



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2018

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3200 of 2007

and

M.P.No.1 of 2007

United India Insurance Co. Ltd.,
Coimbatore.

.. Appellant/2nd Respondent

vs

1.A.R.R.Nataraj

2.B.Raja

3.Padmanabhan

(Respondents 2 and 3 remained exparte

before the Lower Court. Hence batta

not paid)

.. Respondents/Petitioner & Respondens 1 & 2

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act against the judgment and decree in M.C.O.P.No.357 of 2006, dated 08.12.2006, on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Coimbatore.

For Appellant : Mr.N.B.Gopalan

For R1 : Mr.Parthasarathi

JUDGMENT

On 20.07.2018, the operative portion of the order was pronounced by dismissing the above appeal after hearing. Subsequently, the case was listed on 28.08.2018 under the caption for clarification, in view of certain doubts entertained on account of the applicability of the decision of the Hon'ble Supreme Court in National Insurance Co., Ltd., vs. Pranay Sethi & Others, 2017(2) TN MAC 609(SC) to the facts of the present case while dictating the order.

2. Accordingly, the civil miscellaneous appeal is being disposed after getting clarification and eliciting further submission of the respective counsel.



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3. The appellant-insurance company is aggrieved by the fair and decretal order (impugned order) dated 08.12.2006 passed by the Motor Accident Claims Tribunal, Principal Subordinate Court, Coimbatore (Tribunal) in M.C.O.P.No.357 of 2006.

4. By the impugned order, the Tribunal has awarded a sum of Rs.3,22,357/- as total compensation for amputation of index finger of right hand, and towards loss of income applying the multiplier of 13 considering the age of the 1st respondent at 45 and a sum of Rs.5000/- towards pain and suffering and Rs.1000/- towards transportation and Rs.58,957/-towards medical expenses.

5. The accident is said to have taken place when the first respondent was travelling as a passenger in a state government bus when a lorry coming from the opposite direction driven in a rash and negligent manner hit the bus. The the first respondent who was sitting three rows behind the driver seats by the window suffered fracture and other injuries. The first respondent had undergone treatment as an inpatient in two spells and during May, 2004 and his little finger was amputated. This injury compromised his earning capacity as he uses his hands in his eye-spectacle show room while meeting customers.

6. The appellant submits that adoption of multiplier by the Tribunal was not correct and the compensation should have been at best awarded on percentage basis.

7. Per contra, the learned counsel for the 1st-respondent submitted that the 1st respondent was running a spectacles shop and was earning a sum of Rs.20,000/- and the injury had compromised his earning capacity.

8. However, the Tribunal has restricted the income to Rs.5,000/- per month and has therefore awarded a lesser amount than the amount claimed by the 1st respondent as compensation.

9. After considering the evidence on record and the pleadings, it is to be noted that the compensation has been awarded based on the income of Rs.5,000/- per month even though there is no contra evidence to suggest that the first respondent had declared an exaggerated income of Rs.20,000/- p.m.

10. P.W.3 has confirmed that the injury resulted in 33% of disability. Ex.P.21 Permanent disability certificate marked by the first respondent shows that the first respondent's rest of the finger movements were also constricted after the amputation of his little finger in his right hand. Thus, the injury has impacted his earning capacity.



11. Therefore, the amount awarded by the Tribunal cannot be questioned. The Tribunal has awarded just compensation on 33% of the loss of income considering the fact that the 1st respondent was a self employed person running a spectacle shop.

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12. His aged parents, wife and two young children were his dependent. Therefore, the first respondent is entitled for the compensation awarded.

13. At the same time, in view of the decision of the Hon'ble Supreme Court in National Insurance Co., Ltd., vs. Pranay Sethi & Others, 2017(2) TN MAC 609(SC), the first respondent is entitled to a further sum of Rs.80,589/- being 25% of Rs.3,22,357/- as addition to income towards future prospect. This is awarded in view of the decision of the Hon'ble Supreme Court in Nagappa Vs. Gurudayal Sigh (2003) 2 SCC 274 which enjoins the Courts and Tribunal to award just compensation to a road accident victim.

14. The appellant-insurance company shall pay a further sum of Rs.80,589/- together with interest at 7.5% per annum from the date of claim till the date payment and the amount already awarded by the Tribunal and also adjusted amount paid to the credit of the above case within a period of four weeks from the date of receipt of a copy of this order.

15. On such deposit, the 1st respondent shall be entitled to receive the amount together with any other amounts lying unclaimed in the account of the above case. No costs. Consequently, connected Miscellaneous Petition is closed.

kkd/ia

20.07.2018

This Appeal having been posted this day on 28th day of August 2018 for clarification perusing to the judgment of this court dated 20th day of July 2018 and mae herein and in the presence of the aftersaid advocates the court delivered the following judgment.

C.SARAVANAN, J.

