

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.3257 of 2012
& MP Nos.1 & 2 of 2012

1. M/s.Jagganath Textiles Company Pvt Ltd.,
Registered Office 14,
East Periyaswamy Road,
R.S.Puram, Coimbatore 2.1st Appellant R2
2. National Insurance Co. Ltd.,
City Branch,
Registered Office,
52, Oppanakkara Street,
Coimbatore.2nd Appellants/R4
- vs-
1. S.KannanR1 /Petitioner
2. K.ShanmughasundaramRespondent No.2/R1
3. M/s.Blue Chips Association,
Reg. Office,
Door No.1290, Trichy Road,
Coimbatore. ... Respondents No.3/R3

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 20.09.2010 made in MACTOP.No.1064 of 1993 on the file of the Motor Accidents Claims Tribunal, (Principal Subordinate Judge), Coimbatore.

For Appellants : Mrs.N.B.Surekha

For Respondents : Mrs. P.Veena
for M/s.T.R.Rajaraman for R1

No appearance for R2
Not Ready notice for R3

J U D G M E N T

[Judgment of the Court made by R.SUBRAMANIAN,J.]

The Insurance Company and the owner of the offending vehicle who suffered an award for payment of Rs.14,87,000/- with interest and costs in MCOP No.1064 of 1993 on the file of the Motor Accident Claims Tribunal, (Principal Sub Judge), Coimbatore, have come forward with the above appeal challenging the quantum of compensation.

2. The Claim petition was filed by the 1st respondent herein seeking compensation for the injuries sustained by him in the motor accident that took place on 21.08.1993. Originally the claimant made a claim for Rs.7,00,000/- and the Tribunal awarded a sum of Rs.3,78,380/-. On appeal before this Court, it was brought to the notice of the Division Bench which heard the appeal that the claimant had undergone several surgeries after the disposal of the Original Petition by the Tribunal and a cross objection was also filed in Cross Objection No.5 of 2005 in CMA No.829 of 1996. Apart from filing the Cross objection, applications in CMP Nos.6639, 6640 of 2005 were also taken out for amending the Original Claim Petition seeking enhanced the compensation of Rs.20,75,000/- and for letting in additional evidence.

3. At the time of hearing of the appeal, the Division Bench noted that the subsequent events will have to be proved by way of evidence and therefore, remitted the matter to the Tribunal for fresh consideration. There upon, the Claim Petition was amended by the claimant seeking enhanced compensation of Rs.20,75,000/-. After remand, the Tribunal granted a sum of Rs.14,87,000/- as compensation and whatever amounts that were paid during the pendency of the CMA before this Court in CMA No.829 of 1996 was directed to be deducted, from the compensation now awarded. Claiming that the compensation awarded is on higher side, the Insurance Company and the owner have come forward with this Appeal.

4. We have heard Mrs.M.B.Surekha, learned counsel appearing for the appellant Insurance Company and Mrs.P.Veena, learned counsel appearing for M/s.T.R.Rajaraman, for the 1st respondent claimant. The 2nd respondent though served has not appear either in person or through counsel and notice to the 3rd respondent is dispensed with since the 3rd respondent remained ex-parte before the Tribunal.

5. Both the counsels for the appellant as well as the 1st respondent have addressed arguments only on the quantum of compensation. Upon consideration of the oral and documentary evidence, the Tribunal has granted a sum of Rs.78,750/- for disability, Rs.7,81,250/- for medical expenses, Rs.15,000/- for transportation charges, Rs.10,000/- for nutrition, Rs.1,00,000/- for pain and sufferings and Rs.1,50,000/- for future medical expenses. These amounts are not very seriously disputed by the counsel for the appellant Insurance Company.

6. The learned counsel would however point out that as regards the medical expenses, the actual amount as evidenced by the bills produced is not Rs.7,81,250/-, but it is only Rs.7,23,000/-. This statement is not disputed by the learned counsel appearing for the 1st respondent. Therefore, we modify the award of the Tribunal with reference to medical expenses to Rs.7,23,000/- instead of Rs.7,81,250/-. Out of this Rs.7,23,000/- bills to the tune of Rs.1,44,578/- were produced before the order of remand, the remaining bills were produced after the order of remand. Therefore, according to the learned counsel for the appellant, interest on the said amounts for which the bills were produced, after the order of remand, cannot run from the date of filing of the Claim Petition in the year 1993. We see much force in the said contention of the learned counsel for the Insurance Company. We are therefore of the opinion that the claimant would be entitled to interest from the date of filing of the petition on Rs.1,44,578/- and as far as the remaining amount of Rs.5,78,422/-, the expenses seems to have been incurred at stages and for over a period of 5 years between 1999 and 2004. We are therefore of the considered opinion that it will be just and proper the interest on the said sum of Rs.5,78,422/- is calculated from 01.06.2001, which is the midpoint of the 5 year period.

