

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 12.04.2019

Judgment Delivered on : 01.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT. TEEKAA RAMAN

C.M.A.No.2212 of 2011

and

M.P.No.1 of 2011

The National Insurance Company Limited,
The Branch Manager,
No.1631/1B, 1st Floor,
Salem Bhavani Main Road,
Sankagiri - 637 301.
Salem District

... Appellant/Respondent II

..Versus..

1.Thiru.Suresh@Soodanath

...1st Respondent/Petitioner

2.Thiru.R.Senthilkumar

3.Thiru.G.Ravichandra

4.The Branch Manager,

The Oriental Insurance Company Ltd.,

City Branch Office,

No.19/1, 1st Floor, 3rd Cross Road,

Chikkanna Garden,

Shankarmutt Compound,

Chamrajpet,

Bangalore- 560 004. ... Respondent 2 to 4/Respondents 1, 3 & 4

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the award and decree dated 13.08.2010 made in M.C.O.P.No.1338 of 2006, on the file of the Motor Accidents Claims Tribunal [Chief Judicial Magistrate] at Krishnagiri District.

For Appellant

Mr.J.Chandran

For R1toR3

: No appearance

For R4

:Mr.S.Manohar

J U D G M E N T

Challenging the award passed by the Tribunal, the second respondent before the Tribunal namely National Insurance Company has preferred this appeal on the point of contributory negligence and quantum of compensation.

2. The first respondent herein filed M.C.O.P.No.1338 of 2006 alleging that on 24.03.2005 at about 20.00 hours, when the claimant had driven the Tempo bearing Registration No.KA 12 3607 belonging to the 3rd respondent and insured with the 4th respondent, in Dharmapuri to Krishnagiri NB7 road towards Krishnagiri, proceeding near K.R.P.Dam Junction Road, the lorry bearing Registration No.KA 01 AA 6060 belonging to the 2nd respondent herein and insured with the appellant herein was driven by its driver in a rash and negligent manner without observing any rules of the road before the said Tempo and all of a sudden the driver stopped his lorry on the middle of the road without giving any signal. The claimant has not anticipated that the driver of the said lorry would stop the lorry suddenly on the middle of the road. However, the claimant applied sudden brake to avoid hit behind the said lorry. Due to the negligent act of the driver of the lorry, the tempo hit behind the lorry and that the claimant sustained severe injuries. On a complaint, a criminal case was registered against the Tempo in Cr.No.246/2005 of Kaveripattinam Police.

3. The appellant-Insurance Company denied the alleged age, avocation and income of the claimant and also denied the negligence on the part of the lorry, which was insured with them. The fourth respondent/Insurance Company has also made similar counter statement stating that the 3rd respondent /owner of the Tempo remained exparte. Negligence on the part of the Tempo is denied. Claim of Rs.5,00,000/- is denied as highly excessive and baseless. The accident had occurred only due to the rash and negligent act of the driver of the lorry. Hence, the fourth respondent is not liable to pay compensation and the petition is liable to be dismissed.

4. To substantiate the averments in the petition, the claimant was examined as P.W.1 and the Doctor was examined as P.W.2 and Exs.P1 to P10 were marked. No oral or documentary evidence was let in on behalf of the respondents before the Tribunal.

5. On consideration of both oral and documentary, the Tribunal has held that both the drivers are at negligence in the ratio of 50:50 and they equally contributed to the accident and awarded quantum of compensation at Rs.2,98,450/-. Aggrieved by the said award, the second respondent-National Insurance Company, the insurer of the lorry vehicle which belonged to the

third respondent driven by the claimant, has preferred this appeal.

6. Heard both sides and perused the records.

7. It is seen that the claimant was driving the Tempo bearing Registration No.KA 12 3607 belonging to the 3rd respondent and insured with the 4th respondent in Dharmapuri to Krishnagiri NB7 road towards Krishnagiri, proceeding near K.R.P.Dam Junction road, the lorry bearing Registration No.KA 01 AA 6060 belonging to the 2nd respondent and insured with the appellant, was driven by its driver in a rash and negligent manner without observing any rules of the road before the said Tempo and the driver all off a sudden, stopped his lorry on the middle of the road without giving any signal. The claimant has not anticipated that the driver of the said lorry would stop the lorry suddenly on the middle of the road. However, the claimant, though applied sudden brake, to avoid hit behind the said lorry, due to the negligent act of the driver of the lorry, the Tempo hit behind the lorry and that the claimant sustained severe injuries.

8. It is contended by the learned counsel for the fourth respondent herein that the F.I.R is filed against the claimant. Admittedly, the claimant has sustained injury after the incident and taken to hospital for treatment. In order to elicit the manner of the accident, the driver of the lorry namely Senthilkumar who is arrayed as 2nd respondent herein was not examined.

