vs.

1.G.Ganesh

2.M/s.United India Insurance Co.Ltd.,

No.38, Anna Salai,

Chennai-600 002.

... Respondents/Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 16.02.2012 in M.C.O.P.No.2620 of 2006 on the file of the Motor Accidents Claims Tribunal (Small Causes Court No.V), Chennai.

For Appellant : Mr.T.G.Balachandran

For Respondents: Mr.S.Arunkumar (For R2)

JUDGMENT

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

This appeal has been filed as against the award dated 16.02.2012 in M.C.O.P.No.2620 of 2006 passed by the Motor Accidents Claims Tribunal (Small Causes Court No.V), Chennai.

2.Originally the said MCOP was by the Injured Chelliah, who had made a claim of Rs.10 lakhs for the injuries sustained by him in the accident that had occurred on 18.05.2006 involving the share-auto bearing Reg.No.TN-04-S-9105 owned by the 1st respondent herein and insured with the 2nd respondent herein-Insurance Company. The Tribunal has passed an award for a total sum of Rs.6,22,500/- as compensation to the victim. The break up details of the compensation amount awarded by the Tribunal are as follows_

Loss of earning power	=Rs.3,96,000/-
Transportation	=Rs. 6,000/-
Extranourishment	=Rs. 10,000/-
Damages	=Rs. 1,000/-
Loss of amenities	=Rs. 50,000/-
Attender Charges	=Rs. 25,000/-
Medical Expenses	=Rs. 84,385/-
Pain and sufferings	=Rs. 50,000/-

Total =Rs.6,22,385-
(rounded off to Rs.6,22,500/-)

Aggrieved over the same, the victim filed the present appeal seeking enhancement of compensation. During the pendency of the appeal, the victim/injured died, hence, his legal representatives got themselves impleaded as appellants by filing C.M.P.No.20780 of 2016.

3.Since the present appeal has been filed only questioning the quantum of compensation awarded by the Tribunal, it is not necessary for this Court to traverse into the other aspects of the award passed by the Tribunal.

4.It is the submission of the learned counsel for the appellants that in the accident, the victim sustained head injury, bilateral Frontal Craniotomy, Renal impairment and he suffered amnesia. Before the Tribunal, his son Vinothkumar was examined as P.W.1, who has stated in his evidence that his father/victim was working as Driver in M.T.C. Limited; that at the time of accident, he was aged 50 years and he was unable to carry on his avocation and he was removed from service in the year 2010 as he had become unfit for duty due to the disability suffered by him on account of the injuries sustained by him in the accident. The Doctor has assessed the disability suffered by the victim at 85%, but the Tribunal has fixed 50% disability and made the calculation on that basis, which has resulted in awarding an inadequate compensation. Thus, the learned counsel for the appellants submitted that the compensation awarded by the Tribunal needs proper enhancement.

5.Further, the learned counsel for the appellants would further submit that since the appellants, who are legal heirs of the victim/injured, have lost the bread-winner in the year 2010, their family suffered financially. Thus, the learned counsel appearing for the appellants submitted that as the appellants are the legal heirs of the victim, they are entitled for the compensation.

6.Per contra, the learned counsel for the 2nd respondent/Insurance Company submitted that the accident had occurred in the year 2006, the victim had died only in the year 2016 that is after a period of 10 years, but absolutely there is no documentary evidence to show that his death had occurred only due to the injuries sustained in the accident. Further, under Ex.P.9, the Doctor had issued a certificate confirming

that the victim was fit for other job which does not require any machinery work or travel. The Discharge Summary issued to the victim for the period from 22.07.2010 to 27.07.2010, which was marked as Ex.P.4 would show that the victim stopped taking treatment as early as in the year 2010 itself. But, the victim died only in the year 2016. No evidence was produced on the side of the Legal Heirs/appellants herein to show that the victim had died only due to the injuries suffered by him in the accident. It is further submission of the learned counsel for the 2nd respondent/Insurance Company that the Legal Heirs/appellants herein are not entitled to any compensation for the injuries sustained by the victim because it is perse in nature. In support of his contention, the learned counsel for the Insurance Company has also relied upon the decision reported in 2017(2) TN MAC 81 (DB) [The Branch Manager, Oriental Insurance Co. Ltd.,m Vs. Monohar].

