

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1901 of 2011

National Insurance Company Ltd.,
Sri Ram Site Office,
2-A Prakasam Road,
T.Nagar, Chennai.

... Appellant/2nd Respondent

Versus

1. Sundaram ...1st Respondent/Petitioner

2. Samikannu ...2nd Respondent/1st Respondent

Prayer : These Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 17.03.2008 made in M.A.C.T.O.P.No.962 of 2004 on the file of Motor Vehicle Accident Claims Tribunal, Additional District Judge, (Fast Track Court No.IV), Coimbatore at Tirupur.

For Appellant : Mr. S. Vadivel

For R-1 & R2 : Mr.Ma.Pa. Thangavel

For Respondent -2 : Ex-parte.

JUDGMENT

The appellant/Insurance Company has preferred the above civil miscellaneous appeal, challenging the Judgment and Decree dated 17.03.2008 made in M.A.C.T.O.P.No. 962 of 2004 on the file of the Motor Vehicle Accidents Claims Tribunal-cum-Additional District Court (Fast Track Court No.IV), Coimbatore at Thirupur.

2. The brief facts of the case which are necessary for the disposal of this appeal, are as follows:-

(i) The appellant is the Insurance Company. The first respondent herein is the claimant and the second respondent herein is the owner of the alleged vehicle involved in the accident.

(ii) The injured/claimant was aged about 32 years on the date of the accident and he was working as a driver and earning a sun of Rs.5,000/- per month.

(iii) The accident in this case happened on 07.07.2004 at about 1:45 hours, when the first respondent herein/claimant was travelling in an auto bearing Registration No.TN46 Bus 6285, which was driven by its driver in a rash and negligent manner near Kattu Peeranangiam. Due to the accident, the claimant has sustained injuries and hence, he filed a claim petition in M.C.O.P.No.962 of 2004, on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.IV, Coimbatore at Tiruppur, Claiming a sum of Rs.5,00,000/- as compensation.

3. Before the Tribunal, the claimant examined himself as P.W.1 and Dr.Senthil Kumar was examined as P.W.2 and documents Exs.P.1 to P.7 were marked on the side of the claimant. On the side of the respondents before the Tribunal, no witness was examined and no document was marked.

4. The Tribunal, based upon the documentary evidence Ex.A1-FIR and the oral evidence of P.W.1, has held that due to the rash and negligent driving on the part of the driver of the Auto, the Auto was capsized and P.W.1 has suffered injuries and further held that the accident has taken place due to the rash and negligent driving on the part of the driver of the Auto and the said finding is well considered and well merited and hence, the said finding is hereby confirmed.

5. On the point of quantum, both the parties were heard.

6. It is seen from Ex.A.3-Discharge Summary, the claimant has sustained a lacerated wound measuring 5x4cm over dorso-radial aspect of left forearm with grade II commuted fracture at middle third of ulna and radius. It is a grievous injury. Orif with K wire fixation was done in Coimbatore Medical College Hospital, Coimbatore by conducting surgery on 08.07.2004 and thereafter further treatment was given in Ganga Hospital, Coimbatore, by conducting surgeries on 10.07.2004, Debridement, K. wire removal from radius shortening of radius and internal fixation with DCP screws. The claimant was again admitted in the same hospital on 28.10.2004 for bone grafting of radius due to delayed union of the fracture and he was an in-patient upto 03.11.2004 as per Ex.A.5-medical bills.

7.P.W.2-Dr.Senthilkumar, who is an Ortho Surgeon working in CMC Hospital, Coimbatore, has examined the claimant on 03.01.2008 and issued Disability Certificate under Ex.A6, fixing the permanent partial disability being suffered by the

claimant due to restricted movements of left elbow and wrist joint, reduced muscle power grasping power at left hand, muscle wasting by 4 cm, absence of part of middle third of ulna and loss of co-ordination at 45%. Ex.A.7 is the X-ray taken for this purpose.

8.The injured / claimant, who was examined as P.W.1, in his evidence had deposed that he was working as a driver in Valarmathi Transports, Palladam and earning a sum of Rs.5,000/- per month and after the accident, he was unable to pursue his avocation. In Ex.A.1-FIR itself, it has been stated that the claimant was working as a driver in Valarmathi Lorry services. Due to the injuries sustained by the claimant, his earning power would be affected and hence, the Tribunal has fixed the disability suffered by the claimant at 40%. At the time of the accident, the deceased was aged 38 years. Considering the age of the claimant, the Tribunal has applied the multiplier of 16 and in the absence of any documentary proof for his income, the Tribunal has fixed the income of the claimant as Rs.3,000/- per month. For the said income and multiplier of 16, the compensation for 49% of loss of earning power is worked out to Rs.2,30,400/-

9. It is seen from the records that the driving license of the driver has not been marked before the Tribunal and in the absence of any material, the finding of the Tribunal that the negligence is on the part of the driver is hereby vacated.

10. On the point of quantum of compensation, I have heard the counsel appearing for the respective parties and perused the materials on record.

11. In the decision of this Court reported in 2018 (1) TN MAC 592(DB), [Managing Director, State Express Transport Corporation Limited, Vs. Radha and others], the Division Bench has held that though the appeal has been preferred by the Transport corporation, considering the facts and circumstances of the case, the Court could take Suo motu decision for enhancing the compensation amount awarded by the Tribunal, 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 CPC as well as Article 227 of the Constitution of India. The relevant paragraph No.9 of the above said decision is extracted herunder:-

'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.17,83,000/- 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 of 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 Honarable Supreme Court in Nagappa V. Gurudayal Singh, 2004(2) TN MAC 398 (SC).''

