



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.10.2018

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. (MD) No.1053 of 2013

1.R.Srinivasan (Died)
2.S.Prabha
3.Sobana
4.Radha Ammal

... Appellants/Claimants

(Appellants 2 to 4 are brought on record as legal heirs of the deceased sole appellant, vide Court order dated 06.03.2017 made in C.M.P. (MD) No.1372 to 1374 of 2017 in C.M.A. (MD) No.1053 of 2013)

Vs.

1. Ravi ... 1st Respondent/1st Respondent
2. The United India Insurance Company Limited,
Nagapattinam, By the Branch Manger,
Nagapattinam. ... 2nd Respondent/2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award and decree dated 20.09.2012 made in M.C.O.P.No.565 of 2009 on the file of the Additional Motor Accident Claims Tribunal-Additional Subordinate Judge, Kumbakonam, insofar as fixing of compensation is concerned and to enhance the award amount.

For Appellants : Mr.G.Sridharan
For R1 : No Appearance
For R2 : Mr.R.Pandivel

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the award and decree dated 20.09.2012 made in M.C.O.P.No.565 of 2009 on the file of the Additional Motor Accident Claims Tribunal-Additional Subordinate Judge, Kumbakonam, insofar as fixing of compensation is concerned and to enhance the award amount.

2.The first appellant is the claimant in M.C.O.P.No.565 of 2009, claiming a sum of Rs.50,00,000/- (Rupees Fifty Lakhs Only) as compensation for the injuries sustained by him in the accident



that took place on 26.01.2009. The appellants 2 to 4 are the legal heirs of the first appellant.

3.The first respondent herein remained *ex-parte* before the Tribunal.

4.Before the Tribunal, the first appellant examined himself as P.W.1, Prabha, Dr.Srinivasan and Balaji Rajan were examined as P.W.2 to P.W.4 and filed 16 documents and the same were marked as Exs.P1 to P16. One Veeraraghavan was examined as R.W.1 and no oral and documentary evidence has been marked.

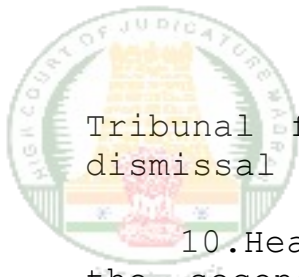
5.The Tribunal after considering the pleadings, both oral and documentary evidence let in by both the parties, held that the respondents are jointly or severally liable to pay compensation to the first appellant and awarded a sum of Rs.6,41,750/- (Rupees Six Lakhs Forty One Thousand Seven Hundred and Fifty Only) as compensation to the first appellant.

6.Not being satisfied with the quantum of compensation, the appellants have come out with the present appeal.

7.The learned counsel appearing for the appellants contended that the first appellant has sustained 69.6% permanent disability and also functional disability. The Tribunal ought to have adopted multiplier method. The amounts awarded by the Tribunal under the heads of pain and suffering, extra-nourishment, attendant charges are very meagre. The first appellant has taken Physiotherapy treatment for two years and examined P.W.4, Doctor, who treated him. The first appellant has spent a sum of Rs.5,33,900/- (Rupees Five Lakhs Thirty Three Thousand Nine Hundred Only) for taking Physiotherapy treatment and produced Ex.P.10 to prove the same. The Tribunal erroneously awarded only a sum of Rs.50,000/- (Rupees Fifty Thousand Only) towards medical expenses for Physiotherapy treatment. The Tribunal did not award any amount for loss of income, during the period of treatment and also for subsequent period. Therefore, he prayed for enhancement of compensation.

8.Though notice has been served on the first respondent and his name is printed in the cause list, there is no representation either in person or through counsel.

9.The learned counsel appearing for the second respondent contended that the appellant is not immobilized and has not proved that he cannot do any work. The amount awarded by the Tribunal based on the percentage of the disability is correct. The appellants are not liable to get compensation by applying multiplier method. The amount of Rs.5,33,900/- claimed by the appellant for taking Physiotherapy treatment was not substantiated by filing documents. The amount of Rs.50,000/- awarded by the



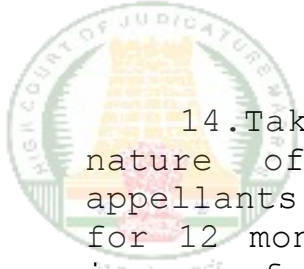
Tribunal for Physiotherapy treatment is correct and prayed for dismissal of this appeal.

10. Heard the learned counsel appearing for the appellants and the second respondent and perused the materials available on record.