7. As regards the compensation granted by the Tribunal on the head of loss of income, during the period of treatment, the learned counsel for the appellant Insurance Company would contend that though, the Tribunal had found that the claimant had availed leave for a period of 6½ months, but while calculating the loss of income for the leave period, the Tribunal has taken a period of 16 months which in the opinion of this court, is incorrect. Considering the overall circumstances and the fact that the claimant would have been forced to take leave during the subsequent surgeries also, we find that it will be just and proper to grant a sum of Rs.70,000/- (Rs.7,000/-X 10) towards loss of income during the treatment period. The

Tribunal has granted a sum of Rs.2,40,000/- for the delay in promotion. It has been established through evidence that in view of the accident, the claimant could not appear for the departmental promotion examinations during the year 1993 and he was denied promotion due to the fact that his performance was affected because of the disability. On a overall assessment, the Tribunal has awarded a sum of Rs.2,40,000/-, which in our considered opinion is not excessive. Therefore, the award of the Tribunal seeks modification only with reference to the interest payable on the medical expenses and the loss of income during the leave period.

8. Accordingly, the award is modified as follows:

S.No.	Heads	Amount
1.	For permanent Disability	Rs. 78,750/-
2.	For Medical Expenses	Rs. 7,23,000/-
3.	For Loss of income during period of treatment	Rs. 70,000/-
4.	For delay in promotion	Rs. 2,40,000/-
5.	Transport Charges	Rs. 15,000/-
6.	Nutrition	Rs. 10,000/-
7.	Pain and Suffering	Rs. 1,00,000/-
8.	Future Medical expenses	Rs. 1,50,000/-
	TOTAL	Rs.13,86,750/-

Of this sum of Rs.13,86,750/-, the sum of Rs.1,50,000/- awarded towards future medical expenses will not carry any interest. Out of the medical expenses Rs.7,23,000/-, the sum of Rs.1,44,578/- will carry interest from the date of the original petition till date of payment and the remaining amount of Rs.5,78,422/- will carry interest from 01.06.2001 till date of payment.

9. For the foregoing reasons, the Appeal is partly allowed and the award of the Tribunal is modified as above. There will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

10. The Insurance Company is directed to deposit the modified award amount, less the amount, if any, already deposited within a period of six (6) weeks from the date of receipt of a copy of the judgment. On such deposit, the claimant, namely the 1st respondent will be entitled to withdraw the award amount.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

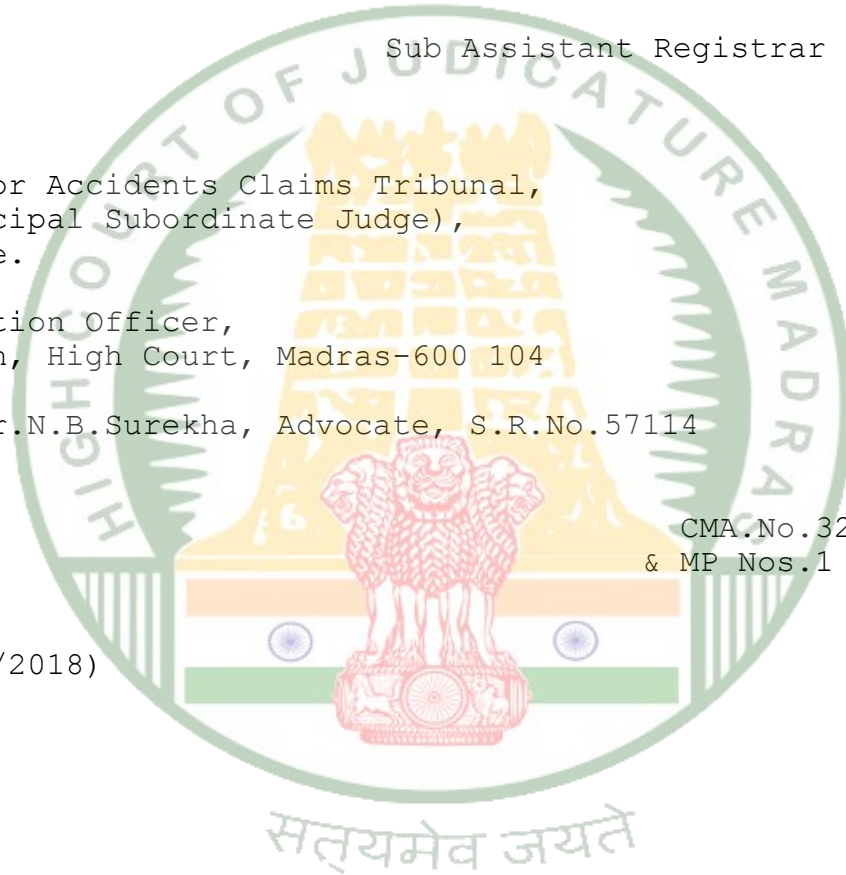
1.The Motor Accidents Claims Tribunal,
(The Principal Subordinate Judge),
Coimbatore.

2.The Section Officer,
VR Section, High Court, Madras-600 104

+1cc to Mr.N.B.Surekha, Advocate, S.R.No.57114

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GSP(15/10/2018)



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