

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 19.08.2019

DATED: 18.10.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.1952 of 2009
& M.P.Nos.1 of 2009 & 1 of 2010

National Insurance Company Ltd.,
Motor Third Party Claims Office,
No.751 Anna Salai,
III Floor, Chennai - 2

... Appellant / R-2 before
the Tribunal.

..vs..

1. P.H.Sai Praveen ... 1st Respondent/Petitioner

2. Syed Ali Basha ... Respondent 2/ Respondent 1

Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree, dated 08.12.2008 made in M.C.O.P.No.1185 of 2002 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge / Fast Track Court No.1, Chennai.

For Appellant : Mr. D.Bhaskaran

For Respondents : Mr. V.Manisekaran, for R-1.

J U D G M E N T

Challenging the quantum of compensation awarded by the Tribunal, the appellant / Insurance Company has filed this Civil Miscellaneous Appeal.

2. In an accident that took place on 18.08.2001, the first respondent herein, who was a Software Engineer, by profession, aged 24, sustained grievous injuries, while riding his motor cycle bearing Registration No.TN02-Z-3361 on account of the rash and negligent driving of the driver of the car bearing Registration No.TN31-C-9001, belonging to the second respondent herein and insured with the appellant herein. Stating so, he has filed a claim petition claiming a compensation of Rs.7,00,000/-.

3. The Tribunal, after trial, has fastened the liability on the Insurer of the Car / appellant herein and arrived at

the total compensation at Rs.5,50,980/-, with interest at the rate of 9% per annum from the date of petition till the date of deposit. The breakup details of the quantum arrived at by the Tribunal reads thus:-

Disability	-	Rs.4,64,100/-
Doctor Fees	-	Rs. 21,900/-
Medical Bills I	-	Rs. 12,110/-
Medical Bills II	-	Rs. 31,182/-
Transportation Expenses	-	Rs. 2,000/-
Nutritious and diet	-	Rs. 2,000/-
Surgical fees	-	Rs. 12,690/-
Pain and sufferings	-	Rs. 5,000/-

Total	-	Rs.5,50,982/-

(Rounded off)	-	Rs.5,50,980/-

4. Aggrieved over the same, the present Appeal came to be filed.

5. The learned counsel for the appellant / Insurance Company submitted that the Tribunal erred in awarding a huge sum of Rs.5,50,980/- as compensation without any basis; without conducting necessary examination, P.W.2-Doctor has issued Ex.P-17-disability certificate to the effect that the first respondent / claimant sustained 40% permanent disablement and hence, the same is unsustainable; the claimant is continuing his avocation as before and infact, he had no loss of income or reduction in salary; and the tribunal erred in adopting the multiplier method in the case of injury.

6. Per contra, the learned counsel for the claimant / first respondent herein submitted that the Tribunal has appreciated the documents and evidence on record and ultimately arrived at the just quantum, which does not require any interference by this Court.

7. This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record carefully.

8. Since the finding of the Tribunal on negligence that the accident had occurred only due to the rash and negligent act on the part of the driver of the car, is unassailable, the same is hereby confirmed. In view of the same, the liability of the appellant / Insurance Company to pay compensation is also confirmed.

9. As far as the quantum arrived at by the Tribunal is concerned, it has to be pointed out that the Tribunal has applied the multiplier method of compensation. P.W.2-Doctor, who issued Ex.P-17-disability certificate at 40%, in his

evidence, has stated that he had not examined the claimant and given any treatment to him. Hence, the disability certificate given by the Doctor, without examination, lacks relevancy. However, neither the accident nor the injuries sustained by the claimant was disputed by the appellant herein by adducing any evidence either in oral or documentary. In such circumstances, the disability as assessed by the Doctor at 40% has to be taken into consideration for arriving at a just compensation payable to the claimant.

10. It is not the case of the claimant that the injuries sustained by him has attracted total / permanent disablement. Further, the claimant / R-1 herein has not produced any records to show that he is in continuous treatment after the accident. Further, not only the percentage of physical disablement, but also the consequences of physical disablement, especially which reflects in the functional disablement of the injured, are also matters for consideration. As such, the Tribunal has a duty to make an award, determining the amount of compensation, which is just and proper and specify the person or persons to whom such compensation would be paid. But, in this case, the Tribunal failed to arrive at such a compensation. Therefore, the contention made by the appellant Insurance Company that this is not a fit case for adopting multiplier method, deserves to be accepted by this Court. Accordingly, the compensation of Rs.4,64,100/- under the head "disability" is hereby re-calculated, by adopting conventional methodology, i.e., Rs.3,000/- per percentage of disability. Thus, the compensation under this head works out to Rs.1,20,000/- (Rs.3,000/- x 40) and is hereby awarded.

11. However, the compensation awarded towards Transport Expenses, Nutritious and diet and pain and suffering, for the Grade II Compound comminuted fracture shaft tibia (right) leg and 30 ethilion stitches done and deformity in the right leg, in the opinion of this Court, are very low and hence, the same are hereby enhanced to Rs.5,000/-, Rs.5,000/- and Rs.25,000/-, respectively. Further, it is not in dispute that the claimant has undergone treatment for a period of at least three months and hence, the Tribunal ought to have awarded compensation towards loss of income during treatment period, attendant charges and loss of amenities. As per Ex.P-13, the claimant was earning Rs.11,375/- per month (which is an undisputed document). Hence, a sum of Rs.35,000/- is awarded towards loss of income, Rs.10,000/- is awarded towards attendant charges and Rs.25,000/- is awarded towards loss of amenities.

12. There is no modification with regard to the compensation awarded under the heads 'Doctor Fees', 'Medical expenses' and 'Surgical Fees' at Rs.21,900/-, Rs.43,292/- and Rs.12,690/-, respectively, which are based on the Medical Bills produced and hence, the same are confirmed as such. The rate of interest at 9% per annum awarded by the Tribunal also

warrants no interference by this Court as the accident had occurred during the year 2001.

13. Thus, the restructured breakup details of the compensation (Item-wise) would read thus:-

Disability (Rs.3,000/- x 40)	-	Rs.1,20,000/-
Doctor's Fees	-	Rs. 21,900/-
Medical Bills (12110 + 31182)		Rs. 43,292/-
Transportation Expenses	-	Rs. 5,000/-
Nutritious and diet	-	Rs. 5,000/-
Surgical fees	-	Rs. 12,690/-
Pain and sufferings	-	Rs. 25,000/-
Loss of income for 3 months	-	Rs. 35,000/-
Attendant charges	-	Rs. 10,000/-
Loss of amenities	-	Rs. 25,000/-

Total	-	Rs. 3,02,882/-

(Rounded off)	-	Rs.3,02,880/-

14. In the result, this Civil Miscellaneous Appeal is partly-allowed, by reducing the compensation from Rs.5,50,980/- to Rs.3,02,880/-, which is payable with interest at the rate of 9% per annum from the date of petition till the date of deposit. No costs. Consequently, the connected MPs are closed.

15. The appellant / Insurance Company shall deposit the modified compensation, as determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of four 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 Account of the claimant / injured / first respondent herein, within one week thereafter, through RTGS.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. Motor Accident Claims Tribunal,
Additional District and Sessions
Judge / Fast Track Court No.1, Chennai.

2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.V.Manisekaran, Advocate, S.R.No. 87413
+1cc to Mr.D.Bhaskaran, Advocate, S.R.No. 87204

CMA No.1952 of 2009
& M.P.Nos.1 of 2009 & 1 of 2010

BS (CO)
GN(16/09/2020)