



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2018

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

AND

THE HON'BLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.984 of 2014

The Branch Manager,
United India Insurance Company Limited,
Kannaattu Shopping Complex,
Kallarkutty Road,
Adimaly.

:Appellant /2nd respondent

Vs.

1.W.Ribera Albert : R1/Petitioner
2.Chacko.M.M : R2/1st respondent
3.P.Suresh : R3/3rd respondent

4.Iffco-Tokio General Insurance Company Limited,
ITGI-STRAGIC Business Unit,
III Floor, Thulsi Chambers,
195, T.V. Swamy Road (West),
R.S.Puram, Coimbatore. : R4/4th respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment made in MCOP No.1260 of 2009, dated 23.04.2014 by the Motor Accident Claims Tribunal (III Additional Subordinate Judge), Tiruchirappalli.

For Appellant : Mr.J.S.Murali
For 1st Respondent : Mr.N.Sudhagar Nagaraj
For R2 and R3 : Dispensed with,
vide order, dated 19.01.2018
For 4th Respondent : Mr.S.Srinivasaraghavan

J U D G M E N T

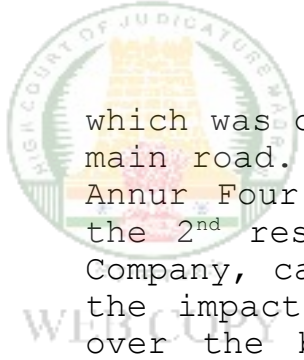
(Judgment of this court was made by T.KRISHNAVALLI,J)

Aggrieved by the quantum of compensation awarded by the Motor Accident Claim Tribunal (III Additional Subordinate Judge), Tiruchirapalli, in MCOP No.1260 of 2009, dated 23.04.2014, the appellant Insurance Company has preferred this appeal.

2.Facts in Brief:-

<https://hcservices.ecourts.gov.in/hcservices/>

On 11.09.2008 at about 16.20 hours, the claimant was travelling as a pillion rider in the Hero Honda motor cycle TN-37-AZ-8679,



which was driven by the 3rd respondent herein on Thirupathi-Karamadai main road. When the rider of the motor cycle attempted to cross the Annur Four Roads, a Qualis Car KL-03-F-8787, which was driven by the 2nd respondent herein and insured with the appellant Insurance Company, came in a high speed and dashed against the motor cycle. In the impact, the claimant sustained multiple grievous injuries all over the body. Immediately, he was taken to K.P.S. Hospital at Mettupalayam, where he took treatment as in-patient for some time and thereafter, he took treatment in KMCH Hospital, Coimbatore. A case was registered by the Karamadai Police Station, Coimbatore, in Crime No.295 of 2008 against the driver of the offending vehicle.

3.The Tribunal, after considering the both and oral documentary evidence, awarded Rs.27,60,269/- together with interest @ 7.5% p.a. Aggrieved by the award of the tribunal, the present appeal.

4.Heard both sides and perused the materials available on record.

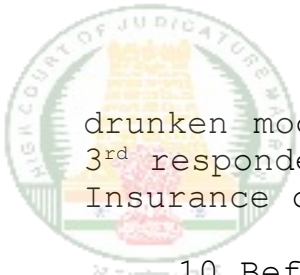
5.The learned counsel for the appellant submitted that the tribunal has taken the monthly income of the claimant as Rs.20,000/-, when the claimant himself has stated in the claim petition as Rs.18,910/- and the tribunal has failed to consider the fact that the claimant even now is getting Rs.8,668/- as monthly pension, which was admitted by PW3 and the tribunal has not deducted 30% of the the salary towards income tax, while assessing compensation towards loss of future earnings and the tribunal, after awarding Rs.1,40,000/- towards 70% disability, has again awarded Rs.21,84,000/- towards loss of future earnings, which cannot be sustainable in law.

6.Countering the submissions made by the learned counsel for the appellant, the learned counsel for the 1st respondent/claimant submitted that the driver of the offending vehicle was solely responsible for the accident and the trial court has not taken the correct monthly income of the 1st respondent/claimant and the award under the conventional heads requires enhancement and therefore, the appeal filed by the Insurance Company is liable to be dismissed.

7.The learned counsel appearing for the 4th respondent submitted arguments in support of the findings of the tribunal.

8.In this case, the first respondent/the claimant is the injured person and he was examined as PW1. PW1 during his evidence stated that the accident occurred only due to the rash and negligent driving of the 2nd respondent herein. In this regard, First Information Report was registered in Crime No.295 of 2008 against the 2nd respondent/the driver of the offending vehicle.

9.The learned counsel for the appellant Insurance Company mainly argued that at the time of the accident, the 3rd respondent, who is the rider of the two wheeler, driving the motor cycle in a



drunken mood and only due to the rash and negligent driving of the 3rd respondent, the accident had taken place and hence, the appellant Insurance company is not liable to pay the compensation.