12. The Tribunal, after taking into consideration the nature of injuries and the age of the claimant, has arrived a sum of Rs.2,30,400/- towards loss of earning power and taking note of Ex.A.5- Medical bills, assessed a sum of Rs.77,085/- towards medical expenses and the same are confirmed. The Tribunal has awarded a sum of Rs.15,000/- under the head of pain and sufferings and the same is enhanced to Rs.25,000/-. Further, the Tribunal has awarded a sum of Rs.2,000/- towards transportation charges and the same is confirmed. Under the head of extra nourishment, the Tribunal has awarded a sum of Rs.3,000/- and the same is enhanced to Rs.15,000/- The Tribunal has not awarded any amount towards loss of amenities and attender charges and hence a sum of Rs.20,000/- is awarded towards loss of amenities and a sum of Rs.10,000/- is awarded towards attender charges. The Tribunal has awarded a sum of Rs.1,500/- towards loss of income. This Court is of the view that due to the injuries suffered by the claimant and subsequent treatment, the claimant could not have been attended his regular duty for a period of five months, and hence, loss of income for five months is assessed at Rs.15,000/-. Accordingly, the compensation awarded by the Tribunal is enhanced to Rs.3,94,485/- from 3,28,985/- as tabulated hereunder:

Particulars	Amount awarded by the Tribunal	Amount awarded by this Court
Loss of income	Rs.77,085/-	Rs.77,085/-
Attender Charges	-Nil-	Rs.10,000/-
Loss of earning power	Rs.2,30,400/-	Rs.2,30,400/-
Transport Expenses	Rs.2,000/-	Rs.2,000/-

Particulars	Amount awarded by the Tribunal	Amount awarded by this Court
Pain and sufferings	Rs.15,000/-	Rs.25,000/-
For Extra nourishment	Rs.3,000/-	Rs.15,000/-
Loss of income	Rs.1,500/-	Rs.15,000/-
Loss of amenities	-Nil-	Rs.20,000/-
Total	Rs.3,28,985/-	Rs.3,94,485/-

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed, to the extent and nature indicated above.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.3,28,985/- to Rs.3,94,485/-

(iii) The appellant/Insurance Company is directed to deposit the enhanced compensation amount together with interest at the rate of 7.5% per annum, within a period of eight weeks from the date of receipt of a copy of this judgment.

(iv) On such deposit being made by the appellant/Insurance company, the first respondent/claimant is permitted to withdraw the enhanced amount, less the amount already withdrawn, if any, by way of filing proper application before the Tribunal.

(v) The appellant/Insurance company is permitted to withdraw the excess amount, if any, lying in the credit of M.C.O.P.No.962 of 2004.

(vi) No Costs.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

To

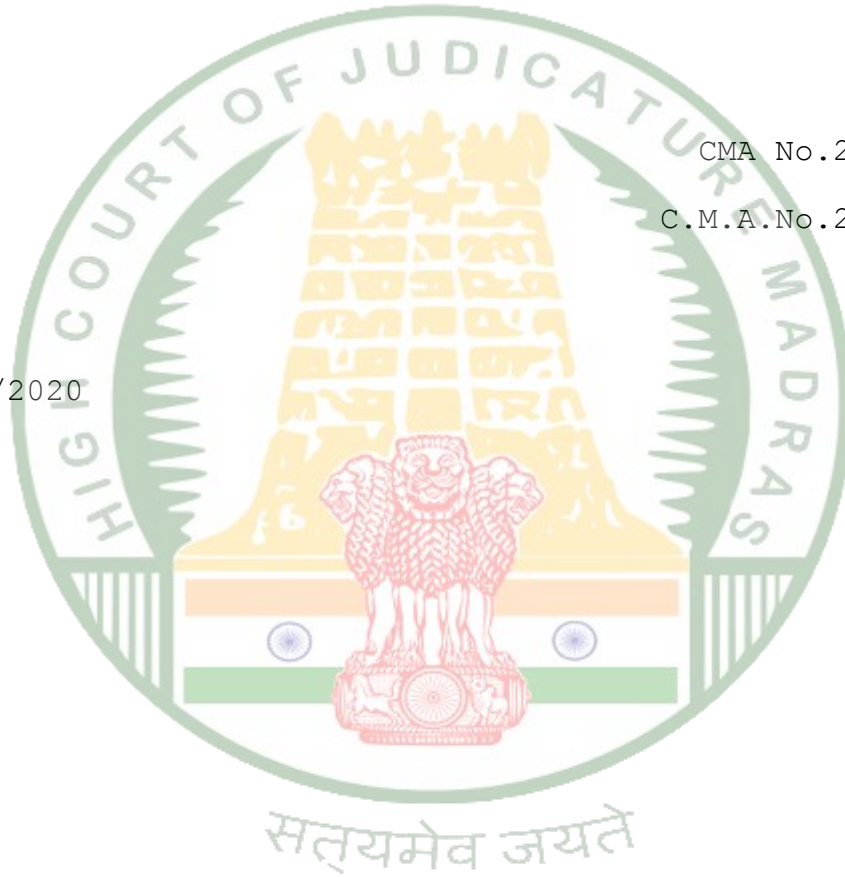
1. The Additional District Judge,
Fast Track Court-IV,
Coimbatore @ Tirupur.

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

+lcc to Mr.S.Vadivel, Advocate Sr.31442
+lcc to Mr.Ma.P.Thangavel, Advocate Sr.32178

CMA No.2640 of 2010
and
C.M.A.No.2193 of 2011

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