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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2019

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

CIVIL MISCELLANEOUS APPEAL NO.731 OF 2004

&

CMP.NO.3217 OF 2018

T.Pazhani

... Appellant/Claimant

..vs..

1. A.Parthasarathy (Died)

2. The United India Insurance Company Ltd.,
Divisional Office,
Having Office at:
No.61/62 Gandhi Road,
Kancheepuram 631 501

... Respondents/
Respondents

3. Mrs.Devaki

4. Srinivasan

5. Sekar

6. Sridhar

... Impleaded Respondents

(R-1 reported dead and hence,
R-3 to R-6 impleaded as L.Rs. of deceased R-1,
vide the order of this Court, dated 09.09.2019
in CMP Nos.1246 to 1248/2010 in CMA.No.731 of 2004)

Appeal filed under Section 173 of Motor Vehicles Act 1988,
against the Judgment and Decree, dated 08.05.2003 made in
M.C.O.P.No.475 of 1999 on the file of the Motor Accident Claims
Tribunal, Additional District Court / Fast Track Court No.I,
Chengalpattu.

For Appellant : Mr.K.Hariharan

For Respondents: Mr.P.Sankara Narayanan, for R-2
No Appearance, for R-3 to R-6.

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the
appellant/claimant, as against the award passed by the Motor
Accident Claims Tribunal, Additional District Court/Fast Track
Court No.I, Chengalpattu, in MCOP No.475 of 1999.



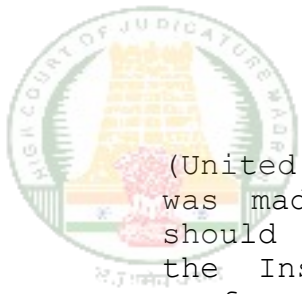
2. According to the appellant/claimant, on 19.07.1999 when he was returning by walk, after leaving his child in St. Mary's English Medium School, the bus belonging to the first respondent, which was driven by its driver, by name, K.Suresh, came at a high speed and hit the claimant from backside and due to the said impact, he fell down and sustained fracture on neck and femur and also multiple injuries all over the body. Hence, he has filed a claim petition before the Tribunal claiming a sum of Rs.5,00,000/- as total compensation.

3. The Tribunal, after elaborate trial, has held that the accident had happened due to the rash and negligent driving of the driver of the first respondent herein, which vehicle was insured with the second respondent/Insurance Company and accordingly, fastened the liability on the second respondent herein and arrived at the total compensation at Rs.1,93,437.17, out of which Rs.1,09,964.76 has already been received by the claimant through his employer and thus, directed the second respondent herein/Insurance Company/Insurer of the Bus to pay the balance sum of Rs.83,472/-. Branding the award as disproportionate and lesser, the claimant/appellant has preferred this Appeal seeking enhancement of the compensation awarded by the Tribunal.

4. Since this Appeal has been filed by the claimant, this Court would like to deal with the quantum alone, eschewing the negligence aspect.

5. Heard the learned counsel for the appellant/claimant and the learned counsel for the second respondent/Insurance Company. Despite ordering notice for number of occasions right from 2004, the first respondent is not served till now. Hence, the Appeal itself is taken up for final disposal, since the disposal of this case will not in any way affect their rights.

6. The learned counsel for the appellant/claimant submitted that the Tribunal erred in awarding lesser compensation under the heads 'loss of income during treatment period' and 'future medical expenses'. He further submitted that the medical expenses, which was compensated by the employer of the claimant at Rs.1,09,946.76, ought not to have been deducted by the Tribunal, since medi-claim meant for his own and his family members' medical emergencies and treatment and hence, that cannot be adjusted in the compensation payable by the offender as third party liability. He further submitted that medical reimbursement is out of contract of insurance and not adjustable one. In support of the said contentions, the learned counsel relied upon the decisions reported in 2000 ACJ 701 : 1999 SCC Online MP 18 (Madhya Pradesh State Road Transport Corporation and another v. Priyank) and 2013 ACJ 1295 : 2012 (3) AllMR 367



(United India Insurance Co. Ltd., v. Anjana and Ors) wherein it was made clear that the medi-claim expenses by the employer should not be deducted from the total compensation payable by the Insurer. He also submitted that the operations were performed on the claimant twice and hence the Tribunal ought to have awarded compensation towards pain and suffering and attendant charges.

7. Per contra, the learned counsel for the second respondent / Insurance Company submitted that the Tribunal has considered each and every aspect and has awarded just compensation. He further submitted that out of the total compensation of Rs.1,93,437/-, medical expenses of Rs.1,09,964/- have been paid by the employer of the claimant and the balance of Rs.83,472/- was directed to be paid by the second respondent herein and the said principle applied by the Tribunal is not perverse and hence, the interference of the same is uncalled for.

8. This Court has considered the said submissions made by the learned counsel for the claimant / appellant and Insurance Company/ second respondent and perused the materials available on record.

