

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.1246 of 2015
and
M.P.No.1 of 2015

The Branch Manager,
M/s.Cholamandalam MS General Ins.Co.,Ltd,
The Regional Office, Salem. ... Appellant/2nd Respondent

Vs.

1.S.Prabhu
2.P.Kumar ... Respondents/Petitioner and
1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.06.2014 made in M.C.O.P.No.238 of 2009, on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Krishnagiri.

For Appellant : Mr.M.B.Raghavan
For R1 : Mr.E.Kannadasan
For R2 : Ex-parte

J U D G M E N T

The Civil Miscellaneous Appeal has been preferred against the judgment and decree dated 05.06.2014 made in M.C.O.P.No.238 of 2009, on the file of Motor Accident Claims Tribunal, Principal Subordinate Court, Krishnagiri.

2. The brief facts relating to the claim application are as follows:

On 30.12.2007 at about 20.30hrs, the petitioner along with one Gopi was coming from Krishnagiri to Hosur in the motor cycle Bajaj C T 100 bearing Registration No.TN 24 A 9628 as pillion rider, near the 'U' turn kakkanpura junction road, the rider of the above said vehicle was driving slowly and cautiously, observing the traffic rules and sounding horn. At that time,

the JCB vehicle bearing Registration No. PY 01 S 7925 belonging to the first respondent, insured with the second respondent came in the opposite side, in a rash and negligent manner without observing any rules of the road, without applying break, without sounding horn at an uncontrollable speed, dashed against the vehicle. The rider of the said two wheeler was died on the spot. Hence, the claimant filed a claim petition in M.C.O.P.No.238 of 2009 claiming a sum of Rs.5,42,121/- as compensation.

3.In the grounds of an appeal, the appellant contended that the compensation determined by the Tribunal is not in consonance with the facts and circumstances of the case in awarding the future loss of earning at Rs.4,60,800/- by adopting multiplier method, which is very much on the high side. The nature of injuries and disability were grossly exaggerated for the purpose of the case, further there is no reliable or believable evidence for loss of employment and therefore adoption of multiplier method is not sustainable. The sum awarded under the other heads also on the higher side and liable to be set aside.

4.Heard Mr.M.B.Raghavan, learned Counsel appearing for the appellant and Mr.E.Kannadasan, learned Counsel appearing for the first respondent and perused the documents available on records.

5.On perusal on records, it is seen that the respondent/claimant sustained grievous injuries due to the accident that was happened on 30.12.2007. He sustained injuries on right thigh lacerated injury, back side of the head, right shoulder and all over the body and he was immediately given treatment in the Government Hospital, Krishnagiri and further treatment at Government Hospital, Salem. Regarding the treatment given to the injured claimant and also the nature of treatment given to the respondent claimant were all proved by way of filing the accident register as Ex.P.2 and also Ex.P.5 that is discharge summary. To prove the injury and also the disability sustained by him before the Tribunal P.W.2 was examined. P.W.2 Doctor has examined the petitioner and he deposed that the petitioner has sustained blood clot in the head and fracture in left leg and surgery was done to him by fixing screws. Even though the fracture is malunited upto two degree, he has sustained disability at 60%. The Tribunal considering the documents and disability assessed by P.W.2 at 60% was determined the loss of income by adopting proper multiplier 16 at Rs.4,60,800/-(4000X12X16X60%).

6.The appellant herein is very much aggrieved that it is only a fracture injury and proper treatment was also given by fixing the screw, there cannot be any such excessive disability

as assessed by P.W.2. and therefore the claimant is not entitled for the loss of income determined by the Tribunal.

7. On the other hand, the respondent claimant contended that the injured person was doing business by selling fancy item and he is only 24 years old at the time of accident. He is a self employed person and total income has been very much affected. Since he is a self employed person and considering the treatment and the nature of injuries, the sum awarded by the Tribunal by multiplier method is reasonable and need not be modified. Consider the nature of injuries and treatment given to the claimant this Court is inclined to modify the sum awarded under the loss of income by taking Rs.3000/- per percentage and accordingly this sum is modified to Rs.1,80,000/- (6000X60).

