

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.09.2018

DELIVERED ON : 29.01.2019

CORAM:

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

C.M.A.NO.370 OF 2004

1. S.Palanisami (Deceased)
2. P. Ammaniyammal
3. P.Swaminathan
4. K.Nagalakshmi
5. P.Venkatalakshmi
6. S.Sakunthaladevi ..Appellants/Petitioners

(Appellants 2 to 6 brought on record as Legal Heirs of the deceased vide order of the court dated 25.09.2018 in CMP.Nos.4486 to 4488 of 2016 in CMA.370 of 2004)

Vs.

1. M.Vasanthakumar
2. M/s. Santhamani Bus Service
near T.K.T. Bus Stop,
Palladam Road, Tiruppur.
3. M/s. National Insurance Company Ltd.,
Tiruppur Town, Tiruppur.
4. M/s. United India Insurance Company Ltd.,
Kumaran Road, Tiruppur-1.

...Respondents

PRAYER:

Civil Miscellaneous Appeal filed against the Judgment and decree dated 17.10.2002 passed in MCOP. No. 163 of 1995 on the file of the Motor Accident Claims Tribunal, (Additional District and Sessions Judge), Fast Tract Court - IV, Coimbatore.

For Appellants : Mr.Ma.P. Thangavel

For Respondents: M/s.T.Ravichandran-R4

M/s.NB.Surekha - For R3

R1 & R2 Exparte

JUDGMENT

This Civil Miscellaneous has been preferred against the judgement and decree 17.10.2002 passed in MCOP. No. 163 of 1995 on the file of the Motor Accident Claims Tribunal, (Additional District and Sessions Judge), Fast Tract Court - IV, Coimbatore.

Brief facts leading to the claim application are as follows;

2. On 03.05.1993, the petitioner along with one V.K. Vetrivel, S/o. V.S. Kuppusami were proceeding from Palladam to Tiruppur in a Scooter bearing registration number TN39 A 0393. The petitioner was the pillion rider. When the scooter was going near Mahalakshmi Nagar, at about 10.30 am, a bus belonging to the second respondent's company bearing registration number TN 30 A 9266 driven by the 1st respondent at a very high speed came from the opposite direction. At that time a lorry was proceeding before the bus from north to south, the first respondent without following the traffic rules and even after seeing the scooter coming from the opposite direction tried to overtake the lorry and came to the right extreme side of the main road and hit the scooter. On seeing the bus TN 39 A 9266 coming at a very high speed without following the traffic rules, the rider of the scooter V.K. Vetrivel had ride the scooter to the left extreme side of the road. Despite the efforts taken by the rider of the scooter, the right side body of the bus hit the scooter. As a result, the petitioner, who is the pillion rider and rider of the scooter were thrown away from the scooter and sustain severe injuries. The petitioner was taken Government Hospital at Palladam and thereafter he was given treatment at Government Head Quarters Hospital at Coimbatore as inpatient from 03.05.1993 to 10.05.1993. The petitioner has also undergone surgery for the fracture sustained in the right hand. Even after the treatment and surgery, he was unable to regain his original health condition. Hence, he claimed compensation of Rs.1,50,000/-.

3. The 4th respondent/United India Insurance Company in the counter statement has denied the manner of the accident as stated by the petitioner in the claim petition and also stated that the claim is bad for non joinder of parties namely the owner and the insurer of the scooter in which the petitioner travelled at the time of the accident. The age, income, occupation of the claimant was also denied and the claim made was also excessive without any relevant documents and basis.

4. The tribunal upon analysing the pleadings and documents, has given finding that, it is the first respondent/driver of the bus who drove the bus in a rash and negligent manner is responsible for the accident. The tribunal on considering the age, income and occupation of the claimant and awarded a sum of

Rs.12,000/- as total compensation against his claim and directed the respondents 1,2 and 4 to pay the said compensation jointly and severally to the claimant along with interest at the rate of 9% per annum from the date of petition till the date of deposit. Aggrieved against the said award, the claimant has preferred this appeal for enhancement.

5. In the grounds of appeal, it is stated that when the tribunal has rightly held that the accident had occurred due to the negligent driving on the part of the vehicle belonged to the 2nd respondent, insured with the 4th respondent, has committed an error in arriving compensation only Rs. 12,000/- . The tribunal has not considered the monthly income of the claimant, who is an agriculturist and was earning monthly income of Rs.10,000/-. In the absence of any contra evidence and arguments, the tribunal ought to have considered the claim made by the claimant. The other grievance made in the appeal is that when PW2 has categorically stated the disability suffered by the claimant as 22%, the tribunal has not considered the same. On the whole the appellant is very much aggrieved against the award of Rs.12,000/- passed by the tribunal.

6. Heard both side and perused the documents available on record.

7. It is seen from the records that the appellant/claimant has died pending appeal and hence his legal heirs were brought on record as appellants 2 to 6.

