

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.750 of 2011 and
M.P.No.1 of 2011

National Insurance Company Ltd.,
First Floor, No.638,
Cuddalore Main Road,
Post Box 7, Attur,
Salem.Appellant

Vs.

1.R.Jishnu Ravi
2.D.Senthil Kumar ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 28.09.2010, in M.C.O.P.No. 524 of 2008, on the file of the Motor Accidents Claims Tribunal (CJM) at Namakkal District.

For Appellant : M/s.R.Sreevidhya

For Respondents : Mr.MA.P.Thangavel for R1
R2 - exparte

JUDGMENT

This Civil Miscellaneous Appeal is filed by the National Insurance Company Limited, challenging, the Judgment and decree passed in M.C.O.P.No. 524 of 2008, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Namakkal 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 first respondent/claimant is as follows:

(i) The first respondent/claimant was aged 23 years, on the date of the accident. He was studying B.E., third year in

A.M.S. Engineering College, Erumapatti, Namakkal Taluk.

(ii) On 02.12.2006, at about 09.15 pm, near Aruna pipes at Pattarimedu along Namakkal - Thuraiyur main road, the first respondent/claimant was travelling as a pillion rider in a Bullet bike bearing Registration No. TA N 4979, by the left side of the road, from Namakkal to Erumapatti. At that time, a lorry bearing Registration No. TN 45 D 5454, driven by its driver in a rash and negligent manner, came in the opposite direction and suddenly dashed against the above said bike and another one bike. Due to the accident, the first respondent/ claimant was thrown away from the bike and sustained multiple grievous injuries and compound fractures in his right leg, head and some other injuries all over the body. This accident occurred only due to the rash and negligent driving of the driver of the lorry bearing Registration No. TN 45 D 5454.

(iii) Immediately after the accident, the first respondent/ claimant was admitted in C.M.Hospital, Namakkal for treatment, where, he took treatment for one week and it is alleged by the first respondent/claimant that, a sum of Rs.1,50,000/- has been spent towards medical and other expenses.

3. Before the Tribunal, the first respondent/claimant was himself examined as PW1 and the doctor who treated him was examined as PW2 and exhibits P1 to P11 were marked. On behalf of the Insurance Company, no oral or documentary evidence was marked. During the Trial, the Insurance Company has disputed the manner of the accident and they also disputed the age, avocation and alleged income of the first respondent/claimant. Based upon the oral evidence of PW1 coupled with FIR (Ex.P1) and copy of the investigation report (Ex.P3), 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 lorry bearing Registration No. TN 45 D 5454, belonging to the second respondent herein and insured with the National Insurance Company Limited. Therefore, the Tribunal directed the first and second respondents, therein, to jointly and severally pay a sum of Rs.4,91,710/- to the first respondent/claimant. Aggrieved against the orders passed by the Tribunal, the National Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Heard both sides.

5. 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 lorry

bearing Registration No. TN 45 D 5454 does not warrant any interference, at this appellate stage, and the same is hereby confirmed.

6. Quantum of compensation: The learned counsel appearing for the Insurance Company would contend that, for the injuries sustained by the first respondent/claimant, there was no surgery done and only conservative line of treatment was done, and hence, the Tribunal has erroneously applied the multiplier method taking the income of the first respondent/claimant as Rs.5,000/- for a student studying in third year of B.E. The learned counsel appearing for the first respondent/claimant is also heard. It is seen from the evidence of PW2 coupled with discharge summaries (Ex.P4 and P5) and also the disability certificate (Ex.P11), that the first respondent/claimant has suffered 40% disability and underwent only a conservative line of treatment for the re-union of bones. It is also seen that Dr.Sivalingam (PW2) has not whispered anything regarding the alleged shortening of leg or the limping of leg as projected by the learned counsel appearing for the first respondent/claimant. Furthermore, in the absence of any medical evidence to show that the injuries sustained by the first respondent/claimant, resulted in functional disability, this Court is of the considered view that the multiplier method adopted by the Tribunal, calls for interference and accordingly, the multiplier method is hereby vacated. The disability of 40% assessed by PW2 is taken up for calculation and a sum of Rs.2,000/- per percentage of disability is awarded. Therefore, a sum of Rs.80,000/- is awarded towards 'loss of pecuniary benefits'.

7. Taking into consideration, the period of treatment and also the injury sustained by the first respondent/claimant, the sum of Rs.30,000/- awarded towards 'pain and sufferings' is enhanced to a sum of Rs.35,000/-. The first respondent/claimant is entitled to a sum of Rs.15,000/- towards 'loss of amenities' as against the sum of Rs.10,000/- awarded by the Tribunal. Taking note of the medical bills (Ex.P6) adduced by the first respondent/claimant, the Tribunal has granted a sum of Rs.12,710/- towards 'medical expenses' and the same is hereby confirmed. Since, the first respondent/claimant was a student, the injuries sustained by him would affect his matrimonial aspects, and therefore, a sum of Rs.45,000/- is granted towards the 'loss of matrimonial aspects'. All the other heads awarded by the Tribunal are just and reasonable and the same are hereby confirmed.

8. Accordingly, the award of the Tribunal in M.C.O.P.No. 524 of 2008 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of pecuniary benefits	Rs.3,84,000/-	Rs.80,000/-
2.	Pain and sufferings	Rs.30,000/-	Rs. 35,000/-
3.	Transportation	Rs.10,000/-	Rs.10,000/-
4.	Extra nourishment	Rs.20,000/-	Rs.20,000/-
5.	Loss of amenities	Rs.10,000/-	Rs.15,000/-
6.	Medical expenses	Rs.12,710/-	Rs.12,710/-
7.	Loss of matrimonial aspects	NIL	Rs.45,000/-
8.	Loss of future prospects	Rs.25,000/-	Rs.25,000/-
	Total	Rs.4,91,710/-	Rs.2,42,710/-

The compensation awarded by the Tribunal is reduced from Rs.4,91,710/- to Rs. 2,42,710/- which shall carry interest at the rate of 7.5% per annum.

9. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is reduced from Rs.4,91,710/- to Rs. 2,42,710/-.

(iii) The appellant - Insurance Company is directed to deposited the compensation awarded by this court, i.e., Rs.2,42,710/- together with interest at the rate of 7.5% per annum (if not already deposited) to the credit of M.C.O.P.No. 524 of 2008, dated 28.09.2010, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Namakkal District within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the present appellant, the first respondent/claimant is permitted to withdraw the same, in the suitable 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 (CS-VI)

//True Copy//

Sub Assistant Registrar

Mbi

To

1.The Motor Accidents Claims Tribunal
Chief Judicial Magistrate,
Namakkal District.

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

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No. 21610

+1cc to Mr.R.Sreevidhya, Advocate, S.R.No. 22256

C.M.A.No.750 of 2011 and
M.P.No.1 of 2011

SS (CO)
GN(06/08/2019)

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