

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 22.04.2019

Judgment Delivered on : 08.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT. TEEKAA RAMAN

C.M.A.No.2017 of 2012

The New India Assurance Co.Ltd.,
D.No.47, Kumaran Shopping Complex,
Kumaran Road, Tirupur. ...Appellant/2nd Respondent

..Vs..

1.Chinnathambi ... Respondent/Petitioner

2.M/s.Cylwin Knit Wear,
29, Aranmanai Pudur, 1st Street Extension,
Dharapuram Road, Tirupur District.
(The 2nd respondent remained exparte and
notice dispensed with) ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988 against the Judgment and decree
dated 09.04.2010, in M.C.O.P.No. 1107 of 2006, on the file of
the Motor Accidents Claims Tribunal (Principal Subordinate
Judge) at Tirupur.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.M.V.Venkataseshan for R1
R2 - exparte before the Tribunal

JUDGMENT

This Civil Miscellaneous Appeal is filed by the New India Assurance Company Limited, challenging, the Judgment and decree passed in M.C.O.P.No. 1107 of 2006, on the file of the Motor Accidents Claims Tribunal [Principal Subordinate Judge], Tirupur District. They have filed the present appeal questioning both the liability to pay compensation and the quantum of compensation awarded by the Tribunal.

2. The brief case of the claimant is as follows:

(i) The claimant was aged 44 years, on the date of the accident. He was doing own business and earning a sum of Rs.20,000/- per month.

(ii) On 06.07.2006, at about 09.15 a.m, the claimant was riding in a motor cycle bearing Registration No.TN 39 AD 0824 in Amaravathipalayam to Kuvandampalayam road, near Pap Vaikal from East to West, on the extreme left of the road in a normal speed. At that time, in the opposite direction Tempo Excel Van bearing Registration No.TN 39 R 1414, drove by the driver Mr.Veeramani from West to East direction in a rash and negligent manner and dashed against the claimant. Due to the accident, the claimant has sustained multiple injuries and following injuries as follows:- (i) superficial Abrasion Left elbow, (ii) swelling Right knee, (iii) Abrasion Patellar Tap sign present, (iv) Inferior pole fracture multiple abrasion over leg anterior, (v) Tenderness over right leg anterior aspects, (vi) Tenderness over Proximal Tibia and over both Tibial condyle, (vii) Laceration over right foot, (viii) Tenderness over 7,8,9,10 Ribs present upper rib (3rd and 4th) fracture, (ix) grievous injuries in internal etc.

(iii) The accident had happened at a Amaravathipalayam to Kavandanpalaya road, near Pap Vaikal, within the jurisdiction of Avinashipalayam Police Station. The accident had happened only due to the rash and negligent driving of the driver of the above said van. The first respondent is the owner and the second respondent is the insurer of the above said van, vide their policy number 721200/31/5/12273.

(iv) Owing to the accident, movements of the claimant are very much restricted. He is unable to walk. The hip movements are arrested and he is unable to stand himself, bend his body on either forward or backward to do anything. The claimant has lost his ease and convenience and disabled to work and function as he did before.

3. Before the Tribunal, the claimant was himself examined as PW1, the doctor who treated him was examined as PW2 and P.W.3 were examined and Exhibits P1 to P16 were marked. On behalf of the respondent-New India Assurance Company, no oral or documentary evidence was marked.

4. Based upon the oral evidence of PW1 coupled with FIR (Ex.P1), the Tribunal has come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the TEMPO EXCEL VAN bearing Registration No. TN 39 R 1414, belonging to the second respondent herein and insured with the New India Assurance Company Limited. Therefore, the Tribunal directed the first and second respondents, therein, to jointly and severally pay a sum of Rs.11,55,300/- to the claimant. Aggrieved against the orders passed by the Tribunal, the New India Assurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Heard both sides.

6. On perusal of the orders passed by the Tribunal and the materials available on records, this Court finds that, the finding of the Tribunal that the accident has taken place due to the rash and negligent driving of the driver of the TEMPO EXCEL VAN bearing Registration No. TN 39 R 1414 does not warrant any interference, at this appellate stage, and the same is hereby confirmed.