8. It is argued by the learned counsel for the appellants that fixing the liability on the first respondent/ driver of the alleged vehicle by the tribunal, clearly proves the fact that the claimant has sustained severe injuries and he has incurred loss of income due to the disability and also spent money towards medical expenses. It is also argued that the injuries sustained by the claimant are greivous in nature as per the evidence of PW2 Doctor, who issued disability certificate. The movement of the claimant's right hand wrist has been reduced due to which his routine work has been affected very much. The doctor who issued the certificate has also observed that the surgery was done to the claimant and plates were fixed for the injuries. But no relevant documents viz., accident register or discharge summary were produced before the tribunal to prove the said injuries and surgery. Hence, the tribunal has observed that "அதன் காரணமாக விபத்தில் ஏற்பட்ட காயங்களால் மனதாரருக்கு நிரந்தர ஊனம் ஏற்பட்டு உள்ளது என்றும், நாம் கருத முடியாது "

9. It is seen that no documents relating to the nature of injury, the treatment given to the claimant and also the period

of treatment, have been filed by the claimant before the tribunal for assessing the disability of the injured person, whereas, in the disability certificate issued by PW2 Doctor, it has been stated that he has verified the documents. Regarding medical expenses Ex.P7 was filed before the tribunal; Hence, by taking into consideration the nature of injury sustained by the claimant, the medical expenses incurred by the claimant has been considered while determining the compensation.

10. It is also seen from the records that the date of accident was on 03.05.1993 and no documents were filed in respect of the treatment taken by the claimant as an inpatient during the period from 03.05.1993 to 10.05.1993. But the tribunal, while determining the compensation, has considered the medical expenses incurred by the appellant as per Ex.P7. Even in the absence of relevant documents and since the Tribunal has not granted any amount towards pain and sufferings, considering the pain and sufferings undergone by the injured claimant due to the accident, this Court is inclined to grant a sum of Rs.10,000/- towards this head. It is also seen from the award that though claimant has filed land revenue receipts in respect of his agricultural work for claiming compensation under the head loss of income, the tribunal has not considered the same by stating that the claimant has not filed the relevant document namely 'Adangal' to prove the income by way of agricultural works. This Court, even in the absence of the relevant documents, considering the age of the claimant who was 62 at the time of the accident and subsequently died pending appeal and also considering the period of trial, is of the view that the deceased would have lived at least upto the age of 75 years and earned some money during the intervening period. Hence, this court finds it proper and just to award a sum of Rs.10,000/- towards loss of income. Accordingly, sum of Rs. 10,000/- is awarded under this head.

11. This Court also observes that though the appellants herein/legal heirs of the claimant, who died pending appeal, are no way entitled for compensation claimed by the injured person for his personal disability, this Court, by taking into consideration the fact that due to the disability sustained by the claimant, he could not continue his routine work, awarded the said sum of Rs.10,000/- under the head 'loss of income'.

12. Accordingly, this Court grants additional amount of Rs.20,000/- in addition to the award passed by the tribunal as follows;

Head	Sum awarded by this Court
Loss of Income (Lumpsum)	Rs. 10,000
Pain and Suffering	Rs. 10,000
Total	Rs. 20,000

13. The learned counsel for the appellants has produced a judgment of the Hon'ble Supreme Court reported in CDJ 2018 SC 818 in the case of Santhosh Devi & Others Vs. Mahaveer Singh & Others. The relevant portion of the said judgment is extracted below;

"Taking a realistic view, the income should have been assessed at Rs.2,500 per month having due regard to the nature of the business, the date of accident and all the circumstances of the case. The deceased was 38 years old and hence the correct multiplier would be 16. Following the decision of the Constitution Bench in National Insurance Company Limited Vs. Pranay Sethi (2017) 16 SCC 680, as amount of 40 percent is required to be added towards future prospects. Accordingly, the quantum of compensation is recomputed."

14. By quoting the said judgment, the learned counsel for the appellants argued that a sum of Rs.2,500/- per month has to be taken as monthly income of the injured person to calculate the loss of income.

15. In the present case, the claimant was 62 years at the time of the accident and subsequently he died pending appeal. Though the claimants have not put forth any arguments that the death of the deceased was due to the injuries sustained by him at the time of the accident, this Court as discussed above, by taking into consideration the age and occupation of the deceased, has granted a lumpsum amount of Rs.10,000/- towards 'loss of income. Hence the argument advanced by the appellant to fix the monthly income to the deceased cannot be considered.

16. In view of the above enhancement, the Civil Miscellaneous petition is partly allowed. No costs. The claimants shall pay necessary court fee on the enhanced compensation amount.

17. Accordingly, the respondents 1,2 and 4 are directed to deposit the entire award amount of Rs.32,000/- (Rs.12,000 + Rs. 20,000) with interest and costs, as apportioned by the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this

order. On such deposit being made, the Tribunal is directed to transfer the amount to the claimants bank accounts thro' RTGS within one week thereon. The rate of interest for the modified amount shall carry the same as ordered by the tribunal.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge
Motor Accident Claims Tribunal,
Fast Tract Court - IV, Coimbatore.
2. The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.7112
+1cc to M/s.NB.Surekha, Advocate, S.R.No.6777
+1cc to M/s.T.Ravichandran, Advocate, S.R.No.7148

C.M.A.No.370 of 2004

CNR(CO)
CS/11/06/2019

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