

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1678 of 2015

1.J.V.Sivanandan (died)
2.S.Valli
3.S.Jegadeesan
4.S.Soundaraiya

..Appellants /Petitioners

(appellants 2 to 4 brought on record as legal heirs of the deceased sole appellant viz., J.V.Sivanandan, vide Court order dated 06.09.2018 made in C.M.P.No.7349/2018 in C.M.A.No.1678/2015)

Vs.

S.Abdul Kareem (died)

1.The New India Assurance Co. Ltd.,
No.39-C, Bye-Pass Road, Dharmapuri - 636 701.

2.Sunori
3.Jilan

4.Mohammed Gowse

..Respondents/Respondents

(Respondents 2 to 4 remained exparte before the Tribunal)
(Hence, notice may be dispensed with for
respondents 2 to 4 in this Appeal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 01.10.2014 made in M.C.O.P.No.459 of 2006 on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Namakkal.

For Appellants : Mr.Ma.P.Thangavel

For R1 : Mrs.S.R.Sumathy

For R2 to R4 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants/legal heirs of the deceased 1st appellant/claimant seeking enhancement of the compensation granted by the award dated 01.10.2014 made in M.C.O.P.No.459 of 2006 on the file of

the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Namakkal.

2.Initially the 1st appellant filed M.C.O.P.No.459 of 2006 on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Namakkal, claiming a sum of Rs.96,00,000/- as compensation for the injuries sustained by him in the accident that took place on 13.11.2001. Pending Civil Miscellaneous appeal, the 1st appellant died and appellants 2 to 4 were brought on record as his legal heirs vide order of this Court dated 06.09.2018 made in C.M.P.No.7349/2018 in C.M.A.No.1678/2015.

3.The learned counsel appearing for the appellants contended that the Tribunal erred in awarding meagre amount for non-pecuniary damages and the Hon'ble Apex Court in the judgment reported in 2008 ACJ 2519 [Shri Virender Singh Vs. Shri Anand Prakash and others] has awarded a sum of Rs.4,50,000/- towards non-pecuniary damages in the year 1980. The cost inflation index of Government of India for 1980 - 1981 was Rs.100 and the same for the year 2011-2012 was Rs.785/-. The Tribunal ought to have granted 7 to 8 times of Rs.4,50,000/- towards non-pecuniary damages. The Tribunal erred in rejecting the physiotherapist and speech therapist bills. The Tribunal ought to have awarded compensation of Rs.2,00,000/- towards transportation, Rs.3,00,000/- towards extra nourishment, Rs.5,00,000/- for pain and sufferings, Rs.5,00,000/- for attender charges, Rs.5,00,000/- towards loss of amenities, Rs.5,00,000/- for loss of marriage prospects, Rs.5,00,000/- towards future medical expenses, Rs.5,00,000/- towards frustration, hardship, inconvenience, disappointment, mental shock in life and prayed for enhancement of the compensation.

4.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the disability certificate issued by the Medical Board, has awarded compensation for 100% loss of earning capacity. The Tribunal has rightly fixed the income of the deceased 1st appellant at Rs.15,549/- and applying the correct multiplier, awarded compensation. The Tribunal has given valid reason for rejecting the bills issued by the physiotherapist and speech therapist. The appellants are not entitled for any amount towards loss of income as the deceased 1st appellant/claimant received salary for the leave period. The huge claim of the appellants under different heads in the grounds of appeal are without any basis. The amounts awarded by the Tribunal are excessive and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellants as well as the 1st respondent and perused the materials available on records.

6.The present appeal is filed by the 1st appellant/claimant for enhancement of the compensation granted to him for the injuries sustained by him in the accident that occurred on 13.11.2001. Pending appeal, the 1st appellant died and the appellants 2 to 4 were brought on record as his legal heirs vide order of this Court dated 06.09.2018 made in C.M.P.No.7349/2018 in C.M.A.No.1678/2015. From the materials on record, it is seen that the 1st appellant has claimed compensation for the bodily injuries suffered by him. In view of the death of the 1st appellant, the appellants 2 to 4 are not entitled for any enhancement for the bodily injuries of the deceased 1st appellant. As far as the claim of appellants for expenses towards physiotherapy and speech therapy is concerned, the Tribunal has given reasons for rejecting the same. The said reasons are not erroneous, warranting interference by this Court.

7.In the result, the appeal is dismissed and award granted by the Tribunal at Rs.37,18,947/- along with interest and costs is confirmed. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal), Namakkal.
 2. The Section Officer,
V.R.Section,
High Court, Chennai.
 3. The New India Assurance Co. Ltd.,
No.39-C, Bye-Pass Road, Dharmapuri - 636 701.
- +1 cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.7108
- +1 cc to Mrs.S.R.Sumathy, Advocate, S.R.No.7051

C.M.A.No.1678 of 2015

KK(CO)
SSM(11/04/2019).