

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.Nos.2801 of 2015 & 170 of 2016
and
C.M.P.No.4649 of 2019

C.M.A.No.2801 of 2015

M/s.Iffco Tokio General Insurance Company Limited,
Thulsi Chambers, 2nd Floor,
No.195, T.V.Swamy Road (West),
R.S.Puram, Coimbatore. Appellant/3rd respondent

Vs

1.C.Nagappan,
S/o.Chinnappa Gounder,
(Rep. by his wife & NF Amutha, W/o.C.Nagappan)
....1st Respondent/Claimant

No.1, Chinna Iyer Tottam,
Mevani Post 638 313,
Gobi Taluk, Erode District.

2.A.Subramaniam,
W/o.Ammasai Gounder,
C/o.Jai Printers, Kamaraj Nagar,
Sengodampalayam,
Thindal Post, Erode.

3.M.A.Velusamy, S/o.Ammasai Gounder,
No.77, Kamaraj Nagar,
Bhavani 638 301, Bhavani Taluk,
Erode District. Respondents2 &3/Respondents 1&2

PRAYER : Civil Miscellaneous Appeal filed U/s 173 of Motor Vehicle Act,1988 filed against the Judgment and Decree in M.C.O.P.No.378 of 2009, dated 05.06.2015 on the file of the Motor Accident Claims Tribunal, 4th Additional District Court, Erode District, Bhavani.

For Appellant :Mr.M.B.Raghavan

For Respondents :Mr.Ma.P.Thangavel (for R1)

C.M.A.No.170 of 2016

C.Nagappan,
Son of Chinnappa Gounder,
Rep. by next friend, Guardian, Wife Amudha
Residing at No.1, Chinna Iyer Tottam,
Mevani Post 638 313,
Gobi Taluk, Erode District. ... Appellant/Claimant

Vs

1.A.Subramaniam,
Son of Ammasai Gounder,
C/o.Jay Printers, Kamaraj Nagar,
Sengodampalayam,
Thindal Post, Erode.

2.M.A.Velusamy, Son of Ammasai Gounder,
No.77, Kamaraj Nagar,
Bhavani - 638 301,
Bhavani Taluk, Erode District.

3.M/s.Iffco Tokio General Insurance Company Limited,
Thulsi Chambers, 2nd Floor,
No.195, T.V.Swamy Road (West),
R.S.Puram, Coimbatore. ... Respondents/Respondents
(The Respondents 1 & 2, remained ex-parte
before the Tribunal, hence notice may be
dispensed with for the respondents 1 & 2
in this Appeal)

PRAYER : Civil Miscellaneous Appeal filed U/S 173 of Motor
Vehicle Act, 1988 against the award in the Judgment and Decree
dated 05.06.2015 made in M.C.O.P.No.378 of 2009 on the file of
MACT/IV Additional District Court, Bhavani at Erode District.

For Appellant :Mr.Ma.P.Thangavel

For Respondents :Mr.M.B.Raghavan (for R3)

C O M M O N J U D G M E N T
(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeals have been preferred by the claimant as well as by the Insurance Company aggrieved over the quantum of compensation of Rs.26,59,932/- to the claimant, who sustained injuries in the accident occurred on 09.09.2008, when the claimant was travelling as a passenger in a Tempo which was driven by its driver rash and negligently resulting in overturning of the vehicle.

2. Heard Mr. Ma. P. Thangavel, learned counsel appearing on behalf of the claimant and Mr. M. B. Raghavan, learned counsel appearing on behalf of the Insurance Company.

3. There is no dispute with regard to negligence. The appeals have been filed only questioning the quantum of compensation by the Insurance Company as well as by the claimant.

4. It is seen from the records that the claimant sustained grievous injuries, resulting in paralysis of the entire body. In other words, he is in a vegetative state and is not able to know whether urine or motion passed or not. PW1 in his evidence categorically stated the condition of the injured. The trial Court also took note of the same and elaborately discussed in paragraph 8 of the award. In paragraph 8 of the award it has been stated that the claimant is unable to speak and both his legs and hands are paralyzed and he has become immobile. As proved by the evidence of PW1 as well as Ex.P.15/discharge summary issued by KG Hospital and Ex.P.25/discharge summary issued by Nagappa Hospital & Ex.P.27/Medical Certificate issued are to the effect that he is totally incontinent. Ex.P.27 is extracted as follows for better appreciation of the case:

"This is to certify that Mr. Nagappan, S/o. Mr. Chinnappa Gr., 1, Chinna Iyer Tottam, Mevani, Gobi, Erode had been admitted at K.G. Hospital on 16.09.2008 and was treated as inpatient for injuries sustained in a Road Traffic Accident. He had diffuse axonal injury (brain) with fracture shaft of right femur. Intra medullary inter locking nailing of right femur was done on 22.09.2008. Distal interlocking screw fixation of right femur was done on 26.09.2008. He was discharged on 19.11.2008. At present patient is awake, non communicating. He has spastic paralysis of all the limbs. He is not able to stand or walk. He is not able to write or affix his signature. Patient is in a persistent vegetative state."

5. PW2/Doctor also has confirmed the status of the claimant. From the evidence of PW1 and PW2 and based on the medical records, the Tribunal rightly found that the claimant has become paralyzed, immobile and incontinent. In that case the Tribunal should have determined the disability at 100%. However, the Tribunal determined the disability at 80%, merely because the Doctors who gave treatment to the claimant in Government Hospital, Kumtha, Karnataka, Nanjappa Hospital, Shimoha, were not examined before the trial Court. When PW2/Doctor and medical records would categorically prove that the claimant has become paralyzed, there is no occasion for the Tribunal to determine the disability at 80% and therefore,

this Court re-determines the disability at 100%.

