

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 29.03.2019

Judgment Delivered on : 18.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT. TEEKAA RAMAN

C.M.A.No.1958 of 2012

and

M.P.No.1 of 2012

The United India Insurance Company Limited,
Chennai-2 ... Appellant/2nd Respondent

Versus

1.Arunagiri ...1st Respondent/Petitioner
2.Vijayababu ...2nd Respondent/1st Respondent
3.P.Kumar ...3rd Respondent/3rd Respondent
4.The Oriental Insurance Co.Ltd,
Katpadi Road, Gudiyattam...4th Respondent/4th Respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the award and decree dated 13.07.2011 made in M.C.O.P.No.74 of 2007, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.II), Poonamallee.

For Appellant	: Mr.S.Arunkumar
For R1	: Mr. K.Varadha Kamaraj
For R2&R3	:Not ready in notice
For R4	:Mr.S.Manokaran

J U D G M E N T

The appellant-Insurance company has filed the Civil Miscellaneous Appeal as against the order and decree dated 13.07.2011 made in M.C.O.P.No.74 of 2007 on the file of the Motor Accidents Claims Tribunal (Fast Track Court No.II), Poonamallee, challenging the liability as well as quantum of compensation awarded by the Tribunal.

2. The first respondent/claimant-Arunagiri has filed M.C.O.P.No.74 of 2007 alleging that on 08.11.2005 at about 19.30 hrs (night 7.30), the claimant was a pillion-rider in the motor cycle bearing Registration No.TN 22 AB 0686 on the Maduravoil Tambaram bye-pass road, near Tharapakkam. At that time, the first respondent's motor cycle rider rode the said motor cycle in a rash and negligent manner endangering the public safety and hit against the parked third respondent's lorry bearing Registration No.TN 23 3679. The accident occurred solely due to

the rash and negligent driving of the first respondent's said motor cycle and the third respondent's said lorry.

3. The appellant-Insurance Company, who is the second respondent before the Tribunal has filed counter statement alleging that there was a delay of 4 days in filing the F.I.R and the accident is invited by the injured himself, who dashed against the parked lorry on the left hand side of the road and hence, it is contended that the appellant-Insurance Company is not liable to pay the compensation.

4. Before the Tribunal, the owner of the parked lorry was arrayed as third respondent, while, the Insurance Company was arrayed as second respondent.

5. During trial, as the claimant/petitioner suffered mouth injury and underwent injury, he could not speak and hence, the father of the injured was examined as P.W.1 and Dr.Subramanian was examined as P.W.2 and Exhibits P1 to P8 were marked. It is also seen from the records that during the cross-examination of P.W.1, on behalf of the present appellant/Insurance Company (second respondent before the Tribunal), Exhibits R1 and R2 were marked. No witness was examined on the side of the Insurance Company.

6. On consideration of both oral and documentary evidence, the Tribunal has held that the accident has taken place due to the rash and negligent driving of the rider of the two wheeler and also on the part of the driver of the third respondent's lorry and fixed the negligence at 40:60 and also held that the injured had travelled as a pillion rider. As against the said finding, the third and fourth respondents before the Tribunal, namely, the owner and his Insurance Company have not filed any appeal and the Tribunal has awarded a sum of Rs.7,58,103/- out of which, the award granted towards medical expenses alone comes to be Rs.6,18,103/-

7. On a perusal of the documentary evidence Ex.P1 FIR, it is seen that there was a delay of 4 days in filing the complaint before the police and that by himself cannot give a suspicion as to the manner of the accident. As per the discharge summary Ex.P2 issued by the Apollo Specialty Hospital, it appears that severe damage has been caused on the body of the claimant after the accident and hence, the delay by itself cannot give room for any suspicion. Furthermore, even in Exhibits R1 and R2, it is categorically mentioned that the claimant was travelling in the two wheeler and hence, the Tribunal has rightly come to the conclusion that the injured had travelled as a pillion rider in the two wheeler and not as a rider of the two wheeler and the said conclusion of the Tribunal does not warrant any interference, in the absence of any positive evidence being

adduced by the contesting respondents before the Tribunal and hence, the said finding of the Tribunal is hereby confirmed.

8. After perusing the evidence of P.W.1 and also taking note of Exhibit P1, this Court is of the considered view that the accident has taken place due to the composite negligence of the driver of the two wheeler and also the driver of the lorry having parked the lorry by not parking lorry in the proper side of the road, which is in violation of the Motor vehicles Rules and hence, the composite negligence fixed at 40:60 by the Tribunal hereby stands modified as 50:50 and this point is answered accordingly.