10. Before the tribunal, on the side of the 4th respondent Insurance Company, one Thiru. Vijayakumar, an official of the 4th respondent Insurance Company was examined as RW1 and through him, the copy of the judgment made in MCOP No.1187 of 2008 was marked as Ex.R1. RW1 admitted during his evidence that in respect of the same accident, MCOP No.1187 of 2008 was filed before the Fast Track Court No.3, Coimbatore and in that case, it was held that only the appellant Insurance Company and the 2nd respondent herein are made liable to pay the compensation.

11. It is admitted that no appeal was preferred as against the order passed in MCOP No.1187 of 2008.

12. In this case, the 2nd respondent herein has not chosen to give any complaint against the 3rd respondent stating that the accident had occurred due to the rash and negligent driving of the 3rd respondent. Further, the 2nd respondent has not sent any petition, objecting registration of the criminal case against him. There was no contra evidence let in on the side of the 2nd respondent. Hence, from Ex.P1, it is held that the accident had taken place only due to the rash and negligent driving of the 2nd respondent. Hence, the argument of the learned counsel for the appellant stating that accident had taken place due to the rash and negligent driving of the 3rd respondent is not at all acceptable.

13. Further, in this case, the quantum is also in dispute. The learned counsel for the appellant argued that the 1st respondent/claimant was unable to do the work and he was sent to Medical Board for examination and due to his disability, he was discharged from his duty and there was no permanent disability and hence, for assessing loss of income, multiplier method cannot be taken into account.

14. It is to be noted here that at the time of the accident, the gross salary of the claimant was Rs.28,760/- per month. The claimant is aged 48 years as on 11.09.2008 and he was given compulsory retirement from service on 18.10.2010 and for a period of two years and one month, the claimant would have been receiving the salary, even though he had been suffering from ailment on account of 70% disablement. Therefore, for the period of two years and one month, there was no loss of income for him.

15. In respect of the age group between 45 and 50, the multiplier is 13 and upto the age of 58, he would have been receiving the monthly salary, as he has been receiving while in service and this will happen from the date on which he was given compulsory retirement from service.



16. After the age of 58, the claimant would be receiving pension and like any other healthy individual, he will not be in a position to take up any other employment and therefore, the calculation must be on three dimensions as under:-

i) From the age of 48 till the age of 50, i.e., from 11.09.2008 to 18.10.2010, the date upto which he was in service, there was no loss of salary.

ii) From 2010 to 2018 (after 18.10.2010 till actual retirement) - The monthly salary of the petitioner (as fixed by the Tribunal) comes to Rs.28,760/- (rounded off to Rs.28,800/-). Therefore, the compensation on account of loss of salary is Rs.27,64,800/- [Rs.28,800/- x 12 x 8 (96 months)].

iii) After the retirement, but for the disablement, the claimant would have been earning at least 50% of the amount, which he had been earning as a salaried person. Therefore, the loss of earning at least to the extent of 70% disablement in respect of the half of the salaried income is Rs.14,400/- x 70/100 x 12 months (3 years) = Rs.3,62,880/-. Therefore, the total income comes to Rs.31,27,680/- (Rs.27,64,800/- + Rs.3,62,880/-). After deducting 10% of the amount towards income tax, as per the proposition laid down by the Hon'ble Apex Court (2015(1) TN MAC 1 (SC) (Kanh Singh vs. Tukaram) and 2015-ACJ-1612 (Chanderi Devi and another vs. Jaspal Singh and others), the income is calculated at Rs.28,14,912/- (Rs.31,27,680/- - Rs.3,12,768/-).

17. In this manner, the compensation that is payable to the claimant is worked out as under:-

Head	Award of the tribunal	Award of this court
Disability	1,40,000/-	Nil
Pain and sufferings and mental agony	30,000/-	30,000/-
Medical expenses	3,84,269/-	3,84,269/-
Extra Nourishment	10,000/-	10,000/-
Loss of future income	21,84,000/-	28,14,912/-
Transport expenses	5,000/-	5,000/-
Attendant charges	5,000/-	5,000/-
Damages on clothes	2,000/-	2,000/-
Total	27,60,269/-	32,51,181/--

18. In the result, this appeal is partly allowed on the above terms. The award amount of Rs.27,60,269/- is enhanced to Rs.32,51,181/-. The appellant Insurance Company is directed to deposit the modified award amount with accrued interest and costs, less the amount already deposited to the credit of claim petition,



within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the same directly to the Bank Account of the claimant through RTGS within a period of two weeks thereafter. No costs.

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/True Copy/

Sd/-

Assistant Registrar(CS-I)

Sub Assistant Registrar

To

The III Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Tiruchirappalli.

COPY TO:

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1CC to Mr.J.S.Murali, Advocate, SR.No. 50313

+1CC to Mr.N.Sudhagar Nagaraj, Advocate, SR.No.51143

C.M.A(MD)No.984 of 2014
21.02.2018

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