9. To prove the contention of the F.I.R, admittedly as stated supra, the evidence of P.W.1 in the witness box is to the effect that he was driving the Tempo van on the left hand side of the road, following the lorry driven by the offending vehicle and all of a sudden, the lorry in the middle of the road, stopped without giving any signal and as the claimant has not anticipated that the driver of the said lorry could stop the lorry, suddenly, on the middle of the road and he has applied the brake and further taken steps to avoid his Tempo hit behind the said lorry by turning the van on the left hand side of the road and despite the best judgment, the Tempo hit the lorry from the behind and in the process, the Tempo driven by the claimant dashed against the lorry and he sustained injury and in the absence of any positive evidence being let in by the owner of the lorry or non-examination the driver of the lorry and also in the absence of any evidence to prove the contents of the F.I.R, especially when the claimant suffered injury and this court is of the considered view that the contributory negligence be safely fixed at 25:75 and accordingly, the finding rendered by the Tribunal that by the contributory negligence of the driver of Tempo and the lorry at 50:50 stands modified at 25:75 as

discussed supra.

10. On the point of quantum, both the parties are heard.

11. On perusing the evidence, it is seen that the claimant was taken to the Government Hospital, Krishnagiri and after taking first aid treatment, he was admitted in Sanjay Gandhi Hospital at Bangalore as in-patient from 25.03.2005 to 12.04.2005. P.W.2-Doctor, who examined the claimant also deposed that due to his disablement, the claimant was unable to sit, stand, squat, bend, walk long distance, stand long hours and unable to do his work as before and unable to drive any vehicle hereafter and the Doctor has given Disability Certificate assessing the disability at 60% and the same is marked as Ex.P9. The Doctor has not given treatment to the claimant and he has seen the claimant on 03.02.2010 after five years of the accident. The Doctor has not deposed as to what basis he has arrived the percentage of disability whether on the basis of the Indian Medical Guidelines or under Workmen's Compensation Act. Hence, considering the above aspects, though the Doctor has assessed the disability at 60% to the claimant, this Court is taking disability at 40% based on the above disablement suffered by the claimant. As per Ex.P2, Wound Certificate, the claimant sustained two grievous injury and would have suffered a lot due to his pain and sufferings.

12. Hence, the Tribunal has rightly come to the conclusion that the essential criteria for arriving at the compensation is to adopt the multiplier method. This Court is of the considered view that the essential criteria stated in Rajkumar's case by the Supreme Court in Rajkumar Vs. Ajaykumar & another case reported in 2010 (2) TN MAC 581 SC to award compensation by applying multiplier method for sustaining disability as functional disability, is being satisfied and the multiplier method has to be adopted.

13. The Tribunal has rightly adopted the multiplier method by taking Rs.3,000/- as notional income of the claimant/petitioner as per Ex.P7 and age as '27' years. 40% of the future prospectus has to be included to the total income.

Accordingly, the following calculation is made towards 'loss of income':

Rs.3000+40% of 3000=Rs.4,200 [3000+1200]

Rs.4200x12=Rs.50,400/-

Rs.50,400x17=Rs.8,56,800x40/100=Rs.3,42,720/-

14. The amounts awarded by the Tribunal under the heads 'pain and sufferings', 'medical bills', 'transport bills' and 'extra-nourishment' are hereby confirmed. Further, the amount of Rs.3,000/- is hereby awarded each 'for loss of amenities' and

also 'attender charges'.

15. Consequently, the total compensation amount of Rs.2,98,450/- awarded by the Tribunal is hereby modified and enhanced as detailed below. The break up details of the enhanced compensation amount are as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Compensation for loss of income	Rs. 2,44,800/-	Rs.3,42,720/-
Compensation for his pain and sufferings	Rs. 30,000/-	Rs. 30,000/-
Medical Bill	Rs. 17,200/-	Rs. 17,200/-
Transport bills	Rs. 3,450/-	Rs. 3,450/-
Extra-Nourishment	Rs. 3,000/-	Rs. 3,000/-
Attender charges	----	Rs. 3,000/-
loss of amenities	----	Rs. 3,000/-
Total	Rs. 2,98,450/-	Rs.4,02,370/-

16. In the result,

(i) This Civil Miscellaneous Appeal is disposed of to the extent indicated above. No costs. The compensation amount of Rs.2,98,450/- awarded by the Tribunal is hereby enhanced to Rs.4,02,370/-, with interest at the rate of 7.5% per annum, from the date of petition till the date of realisation.

(ii) The third respondent and fourth respondent-Oriental Insurance company are directed to deposit the enhanced award amount as awarded by this Court, along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgement.[in the ratio of 25:75]

(iii) On such deposit being made, the first respondent/claimant is permitted to withdraw the amount along with interest and costs, after adjusting the amount if any, already withdrawn by him.

(iv) The claimant is directed to pay necessary Court fee, if any, on the enhanced compensation before the Tribunal. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal
[Chief Judicial Magistrate] Krishnagiri District.

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+lcc to Mr.S.Manohar, Advocate SR.No.65819

C.M.A.No.2212 of 2011 and
M.P.No.1 of 2011

NMI (CO)
GMY (13/02/2020)



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