7.Keeping the submissions made on either side, We have carefully gone through the entire materials available on record.

8.Though very many contentions were made on either side with regard to the nature of injuries and disability suffered by the victim, the appellants have miserably failed to establish before the Court that the death of the victim was only due to the injuries sustained by him in the accident that had occurred in the year 2006. Moreover, as contended by the learned counsel for the Insurance Company that the claim is perse in nature and if at all the legal representatives are entitled for any compensation, it could be only for the compensation for the financial loss suffered by the victim and not beyond that.

9.It is seen that the Tribunal has taken only a sum of Rs.6,000/- as monthly income of the victim and made the calculation towards loss of earning power by fixing 50% disability. Whereas We find from the materials available on record that the Doctor (P.W.5), who had examined the victim, assessed the disability suffered by the victim at 85%. But, the Tribunal has not rendered any valid reason to reduce the percentage of the disability of the victim fixed by the Doctor. Hence, it would be proper to make the calculation for awarding compensation, by fixing the disability suffered by the victim at 85%. If a sum of Rs.6,000/- is taken as monthly income of the deceased, by applying multiplier 11 and taking the disability at 85%, the compensation towards loss of earning power works out to Rs.6,73,200/- (6,000 x 12 x 11 x 85/100). Further, We are of the opinion that considering the long period of treatment undergone by the victim, a sum of Rs.6,000/- awarded by the Tribunal for Transportation appears to be on the lower side, hence the same is hereby enhanced to Rs.20,000/-. Similarly, as the sum of Rs.10,000/- awarded by the Tribunal under the head of extranurishment appears to be on the lower side, the same is hereby enhanced to Rs.25,000/-.

10.Further, it is seen that pending the appeal, the victim has taken out the application in C.M.P.No.7832 of 2016, seeking to receive the medical bills and Inpatient treatment expenses actually spent by him after disposal of the MCOP, as additional evidence. The said C.M.P.No.7832 of 2016 is allowed and the

medical bills are received as Ex.P.20 (series). Accepting the medical bills produced on the side of the applicants, a sum of Rs.20,000/- is hereby awarded under the head of Additional Medical Expenses.

11.Except the above modifications, the compensation amounts awarded by the Tribunal under other heads are hereby confirmed as they appear to be reasonable. Thus, the total compensation amount of Rs.6,22,500/- awarded by the Tribunal is hereby modified/enhanced to Rs.9,48,585/-. The break up details of the modified/enhanced compensation amount are as follows_

Loss of earning power	=Rs.6,73,200/-
Transportation	=Rs. 20,000/-
Extranourishment	=Rs. 25,000/-
Damages	=Rs. 1,000/-
Loss of amenities	=Rs. 50,000/-
Attender Charges	=Rs. 25,000/-
Medical Expenses	=Rs. 84,385/-
Pain and sufferings	=Rs. 50,000/-
Additional Medical Bills	=Rs. 20,000/-

Total =Rs.9,48,585-

12.In the result, the Civil Miscellaneous Appeal is allowed and the total compensation amount of Rs.6,22,500/- awarded by the Tribunal is hereby modified/enhanced to Rs.9,48,585/-. The Insurance Company is directed to deposit the entire compensation amount of Rs.9,48,585/-, after deducting the amount if any already deposited, with interest at 7.5% per annum, within a period of six weeks from the date of receipt of a copy of this order. It is made clear that the interest has to be calculated only from the date of filing the appeal. On such deposit, the appellants, LRs of the victim, are entitled to withdraw the same in equal share by making necessary application before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To,
The Motor Accidents Claims Tribunal,
(Small Causes Court No.V), Chennai.

Copy to:The Section Officer, VR Section,
High Court, Madras(2 copies)

+1cc to Mr.S.Arunkumar, Advocate Sr.No.8068
+1cc to Mr.T.G.Balachandran, Advocate Sr.No.7806

RJ(CO)
sm:5.4.2018

C.M.A.No.2126 of 2012
and
C.M.P.No.7832 of 2016