7. The learned counsel for the appellant/Insurance Company would submit that the multiplier method arrived at by the Tribunal for assessing the pecuniary loss does not warranted. Considering the age of the injuries and also the notional income of Rs.12,000/- fixed by the Tribunal for the period of accident is on the higher side.

8. On the point of disability suffered by P.W.1 in the accident and was examined P.W.2-Dr.Gajendran and marked Ex.P5-Wound Certificate, Exs.P6 and P7-Discharge summary issued by the Ganga Hospital, Coimbatore and also filed Ex.P9-Medical bills and Ex.P15-Disability Certificate. P.W.2-Doctor could deposed that due to the accident, the claimant has suffered superficial abbrasion left elbow, swelling right knee, abrasion patellar Tap sign present, inferior pole fracture multiple abrasion over leg anteroor, tenderness over right leg, anterior aspects, tenderness over proximal tibia and over both tibial condyle, laceration over right foot, tenderness over 7,8,9,10 Ribe present upper rib (8,9,10) fracture, grievous injuries in internal etc., and fixed disability at 55% and the Tribunal has fixed the disability 46% as partial permanent.

9. Taking note of the injuries, the Tribunal has also held that the injuries sustained by the claimant satisfies the criteria adopted by the multiplier and accordingly, taking into consideration, the various injuries sustained by the claimant, as spoken to by P.W.2, as reflected in Exs.P6 and P7-Discharge summary which is duly corroborated by Ex.P15-Disability Certificate and the oral evidence of P.W.2-Doctor, the whole body disability is arrived at 46%.

10. On perusal of the Saral forms, it is noticed as follows:-

Year	Filed on	Amount
2003-2004	08.09.2004	Rs. 71,000/-
2004-2005	08.09.2004	Rs. 73,000/-
2005-2006	25.05.2005	Rs. 93,000/-
2006-2007	19.08.2006	Rs.1,14,000/-

11. On perusal of the various Income Tax Saral Forms filed as extracted above, it is seen that for the assessment of the year 2006-2007 has been filed on 19.08.2006 that is after the accident on 06.07.2006. Hence, on comparison of the annual income of the last four consecutive years, this Court is of the considered view that a sum of Rs.1,00,000/- per annum, he could have earned and taking note of the age of the injured (45), as per Sarala Varma's case multiplier of '15' is to be added.

12. As stated supra, though P.W.2-Doctor has assessed the disability under Ex.P15-Disability Certificate at 55%, the Tribunal has taken as 46%.

13. It is seen from the records that based upon the evidence adduced before the Court, the Tribunal has fixed the notional income of the deceased at Rs.12,000/- per month and age of the deceased was fixed as '45' years.

14. As per the Constitutional Division Bench judgment of the Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 601, 25% has to be included for future prospectus.

15. Taking into consideration of the medical evidence of P.W.2-Doctor and Exs.P6&P7-Discharge summary, the disability arrived by the Tribunal at the rate of 46% appears to be just and proper and the same is hereby confirmed.

16. Further, based on the decision of the Supreme Court reported in 2009 (2) TN MAC 1 SC [Sarala Verma and Others Vs. Delhi Transport Corporation and another], the multiplier of '15' is adopted. Resultantly, the annual income contributed by the deceased to the family is arrived at Rs.8,62,500/-

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

Rs.1,00,000+25% of Rs.1,00,000/-=Rs.1,25,000/-
Rs.1,25,000x15x46/100=Rs.8,62,500/-

17. All the other heads awarded by the Tribunal are just and reasonable and the same are hereby confirmed.

18. Accordingly, the award of the Tribunal in M.C.O.P.No. 1107 of 2006 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of income	Rs. 9,93,600/-	Rs. 8,62,500/-
2.	Pain & Sufferings	Rs. 15,000/-	Rs. 15,000/-

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
3.	Extra Nourishment	Rs. 3,000/-	Rs. 3,000/-
4.	Transportation	Rs. 2,000/-	Rs. 2,000/-
5.	Expenses for Discomfort	Rs. 10,000/-	Rs. 10,000/-
6.	Medical Bills	Rs. 1,31,700/-	Rs. 1,31,700/-
	Total	Rs. 11,55,300/-	Rs. 10,24,200/-

The compensation awarded by the Tribunal is reduced from Rs.11,55,300/- to Rs. 10,24,200/- which shall carry interest at the rate of 7.5% per annum.

19. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed.
No costs.

(ii) The quantum of compensation awarded by the Tribunal is reduced from Rs.11,55,300/- to Rs. 10,24,200/-.

(iii) The appellant - Insurance Company is directed to deposit the compensation awarded by this court, i.e., Rs.10,24,200/- together with interest at the rate of 7.5% per annum (if not already deposited) to the credit of M.C.O.P.No.1107 of 2006 on the file of the Motor Accidents Claims Tribunal [Principal Subordinate Judge] Tirupur within a period of eight weeks from the date of receipt of a copy of this order.

(iv) The claimant is permitted to withdraw the above amount, in the manner known to law.

(v) The present appellant - Insurance Company is permitted to withdraw the amount, in excess of the award passed by this Court, if any, in the suitable manner known to law.

Sd/-

Assistant Registrar (CCC)

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Sub Assistant Registrar

To

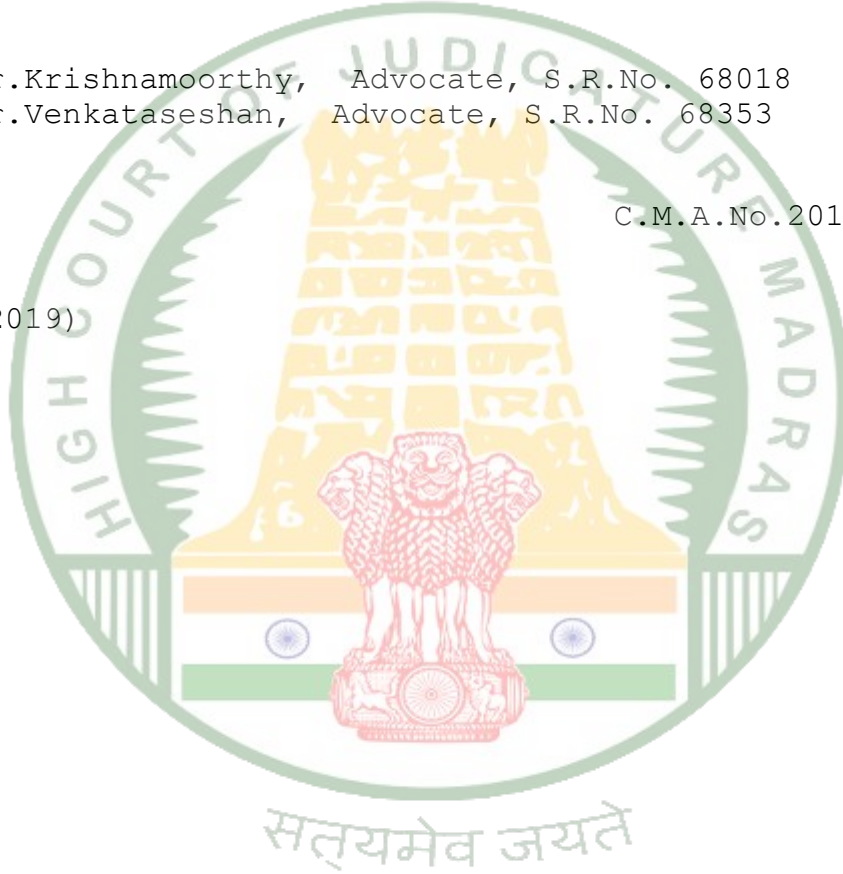
1.The Motor Accidents Claims Tribunal
Principal Subordinate Judge,
Tirupur.

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

+1cc to Mr.Krishnamoorthy, Advocate, S.R.No. 68018
+2cc to Mr.Venkataseshan, Advocate, S.R.No. 68353

C.M.A.No.2017 of 2012

MG (CO)
GN(15/11/2019)



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