

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2019

CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A.No.3180 of 2010

and

M.P.No.1 of 2010

M/s National Insurance Company
Divisional Office-11, LRN Complex,
Saradha College Road, Salem - 636 007

...Appellant/2nd
Respondent

Vs

1. Prabhu
2. V. Sivakumar

....1st Respondent/Claimant
...2nd Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the Judgment and Decree made in M.C.O.P.No.475 of 2005 dated 30.04.2010 on the file of the Motor Vehicle Accident Claims Tribunal, Additional Subordinate Judge, at Salem.

For Appellant : Mrs.R. SreeVidhya

For Respondents1 : Mr.R.Marudhachalamurthy

For Respondent 2 : Ex-parte

JUDGMENT

This appeal is preferred by the Appellant/ Insurance Company against the Judgment and Decree made in M.C.O.P.No.475 of 2005 dated 30.04.2010 on the file of the Motor Vehicle Accident Claims Tribunal, Additional Subordinate Judge, at Salem.

2.The case in brief, is as follows:

On the fateful day, ie. on 31.10.2004 when the first respondent herein was travelling in a Minodoor Auto bearing Registration No: TN 30 D 0459 from Valapadi to Salem, the driver of the auto suddenly turned down and dashed against a stone. Hence, the accident has occurred. Due to the impact, the victim

sustained multiple and grievous injuries. Therefore, he filed a claim petition before the Tribunal and the Tribunal, on a consideration of the materials and evidence available on record, has arrived at the total compensation of Rs.2,50,738/- with interest at the rate of 7.5% p.a., from the date of petition till the date of deposit.

3. Challenging the same, the appellant Insurance Company, has filed the present Civil Miscellaneous Appeal.

4. The learned counsel for the appellant/Insurance Company contended that the Tribunal erred in holding that the driver of the auto is the cause for the accident. He further contended that in the absence of any relevant proof regarding the age, avocation and income of the claimant/injured, the award of the tribunal is on the higher side, which requires interference by this Court.

5. Per contra the learned counsel for the 1st respondent would contend that the accident had taken place due to the inattentive attitude of the driver of the mini auto and the averments in the claim petition regarding the age, avocation and income are true. He further contended that the award passed by the Tribunal is just and reasonable.

6. Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

7. As regards to the quantum of compensation awarded by the Tribunal is concerned, in the claim petition it was stated that the claimant/injured was working as sales man and earning a sum of Rs.5,000/- per month. Based on his avocation, the tribunal has fixed the monthly income of the deceased at Rs.3,000/- per month and his age was mentioned as 23, multiplier '17' was applied and thus the Tribunal has arrived at Rs.6,12,000/- (Rs.36,000 x 17). The Doctor has assessed disability @ 30% and issued disability certificate to that effect. Hence, by applying the same Rs.1,83,600/- (Rs.6,12,000 x 30/100) was arrived as compensation under the head loss of earnings. Further the Tribunal has awarded Rs.52,138/- and Rs.15,000/- towards Medical Bills and pain and sufferings respectively. Thus the total compensation was quantified at Rs.2,50,738/-.

8. Before the Tribunal, the injured was examined as P.W.1, who has deposed that the accident had taken place due to the inattentive attitude of the driver of the auto. P.W-2/Dr.Chidambaranathan has deposed that the rash and negligent driving of the auto is the cause for the accident. The evidence of P.W.1 corroborates with the contents of Ex.P1/F.I.R, which

supports the case of the claimants rather than appellant. R.W.1/Branch Manager of the Insurance Company in his evidence has stated that the vehicle was insured with them and further stated that the owner of the vehicle has violated the policy condition, by allowing the first respondent to travel in the goods vehicle. Therefore, the Tribunal has relied upon the above evidence and has fastened 50% of the liability on the appellant/Insurance Company and the remaining 50% on the owner of the vehicle/ second respondent.

9. The Hon'ble Supreme Court held in the case of of [Manuara Khatum & Others Vs. Rajesh Kr. Singh & Others] has cited findings relating to the Unauthorised passenger which was rendered by the Hon'ble Justice R.M. Lodga and the same is extracted hereunder:

Justice R.M. Lodga (as his Lordship then was and later became CJI) speaking for the Bench held in paras 20 and 26 as under:

The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the Insurance Company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle (Respondent 2 herein)

The pendency of consideration of the above questions by a larger Bench does not mean that the Course that was followed in Baljit Kaur, (2004) 2 SCC 1 and Challa Upendra Rao, (2004) 8 SCC 517 should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to the stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court passed on 01.08.2011(National Insurance Co.Ltd. Vs Saju P.Paul, SLP (c) No. 20127 of 2011 and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent 1)

may be allowed to withdraw the amount deposited by the Insurance Company before this Court along with accrued interest. The Insurance Company(the appellant) thereafter may recover the amount so paid from the owner(Respondent 2 herein.) The recovery of the amount by the Insurance Company from the owner shall be made by following the procedure as laid down by this Court in Chall Upendra Rao (Supra) "

10. By applying the above said Judgment, the appellant Insurance Company is hereby directed to deposit the entire award amount and thereafter recover the same from the owner of the vehicle. In this case the permanent disability was determined as 30% and the Tribunal determined the income by applying multiplier method, which is not correct. It is seen from records that the injured travelled is not the worker and he travelled only as unauthorised passenger and thereby the owner of the alleged vehicle involved in the accident has violated the policy conditions. Hence, this Court is of the view to modify the award amount which is hereby tabulated.

S.No	Particulars	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of earnings	Rs.1,83,600/-	-Nil
2	Medical Bills	Rs.52,138/-	Rs.52,000/-
3	Pain and sufferings	Rs.15,000/-	Rs.30,000/-
4	Disability	-Nil-	Rs.1,00,000/-
5	Extra nourishment	-Nil-	Rs.5,000/-
6	Transport	-Nil-	Rs.5,000/-
7	Attendant charges	-Nil-	Rs.8,000/-
	Total	Rs.2,50,738/-	Rs.2,00,000/-

11.In the result, the Civil Miscellaneous Appeal is partly allowed and the appellant/Insurance Company is directed to deposit the modified award amount as ordered by the Tribunal with interest at 7.5 % p.a, after deducting the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment and recover the same from the owner of the vehicle. Hence on such deposit being made, the Tribunal is directed to transfer the deposited amount as per the

ratio of apportionment fixed by the Tribunal, through RTGS to the claimant/first respondent within one week thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

smn

To

The Motor Accidents Claims Tribunal

Additional Sub Ordinate Judge, Salem

+1cc to Mrs.R.Sreevidhya, Advocate SR.81975.

C.M.A.No.3180 of 2010

and

M.P.No.1 of 2010

VD (CO)

CB(08/09/2020)