11. From the materials on record, it is seen that while calculating the compensation awarded in the above heads, the total amounts comes to Rs.6,56,750/-, but in the judgment and decree passed by the Tribunal, it has been wrongly mentioned as Rs.6,41,750/-. The first appellant has sustained 69.6% permanent disability and the Doctor examined by the appellant has not stated that the first appellant is totally immobilized and cannot do any work. In such circumstances, the multiplier method need not be adopted and the Tribunal granted a sum of Rs.1,39,000/- (Rupees One Lakh Thirty Nine Thousand Only) for 69.6% permanent disability. The said amount is not correct. The disability of 69.6% is rounded off to 70%. The appellant is entitled to a sum of Rs.1,40,000/- (Rupees One Lakh Forty Thousand Only) and the same is awarded. The Tribunal has awarded only a sum of Rs.15,000/- towards pain and suffering, extra-nourishment and for attendant charges. The said amount is very meagre. The first appellant has taken treatment for more than 90 days for multiple grievous injuries and underwent 7 surgeries in different hospitals.

12. Considering the above facts, the amount of Rs.15,000/- awarded by the Tribunal towards pain and suffering, extra-nourishment and attendant charges is set aside and a sum of Rs.25,000/- is granted towards attendant charges and a sum of Rs.50,000/- is granted towards extra-nourishment and a sum of Rs.1,00,000/- towards pain and suffering.

13. As far as the amount spent by the first appellant in taking Physiotherapy treatment is concerned, the first appellant has examined P.W.4, Doctor, who treated the first appellant for two years and has produced Ex.P.10 for the amounts spent by the first appellant. The Tribunal accepting the evidence of P.W.4 held that the first appellant took Physiotherapy treatment and granted only a sum of Rs.50,000/- towards Physiotherapy treatment on the ground that the first appellant has produced Ex.P.10, receipts and has not produced recommendation letter. The said reasoning is erroneous. The respondents have not disputed the receipts produced by the first appellant and have not let in evidence to refute the evidence of the appellant to disprove Ex.P.10 series and that the first appellant has not taken Physiotherapy treatment. In view of the same, the appellants are entitled to a sum of Rs.5,33,900/- as per Ex.P.10. The first appellant has stated that he was earning a sum of Rs.25,000/- by doing farm work and school work. He has not produced any document to prove the same.



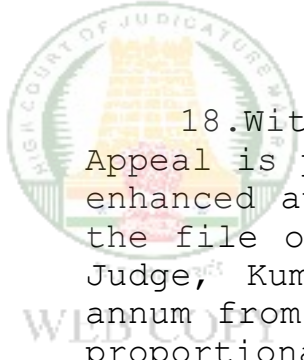
14. Taking into consideration of the period of treatment and nature of injuries sustained by the first appellant, the appellants are entitled to get compensation towards loss of income for 12 months, during and after treatment period. The notional income of the first appellant is fixed at Rs.6,000/- (Rupees Six Thousand Only) and the appellants are entitled to a sum of Rs.72,000/- (Rupees Seventy Two Thousand Only) towards loss of income, during and after treatment period.

15. In view of the above, the award granted by the Tribunal is modified as follows:-

Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
For pain and suffering, extra-nourishment and attendant charges	15,000	-	set aside
For pain and suffering	-	1,00,000	awarded
For extra-nourishment	-	50,000	awarded
For attendant charges	-	25,000	awarded
For loss of income	-	72,000	awarded
For medical expenses	4,42,750	4,42,750	confirmed
For Physiotherapy treatment	50,000	5,33,900	enhanced
For permanent disability	1,39,000	1,40,000	enhanced
For Transport expenses	10,000	10,000	confirmed
Total	Rs.6,56,750	Rs.13,73,650	By enhancing a sum of Rs.7,16,900/-

16. The appellants are directed to pay additional Court fee, if any, for the enhanced amount.

17. The learned counsel appearing for the appellants submitted that the second respondent has not deposited any amount awarded by the Tribunal.



18. With the above modification, this Civil Miscellaneous Appeal is partly allowed, directing the respondents to deposit the enhanced award amount to the credit of M.C.O.P.No.565 of 2009, on the file of the Motor Accidents Claims Tribunal, / Additional Sub Judge, Kumbakonam along with interest at the rate of 7.5% per annum from the date of petition till the date of realisation with proportionate costs, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw the said award amount, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Kumbakonam.
2. The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 2 CC TO Mr.G.SRIDHARAN, ADVOCATE IN SR No. 88877
+ 1 CC TO Mr.R.PANDIVEL, ADVOCATE IN SR No. 88803

MYR

TE/RSK/SAR-4 : 14/11/2018 : 5P/7C

C.M.A. (MD) No.1053 of 2013

05.10.2018