9. Heard both sides on the point of quantum of compensation also.

10. It is seen from Exhibit P2 -discharge summary that the injured was in treatment for 64 days in the Apollo's Specialty Hospital from 08.11.2005 to 11.01.2006 and P.W.2-Doctor, who had given treatment has categorically deposed that due to the accidental injury, the claimant has suffered damage on the stomach and there was a swelling in the brain and surgery was done on the stomach and for the proper ventilization, a surgery has also be performed at the neck of the claimant for fixing artificial tube for respiration and during the treatment, the disability was assessed at 55% by P.W.2.

11. Taking into consideration the various surgeries and the deformity that had resulted out of the accidental injury, the disability fixed by the Tribunal is enhanced from 45% to 50% and compensation towards disability is arrived at the rate of Rs.2,000/- per 1% of disability. Accordingly, for 50% of disability a sum of Rs.1,00,000/- is awarded.

12. From Ex.P-2 discharge summary, it is seen that the claimant-injured was in hospital for a period of 64 days and he underwent surgery on 14.11.2005 and 16.11.2005 and accordingly, for 'pain and suffering', the amount awarded by the Tribunal is hereby confirmed. The amounts awarded by the Tribunal under the heads 'medical expenses', 'extra-nourishment' and 'attender charges' and 'transportation' are also hereby confirmed. Further, the amount of Rs.10,000/- is hereby awarded 'for loss of amenities'. In respect of the 'loss of income' during the period of treatment, a sum of Rs.15,000/- is hereby awarded.

13. Therefore, in the said decision of the Supreme Court in Managing Director, State Express Transport Corporation Limited, Vs. Radha and others reported in 2018 (1) TN MAC 592 (DB), it is held that the Court could take suo motu decision to enhance the compensation award amount without any appropriate petitions made by the claimants/victims as per the Order XLI Rule 33 of CPC and

Section 151 of CPC as well as Article 227 of the Constitution of India. Hence, the relevant portion of the above said Judgment paragraph No.9 is extracted hereunder:-

"9.Though the Appeal has been preferred by the Transport Corporation, the facts and circumstances of the case, enables this Court to enhance the Compensation awarded by the Tribunal from Rs.14,57,000/- to Rs.17,83,600/- by re-appreciating the evidence on record and applying the correct position of law, as on date and invoking Order 41, Rule 33, C.P.C., and Section 151 C.P.C., as well as Article 227 of the Constitution of India. Moreover, the provisions of Motor Vehicles Act are beneficial in nature and what is required to be awarded is Just and Reasonable Compensation. Therefore, even in the absence of Appeal/Cross-Appeal by the Claimants, this Court has got power and jurisdiction to enhance the Compensation, which has been recognised by the Honourable Supreme Court in Nagappa v. Gurdayal Singh, 2004 (2) TN MAC 398 (SC)."

14.Consequently, the total compensation amount of Rs.7,58,103/- awarded by the Tribunal is hereby modified and enhanced to Rs.7,83,103/-. The break up details of the enhanced compensation amount are as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Disability 45%	Rs. 90,000/-	Rs.1,00,000/-
Medical expenses	Rs.6,18,103/-	Rs. 6,18,103/-
Pain and suffering	Rs. 15,000/-	Rs. 15,000/-
Transportation charges	Rs. 5,000/-	Rs. 5,000/-
Loss of amenities	----	Rs. 10,000/-
Attendant charges	Rs. 10,000/-	Rs. 10,000/-
Extra nourishment	Rs. 10,000/-	Rs. 10,000/-
Loss of income	Rs. 10,000/-	Rs. 15,000/-
Total	Rs.7,58,103/-	Rs. 7,83,103/-

15. In the result,

(i) This Civil Miscellaneous Appeal is disposed of to the extent indicated above and the compensation amount of Rs.7,58,103/- awarded by the Tribunal is hereby enhanced to Rs.7,83,103/-, with interest at the rate of 7.5% per annum, from the date of petition till the date of realisation.

(ii) The appellant/Insurance company is 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.

(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. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal
Additional District Judge, Fast Track Court No.II),
Poonamallee.

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

+1 cc to Mr.K.Varadhakamaraj, Advocate,sr.61614.

pm(co)
krd 25/9

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M.P.No.1 of 2012

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