On 20.07.2018, the operative portion of the order was pronounced by dismissing the above appeal after hearing. Subsequently, the case was listed on 28.08.2018 under the caption for clarification, in view of certain doubts entertained on account of the applicability of the decision of the Hon'ble Supreme Court in National Insurance Co., Ltd., vs. Pranay Sethi & Others, 2017(2) TN MAC 609(SC) to the facts of the present case while dictating the order. Therefore, the order dated



20.07.2018 dismissing the appeal is recalled and was taken up for hearing afresh.

2. Heard the learned counsel for both sides.

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3. The appellant-insurance company is aggrieved by the fair and decretal order (impugned order) dated 08.12.2006 passed by the Motor Accident Claims Tribunal, Principal Subordinate Court, Coimbatore (Tribunal) in M.C.O.P.No.357 of 2006.

4. By the impugned order, the Tribunal has awarded a sum of Rs.3,22,357/- as total compensation for amputation of index finger of right hand, and towards loss of income of Rs.5,000/- and applying the multiplier of 13 . (Rs.5,000/-X 12X13/33% = Rs.2,57,400/-) considering the age of the 1st respondent at 45 and a sum of Rs.5000/- towards pain and suffering and Rs.1000/- towards transportation and Rs.58,957/-towards medical expenses.

5. The accident is said to have taken place when the first respondent was travelling as a passenger in a state government bus when a lorry insured with the appellant coming from the opposite direction driven in a rash and negligent manner hit the bus. The first respondent who was sitting three rows behind the drivers seat by the window and suffered fracture and other injuries. The first respondent had undergone treatment as an inpatient in two spells and during May, 2004 and his index finger was later amputated. This injury compromised his earning capacity as he uses his hands in his eye-spectacle show room while meeting customers.

6. The appellant submits that adoption of multiplier by the Tribunal was not correct and the compensation should have been at best awarded on percentage basis.

7. Per contra, the learned counsel for the 1st-respondent submitted that the 1st respondent was running a spectacles shop and was earning a sum of Rs.20,000/- and the injury had compromised his earning capacity.

8. However, the Tribunal has restricted the income to Rs.5,000/- per month and has therefore awarded a lesser amount than the amount claimed by the 1st respondent as compensation.

9. After considering the evidence on record and the pleadings, it is to be noted that the compensation has been awarded based on the income of Rs.5,000/- per month even though there is no contra evidence to suggest that the first respondent



had declared an exaggerated income of Rs.20,000/- p.m. However, at this stage in absence of an appeal, this issue cannot be examined.

10. P.W.3 has confirmed that the injury resulted in 33% of disability. Ex.P.21 Permanent disability certificate marked by the first respondent shows that the first respondent's rest of the finger movements were also constricted after the amputation of his little finger in his right hand. Thus, the injury has impacted his earning capacity.

11. Therefore, the amount awarded by the Tribunal cannot be questioned. The Tribunal has awarded just compensation on 33% of the loss of income considering the fact that the 1st respondent was a self employed person running a spectacle shop.

12. In view of the same, this Civil Miscellaneous Appeal was dismissed on 20.07.2018. However, while dismissing the appeal, the decision of the Hon'ble Supreme Court in National Insurance Co., Ltd., vs. Pranay Sethi & Others, 2017(2) TN MAC 609(SC) was not considered. If it is applied, the first respondent is entitled for a further sum of Rs.80,589/- being 25% of Rs.3,22,357/- as addition to income towards future prospect. This is awarded in view of the decision of the Hon'ble Supreme Court in Nagappa Vs. Gurudayal Sigh (2003) 2 SCC 274 which enjoins the Courts and Tribunal to award just compensation to a road accident victim.

13. Though the appeal has been preferred by the Appellant/Insurance Company, against the award of Rs.3,22,357/- . I am inclined to enhance the compensation by adding a sum of Rs.80,589/- to Rs.3,22,357/- already awarded following the Judgment of the Hon'ble Supreme Court in Swaram Singh invoking under Order 41 Rule 33 of C.P.C. Thus, the compensation awarded is enhanced from Rs.3,22,357/- to Rs.4,02,946/- i.e. (Rs.3,22,357/- + Rs.80,589/-) and is rounded to Rs.4,03,000/.

14. In the result, it is ordered as follows:-

i) The 1st respondent-claimant is directed to pay the additional court fee within a period of six weeks from the date of receipt of a copy of this order.

ii) The appellant-Insurance company has already been deposited the aforesaid amount before the Tribunal.

iii) The appellant-insurance company shall



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therefore deposit a further sum of Rs.80,589/-to the credit of the M.C.O.P.No.357 of 2006 on the file of the Principal Subordinate Court, Coimbatore together with interest at 7.5% per annum from the date of claim till the date payment .

iv) On such deposit, the 1st respondent shall be entitled to receive the amount together with any other amounts lying unclaimed in the account of the above case.

15. Accordingly, this civil miscellaneous appeal is disposed in the above terms.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Principal Subordinate Court, Coimbatore.
2. The Section Officer VR Section, High Court, Madras.

+1cc to Mr.M.B.Gopalan, Advocate SR.No.49580

+1cc to Mr.M.Parthasarathy, Advocate SR.No.49123

C.M.A.No.3200 of 2007
and M.P.No.1 of 2007

GMV (24/01/2019)