

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.2886 of 2015

and

C.M.P.No.1 of 2015

The Branch Manager,
M/s.National Insurance Company Ltd.,
HUB, Hamid Building 2nd Floor,
190, Mount Road, (Opp Old Anand Theatre),
Chennai-600 006. Appellant/2nd Respondent

Vs.

1.Santhosh Kumar @ Santhosh 1st Respondents/Petitioner

2.P.M.Syed Ibrahim 2nd Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 08.07.2015, made in M.C.O.P.No.151/2014 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Perambalur District.

For Appellant : Mr.J.Chandran
For R1 : Mr.P.D.Anbarasan,
For R-2 : Ex-parte

J U D G M E N T

This Civil Miscellaneous Appeal has preferred by the appellant/Insurance Company aggrieved against the judgment and decree dated 08.07.2015, made in M.C.O.P.No.151/2014 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Perambalur District, against the award made by the Tribunal.

2.The brief facts regarding the claim application is that the injured claimant sustained injuries due to the accident occurred on 08.07.2013, at about 6.15 a.m., while the petitioner along with some more persons travelled in Toyota Innova Car bearing Reg. No.TN 09-AV- 1222 from South to North that is the trip to Chennai main road. At that time, when they were nearing

Perambalur a dog suddenly crossed the road, the 1st respondent who is the driver of the said vehicle had applied sudden break, since the said vehicle was driven in a rash and negligent manner, it was capsized. As a result, the petitioner sustained grievous injuries and two fractures and simple injuries in all over the body. The injured person was examined himself as P.W.1, he was working as a Trainee in a private concern and he claimed a sum of Rs.20,00,000/- as compensation for the disability, pain and sufferings, Transport expenses, Medical expenses and other related expenses incurred by him.

3.The appellant/Insurance Company denied the mode of accident and also rash and negligent driving on the part of the driver of the said vehicle and the sum claimed by the claimant at Rs.20,00,000/- under various heads also disputed an excessive one. The tribunal after analyzing the evidence and documents placed before this court, had given a finding that the accident occurred due to negligent attitude of the driver by applying the sudden break and these facts are very much observed by the tribunal by verifying FIR. While determining the compensation claimed by the respondent/claimant the tribunal after analyzing the evidence and documents placed before the same in respect of proof of income, occupation and also the injuries and disability and the expenses incurred by the claimant, had awarded a sum of Rs.9,99,536/- under the following heads as follows:

Heads	Sum Awarded by the Tribunal
1.Future Loss of Income :	Rs.9,18,000/-
2.Medical Expenses :	Rs.47,028/-
3.Transportcharges :	Rs.31,508/-
4.Attender charges :	Rs.3,000/-
Total :	Rs.9,99,536/-

4.Before the Tribunal, on the side of the claimant, witnesses P.W.1 and P.W.2 were examined and Exhibits Ex.P1 to Ex.P18 were marked. On the side of the Respondents, no one was examined and no exhibits were marked.

5.Aggrieved against the said award, the Appellant/Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act by contending that since the accident occurred only due to the rash and negligent act of the driver, the compensation has to be reduced. Further, it is argued that the alleged vehicle which meant for private carrier only, as per the conditions of Registration Certificate and Insurance Policy, the vehicle shall not be used other than the purpose of private carrier, but the said vehicle was used for

hire therefore, there is no liability on the part of this Insurance Company. Further, the award determined by the tribunal by taking the monthly income at Rs.6,000/- per month and by deducting 1/4th, is (Rs.6,000 -Rs.1,500=Rs.4,500/-) by applying multiplier '17' (Rs.4,500 X 12 X '17' = Rs.9,18,000/-) arrived a sum of Rs.9,18,000/- as pecuniary loss is not proper, since, the claimant sustained only wound injury. In the other grounds was that the sum awarded as compensation is against the pleadings, facts, evidence and against the principles of law.

6.Heard the learned counsel appearing for the appellant as well as the respondents and perused all the materials available on record.