7. Further verifying the nature of injuries and also the treatment given to the claimant, for surgery, the sum awarded under the pain and suffering is very much on the meagre side, to be enhanced to Rs.40,000/-. Similarly, the sum awarded under the heads of extra nourishment, attender charges and transportation are also enhanced to sums of Rs.20,000/-, Rs.15,000/- and Rs.15,000/- respectively under those heads. Since the sum awarded under medical expenses is proper, the same does not require at modified. It is clear evidence that the claimant was running a fancy items shop by way of self employment, hence it would be proper to calculate the loss of income for 8 months by taking monthly income at Rs.6,000/- by taking into considering the year of the accident which is of the year 2007, hence the loss of income for 8 months is enhanced to Rs.48,000/-. It is seen that the fracture in the head and in the right shoulder and all over the body has not been considered by the Tribunal, hence, that has to be properly considered by awarding sum, under the head of the loss of amenities and therefore a sum of Rs.34,000/- is awarded under the said head and Rs.10,000/- towards loss of damages. Thus the compensation is awarded by the Tribunal is modified by this court as follows:

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	4,60,800/-	1,80,000/- (3000X60)	Reduced
2.	Pain and suffering	15,000/-	40,000/-	Enhanced
3.	Medical Expenses	36,321/-	36,321/-	Granted

4.	Extra Nourishment	10,000/-	20,000/-	Enhanced
5.	Attendant Charges	3,000/-	15,000/-	Enhanced
6.	Loss of Income	12,000/-	48,000/- (6,000X8)	Enhanced
7.	Transportation	5,000/-	15,000/-	Enhanced
8.	Loss of amenities	-	34,000/-	Granted
9.	Loss of Damages	-	1,000/-	Granted
	Total	Rs.5,42,121/-	Rs.3,89,321	Reduced by Rs.1,52,800/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,42,121/- is reduced to Rs.3,89,321/- together with interest at 7.5% per annum from the date of petition till the date of deposit. No costs. Consequently, connected Miscellaneous Petition is closed.

10. The appellant/Insurance Company is directed to deposit the entire amount as modified by this court 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 order. On such deposit, the 1st respondent/1st claimant is permitted to withdraw the award amount with accrued interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.238 of 2009, if the entire amount has already been deposited by them.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claim Tribunal,
Principal Subordinate Court,
Krishnagiri.

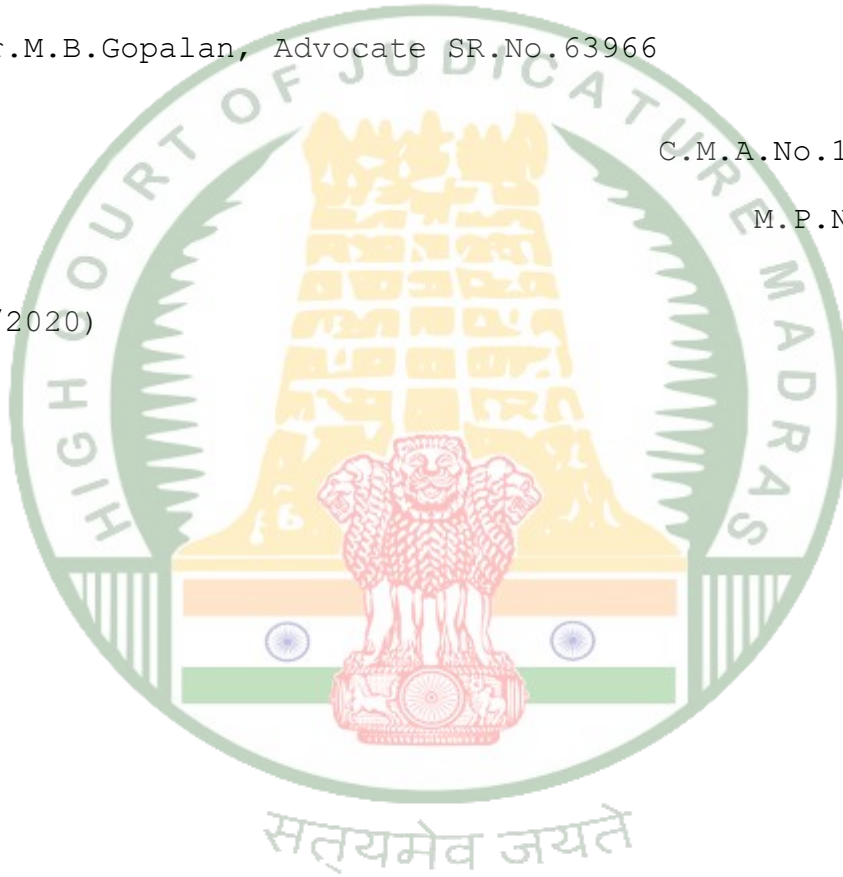
2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.E.Kannadasan, Advocate SR.No.63578

+1cc to Mr.M.B.Gopalan, Advocate SR.No.63966

C.M.A.No.1246 of 2015
and
M.P.No.1 of 2015

SAI (CO)
GMY (23/01/2020)



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