9. It is not in dispute that the claimant / appellant met with an accident on 19.08.1999 at 09.20 pm. He was working as Development Officer in the second respondent / Insurance Company and earning Rs.13,718/- per month. He claimed a sum of Rs.5,00,000/- as total compensation. The Tribunal has arrived at the total compensation at Rs.1,93,437/-, out of which Rs.1,09,964/- was paid by the employer of the claimant and the balance of Rs.83,472/- was directed to be paid by the second respondent herein. The breakup details of the compensation awarded by the Tribunal reads thus:-

Heads	Amount / INR
Medical Expenses	1,15,283.17
Transportation Expenses	2,000.00
Grievous Hurt	25,000.00
Loss of earning during treatment period	41,154.00
Pain and suffering	10,000.00
Total	1,93,437.17 (rounded off) 1,93,437.00
Amount already paid by employer of claimant	1,09,964.00
Total compensation payable	83,472.00



10. This Court is of the opinion that the measure of compensation must reflect a genuine attempt of law to restore the dignity of being. The yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. It must provide a realistic recompense for pain of loss and trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law. The law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity.

11. In this case, a perusal of Exs.P-5 to P-18 Medical bills and summaries of medical treatment would clearly establish the prolonged and strenuous medical treatment administered to the claimant. Having accepted the money value and treatment charges for the initial period in the year 1999, the Tribunal should have applied the same ratio for the post claim period, i.e., treatment in the year 2001 also for removal of the steel plates and screws fixed on the hip and thigh bones of the claimant and should have allowed the claim of the claimant towards future medical expenses. Hence this Court is inclined to award Rs.50,000/- towards future medical expenses and accordingly the same is awarded.

12. Further, it cannot be disputed that the claimant has been continuously suffering from the ailment caused due to the accident. In view of the same, the sum of Rs.10,000/- awarded by the Tribunal under the head 'pain and suffering' is inadequate and hence, the same is hereby enhanced to Rs.60,000/- by adding Rs.50,000/- under that head.

13. Though contentions have been raised with regard to offsetting the medical expenses incurred by the claimant from the total compensation amount between the employer of the claimant and Insurance Company and no amount was awarded towards loss of income, the same stand rejected for the simple reason that it may amount to double compensation under the head 'medical expenses', if the same is not deducted from the total compensation awarded by the Tribunal.

14. There is no quarrel over the proposition laid down in the decisions relied upon by the learned counsel for the appellant/claimant on the point that the reimbursement of medical expenses cannot be adjusted from the compensation payable under the Motor Vehicles Act, however, the facts of those cases and the facts of the case on hand stand on a different footing and hence, the same may not be of any use to the appellant / claimant.



15. Further, it is to be noted that towards attendant charges and extra nourishment, no amount was awarded by the Tribunal. Hence, sums of Rs.5,000/- and Rs.20,000/- are hereby awarded towards those heads. However, the compensation awarded by the Tribunal under other heads appears to be just, reasonable and commensurates with the settled principles of law and hence, the same are confirmed as such.

16. The accident was happened on 19.07.1999, the claim petition was filed before the Tribunal on 17.11.1999, the judgment of the Tribunal was passed on 08.05.2003, the Appeal was filed on 22.09.2003 and the final verdict is passed only now, i.e., during 2019. Hence, this Court is of the opinion that the Insurer of the offending vehicle / Insurance Company cannot be saddled with the interest at the rate of 9% per annum from the date of Appeal till the date of deposit. Hence, the interest portion is reduced to 7.5% per annum from the date of Appeal till the date of deposit for the enhanced quantum.

17. In the result, the Civil Miscellaneous Appeal filed by the appellant / claimant is partly allowed, by enhancing the total amount of compensation from Rs.1,93,437/- to Rs.3,18,437/-.

18. It is admitted by both sides that Rs.1,09,964/- was already paid by the employer of the claimant. Hence, the second respondent / Insurance company shall deposit the balance sum of Rs.2,08,473/- with interest and costs, less the amount already deposited, if any, within a period of six weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the deposited amount to the Savings Bank Accounts of the claimant / injured / appellant herein, within one week thereafter, through RTGS. It is made clear that the appellant shall pay the necessary court fee for the enhanced compensation amount before receiving the copy of this judgment. No costs. Consequently, the connected CMP is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

srk



To

1. The Additional District Judge/Fast Track Court No.I,
Motor Accident Claims Tribunal,
Chengalpattu.

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Copy To

The Section Officer, V.R.Section,
Madras High Court, Chennai 104.

+lcc to Mr.K.Hariharan, Advocate, S.R.No.77533

+lcc to Mr.P.Sankara Narayanan, Advocate, S.R.No.77637

C.M.A.No.731 of 2004
& CMP No.3217 of 2018

BR(CO)
CS/05/10/2021