7.It is seen from the evidence of P.W.2-Doctor, who had deposed that for the injuries sustained by the claimant the bones slip in the neck and treatment was given and the bones were properly united and even spinal cord were also treated by way of surgery. The deposition of P.W.2, observed by the Tribunal is extracted below;

“ம.சா.2/டாக்டர் அவருடைய சாட்சியத்தில் 08.07.2013 அன்று ஏற்பட்ட சாலை விபத்தில் மேற்படி மனுதாரருக்கு வலது முன் கை எலும்பு, முறிவு , ஏற்பட்டு உரிய அறுவை சிகிச்சைக்கு பின் நல்ல முறையில் கூறியுள்ளது. மேலும் கழுத்துப்பகுதியில் சி2, சி3 தண்டுவிட எலும்புகள் அதன் நிலையில் இருந்து நழுவி அறுவை சிகிச்சை மூலம் அது சரிசெய்யப்பட்டுள்ளது என சாட்சியம் அளித்துள்ளார்”.

8. In spite of the said evidence, that the claimant was given proper treatment and he was recovered from the injuries sustained by him, the assessment of disability at 56% but the said doctor is not proper and the same has to be modified. In view of the evidence and documents, it is clear that the health condition of the claimant is now restored and the assessment of disability at 56% and the evidence of the P.W.2-Doctor came contradictory to each other. The appellant also very much aggrieved on this aspect. Considering the fact that the Doctor examined him on the date of accident i.e., on 08.07.2013 and the disability certificate was issued in the year 2018, and the evidence is also very clear that the injuries were properly treated, this Court is of the view that there would not be any disabilities, hence, the sum determined by the Tribunal by adopting the multiplier is not proper, when there is no functional disability.

9.On the other hand, it is argued by the respondents has argued by citing a case laws reported in 2019 (1) TNMAC 5 (SC) In the Supreme Court of India, Anil Kumar V. The Branch Manager, National Insurance Co. Ltd., and another and reported in 2019

(1) TNMAC 777 In the High Court of Madras, United India Insurance Co. Ltd., V. T.Vijayan and one another and reported in 2019 (1) TN MAC 366 (DB), In the High Court of Madras, HDFC ERGO General Insurance Co. Ltd., V. Mathivannan and others.

10.The learned counsel for the respondent/claimant argued that in view of the above judgments even in the absence of cross appeal, if the injury and the disability sustained by the claimant, the forum has other right in assessing the compensation. Hence, the grievance of the respondent/claimant that tribunal has awarded a sum for pain and sufferings, nourishment, medical expenses, attender charges and future prospects. Hence, these aspects which are not considered by the tribunal are very much considered by this forum. Though, the tribunal determined the disability it has not arrived the loss of income properly the sum awarded under the head loss of income has to be modified by applying multiplier '15' (Rs.2,000 X 12 X '15' = Rs.3,60,000/-) arrived a sum of Rs.3,60,000/-.

11.Similarly by considering the fact, that there was no functional disability, the percentage assessed and the loss of income by applying multiplier method are heads to be modified. Hence, disability at 50% is reduced to 25% and awarded Rs.75,000/- by taking Rs.3,000/- per percentage i.e., (3,000/- X 25%= 75,000/-). The sum awarded by medical bills at Rs.47,028/- and transport expenses at Rs.31,508/- are proper, the same is confirmed. This Court also grants a sum of Rs.25,000/- towards pain and sufferings.

12.Hence the total compensation payable to the appellant/claimant is modified as hereunder:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	---	Rs.75,000/-	Granted
2.	Pain & Sufferings	---	Rs.25,000/-	Granted
3.	Future Loss of Income	Rs.9,18,000/-	Rs.3,60,000/- (2000X12X15)	Reduced
4.	Medical Expenses	Rs.47,028/-	Rs.47,028/-	Confirmed
5.	Transportation	Rs.31,508/-	Rs.31,508/-	Confirmed
6.	Nourishment	---	Rs.10,000/-	Granted
7.	Attender charges	Rs.3,000/-	Rs.25,000/-	enhanced

Total	Rs.9,99,536/-	Rs.5,73,536/-	Reduced by Rs.4,26,000/-
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13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation award passed by the Tribunal at Rs.9,99,536/- is hereby reduced to Rs.5,73,536/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the modified award amount along with interest and costs now determined by this Court, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent/claimant is permitted to withdraw the award amount along with proportionate interest and costs, less the amount already withdrawn, if any. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of MCOP.No.151 of 2014, if the entire amount has already been deposited by them. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (AR Comp)

//True Copy//

Sub Assistant Registrar

Ssi

To

1. The Chief judicial Magistrate,
(Motor Accident Claims Tribunal)
Perambalur District.

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

+1cc to Mr.J.Chandran, Advocate, S.R.No. 5187

C.M.A.No.2886 of 2015
and
C.M.P.No.1 of 2015

PA (CO)
GN(06/02/2020)