6.As far as the monthly income is concerned, the Tribunal has taken Rs.5,000/- in respect of salary drawn from the Co-operative Milk Society as Secretary of the Society and Rs.14,000/- as income derived as LIC agent. With regard to income, only argument has been advanced by learned counsel appearing on both sides. Mr.Ma.P.Thangavel, learned counsel appearing for the claimant would submit that the statement of accounts from 2003-2015 issued by the LIC would disclose that in the year 2007, when the accident occurred, a sum of Rs.3,36,102.28/- was received by him as yearly commission and therefore, the said amount should be the basis for annual income and accordingly, the compensation has to be derived.

7.However, Mr.M.B.Raghavan, learned counsel appearing for the Insurance Company denied the same. He also relied upon the very same statement of accounts to show that the amount earned by him in the year 2009 is only Rs.24,493.50/- even though he earned a sum of Rs.3,36,105.28 in the year 2007.

8.Taking into consideration the two amounts, this Court determines the average of the same as annual income derived as LIC agent. Accordingly, the same comes to Rs.1,80,299/- [Rs.3,36,105.28/- (+) Rs.24,493.50/-] and therefore, the monthly income derived as LIC agent is Rs.15,024/- [Rs.1,80,299/- (/) 12]. The claimant derived a sum of Rs.5,000/- as monthly salary from the Co-operative Milk Society as Secretary of the Society. Therefore, this Court determines the total monthly income of the claimant at Rs.20,024/- [Rs.15,024/- (+) Rs.5,000/-].

9.According to the age of the claimant viz., 52 years, 15% has to be added towards future prospects as per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). After adding 15% towards future prospects the yearly income would be at Rs.23,027/- (Rs.20,024/- + 15% of Rs.20,024/- viz., Rs.3,003/-).

10.According to the age of the claimant i.e., 52 years, as per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC) right multiplier is "11". Therefore, loss of earning capacity would be Rs.30,39,564/- (Rs.23,027/- x 12x 11).

11.Transportation and Medical expenses:

The Tribunal has awarded a sum of Rs.5,61,932/- towards transportation and medical expenses as per the bills

produced by the claimant. The same is confirmed.

12.Extra nourishment:

The Tribunal has awarded a sum of Rs.50,000/- which is too low. Considering the position that the claimant is totally paralyzed, this Court awards a sum of Rs.2,00,000/- under this head.

13.Pain and suffering:

The Tribunal has awarded a sum of Rs.1,00,000/- under this head, which is low. Considering the fact that the claimant underwent pain and suffering during the accident and the continuation of the sufferings throughout the life, this Court awards a sum of Rs.2,00,000/- under this head.

14.Loss of amenities:

Though the Tribunal has not awarded any amount under this head, considering the state of the claimant, this Court awards a sum of Rs.1,00,000/- under this head.

15.Attendant charges:

The Tribunal has awarded a sum of Rs.1,00,000/- towards bystander expenses. Considering the position that the claimant is totally paralyzed, this Court would like to follow the amount awarded by the Honourable Supreme Court in Kavitha Vs. Deepak and others reported in 2012 (2) TNMAC 362 (SC) and therefore, attendant charges is awarded at Rs.3,000/- per month for 15 years (Rs.3000/- x 12 x 15) totalling to Rs.5,40,000/-.

16.Future medical expenses:

Definitely, the claimant has to undergo further treatment and therefore, a sum of Rs.2,00,000/- is awarded under this head.

Head	Amount (Rs.)
Loss of earning capacity	3039564
Transportation and Medical expenses	561932
Extra nourishment	200000
Pain and sufferings	200000
Loss of amenities	100000
Attendant charges	540000
Future medical expenses	200000
Total	4841496

17.Hence, the total compensation payable in this case is Rs.48,41,496/- rounded off to Rs.48,42,000/-, along with

interest at the rate of 7.5% per annum.

18.The claimant is directed to pay the requisite court-fee, if any, within a period of two weeks from the date of receipt of a copy of this order, If the requisite court-fee is not paid by the claimant, the Tribunal is directed to deduct the requisite court fee from the compensation amount awarded to him, and thereafter, transfer the remaining award amount to the claimant's account.

19.The Insurance company is directed to deposit the entire award amount along with interest and costs as per the award passed by this Court, within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer 60% of the award amount along with interest and costs to the personal bank account of the claimant through RTGS within a period of one week thereon and the balance 40% of the award amount shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till the life time of the claimant. The wife of the claimant is permitted to withdraw interest accruing on such deposit once in a month.

20.Accordingly, C.M.A.No.2801 of 2015 is dismissed and C.M.A.No.170 of 2016 is allowed, enhancing the compensation amount from Rs.26,59,932/- to Rs.48,42,000/- with interest. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The IV Additional District Judge,
District Court,
Erode District,
Bhavani.

2.The Section Officer,
VR Section,
High Court, Madras-104.

+lcc to Mr.Ma.P.Thangavel, Advocate SR.70157

+lcc to Mr.M.B.Raghavan, Advocate SR.71569(31/01/2020)

C.M.A.Nos.2801 of 2015 & 170 of 2016

VBA (CO)

CB(09/12/2019)