

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 19.09.2018

C O R A M

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.1845 of 2006

The New India Assurance Co.Ltd.,
11,19,20, Govt.Arts College Road,
Coimbatore.

...Appellant/3rd Respondent

Vs

1.S.R.Viswanathan 1st Respondent/Claimant
2.Jayaseelan
3.R.Thirumagan
4.K.G.Rajan

5.Messers. Holland Equipments,
rep.by its Proprietor,
No.26, East Tillai Nagar, Narayanasamy Layout,
Rathinapuri, Coimbatore.

6.New India Assurance Co.Ltd., Branch Office,
11,19,20, Govt.Arts College Road, Coimbatore.

[No relief is claimed against respondents 4 to 6 and
are given up] Respondents 2 to 6/
Respondents 1,2,4 to 6

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.12.2005 made in M.A.C.T.O.P.No.436 of 2004 on the file of the Motor Accidents Claims Tribunal, (III Additional Subordinate Judge) at Coimbatore.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.S.E.D.Sethupathi [for R1]
Given up [RR4 to 6]

R2 & 3 dismissed vide order
dated 30.01.2013

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company against the judgment and decree 16.12.2005 passed in M.A.C.T.O.P.No.436 of 2004 on the file of Motor Accidents Claims Tribunal, (III Additional Subordinate Judge) at Coimbatore.

2.The brief facts of the claim petition is as follows;

(i) On 23.2.2004 at about 5.30 p.m., one Rajan was driving the vehicle and the claimant/1st respondent herein was a pillion rider and they were proceeding to their work spot; while they were nearing Dr.Sarojini Road and trying to cross Dr.Nanjappa Road, at that time, a Suzuki Max 100 R, a two wheeler bearing Registration No.TN-33-5940 came in a rash and negligent manner and hit the vehicle on which the claimant was travelling as a pillion rider. Due to that collusion, the claimant along with the rider of the vehicle sustained severe injuries and immediately the claimant was taken to Ellen Hospital and further he was treated in the K.G.Hospital, wherein, surgery was also done.

3. The Tribunal based on the facts stated in the claim petition and the counter statement and also considering the available evidence placed before it, has awarded a sum of Rs.11,21,625/- as compensation against the claim of Rs.25,00,000/-.

4. Aggrieved against the award, the Insurance Company has preferred the present appeal.

5. The learned counsel appearing for the appellant/Insurance Company has argued that the sum awarded for the disability is not proper since there could not be any loss of income for the claimant/1st respondent herein as he was running a Electronic shop and has also paid income tax during the relevant period of treatment. Hence, the loss of income determined by the tribunal by applying the multiplier method is not a proper one. Regarding the disability related to the alleged distortion of vision, scientific test was not taken and further in respect of the accident, no witness was examined. It is also stated that no substantial document was placed before the tribunal to prove the alleged disability suffered by the claimant.

6. Among other grounds, the Appellant/Insurance Company has very much argued that the sum awarded under the head loss of income by applying the Multiplier method to the tune of Rs.6,91,200/- by the Tribunal, Rs.1,00,000/- awarded towards "Pain and Suffering" is highly excessive. Further, the sum

awarded under the head "shock" at Rs.25,000/- is also not justified. The appellant has also argued on the point that while the Tribunal has already awarded a huge sum by applying multiplier method and determined the loss of earning due to disability as Rs.6,91,200/-, another sum awarded under permanent disability at Rs.50,000/- is highly exorbitant.

7. On the side of the 1st respondent/claimant, it is vehemently argued by pointing out the evidence of the claimant as well as the Doctor, who deposed before the Tribunal that the claimant got injured on his head and surgery was also done for 3 to 4 times for removing the blood clot in his brain. P.W.2 has also deposed that the claimant/1st respondent's eye vision was affected due to the injury sustained and he was suffering for nearly six months and also suffering from nerves inefficiency.

8. It is argued by the appellant counsel that since the claimant is running a Electronic shop presently, the same shows that his profession was not affected due to his disability and further the tribunal based on the Doctor's evidence and disability certificate, has already assessed the disability of the claimant/1st respondent on the higher side.

9. It is pointed out by the learned counsel for the claimant/1st respondent that the claimant/injured is an Engineering Graduate and he sustained the disability on his eye, which could very much affect his profession which involves of viewing the micro objects in his Electronic shop.

10. On hearing both sides and also on a perusal of the compensation awarded under various heads, especially, the sum awarded under the head "shock" and further the compensation awarded under the head "Permanent disability" as Rs.50,000/- are considered as unnecessary, since the amounts granted under other heads would cover the same.

11. As far as the first limb of contention of the learned counsel for the appellant/Insurance Company that when there is no heavy loss of income to the claimant as he is running a Electronic shop even after the accident and also paid income tax, applying the multiplier method is not justified, and the second limb of contention that the percentage method can be applied only for assessing the disability. Hence, this court of the view that taking 45% of disability would be proper and accordingly fixed compensation at the rate of Rs.2,000/- per percentage of disability. Further, this court is of the view that the compensation granted under the head "disability" as Rs.50,000/- is unnecessary and hence, the same is set aside. As far as the sum awarded under head Pain and Suffering as Rs.1,00,000/- is also considered to be on the higher side and

hence, that amount is also to be reduced to some extent. Hence, the modified sum is calculated as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Pain and Sufferings	1,00,000.00	1,00,000.00
2	Loss of earning	6,91,200.00	90,000.00
3	Medical Expenses	2,58,055	2,58,055.00
4	Transport Charges	3,870.00	3,870.00
5	Attender Charges	18,000.00	25,000.00
6	Damages of Clothes	500.00	-
7	Permanent disability	50,000.00	-
8	Shock	25,000.00	-
9	Amenities	-	25,000.00
10	Extra Nourishment	-	25,000.00
	Total	11,46,625.00	5,26,925.00

12. It is seen from the award passed by the tribunal that the total sum arrived by the Tribunal is Rs.11,21,625/- whereas, while calculating the total sum awarded under various head, it comes to Rs.11,46,625/-. Hence this Court takes the amount of Rs. 11,46,625/- for consideration.

13. Since the Tribunal has already given finding, directing the appellant/insurance company to pay the compensation amount to the claimant with liberty to recover the same from the respondents 2 and 3, this Court confirms the said directions given by the tribunal.

14. In the result, the Civil Miscellaneous Appeal is Allowed. The quantum of the Award is reduced to Rs.5,26,925/- from 11,46,625/- with interest at the rate of 7.5% per annum. Since this Court vide order dated 28.06.2006 has directed the appellant/Insurance company to deposit 50% of the compensation awarded by the tribunal including interest and costs, the Insurance company is directed to deposit the remaining amount along with interest as apportioned by the tribunal within a period of four weeks from the date of receipt of a copy of this judgment and on such deposit, the tribunal is directed to transfer the same directed to the claimants' bank account through RTGS, within a period of two weeks thereafter. The

appellant/Insurance Company is permitted to recover the modified amount awarded in this appeal from the respondents 2 & 3 by filing appropriate petition. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

bri

To

1.The Motor Accidents Claims Tribunal,
III Additional Subordiante Judge,
Coimbatore.

2 The Section Officer,
V.R.Section, High Court, Madras

+1 cc to Mr.M.Krishnamoorthy, Advocate Sr.No.64909

C.M.A.No.1845 of 2006

KJI (CO)
CSL/04.02.2019



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