

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A. No.779 of 2012
and
MP.No.1 of 2012

The United India Insurance Company Limited,
Cuddalore

... Appellant

Versus

1.J.Selvam
2.R.Ramesh

... Respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 to set aside the award and decree dated 26.04.2006 made in M.A.C.T.O.P.No.538 of 2005, on the file of the Additional District Court, Fast Track Court No.2, Cuddalore.

For Appellant : Mr.S.J.Jagadev

For Respondent : Mr. K.Anusarala
for D.Baskar (for R1)
: Exparte (for R2)

J U D G M E N T

The Insurance company, the appellant herein, has filed the Civil Miscellaneous Appeal as against the Judgment and Decree dated 26.04.2006 made in M.A.C.T.O.P.No.538 of 2005 on the file of the Additional District Court, Fast Track Court No.2, Cuddalore.

2. The brief facts of the case is that on 11.10.2002, when the claimant was walking in the mud portion in the Panruti to Pudupettai road from west to east near Siva Kalyana Mandapam in Panruti, at about 6.00 pm, the motorcycle bearing Regn.No.TN-31-D-7474 driven by its rider in a hectic speed, hit against the claimant, as a result of which, he sustained grievous injuries. Immediately, the claimant was rushed to the Government Hospital, Panruti, from where he was referred for advance treatment to Government Hospital, Cuddalore and thereafter, he took treatment in a private hospital as in-patient for 15 days for the injuries

sustained in the said accident. He was aged 28 years at that time of accident and earning a sum of Rs.7,000/- per month. Due to the loss of income and pain and suffering, the claimant filed the claim petition, claiming a sum of Rs.6,00,000/- as compensation.

3. So far as the quantum of compensation is concerned, it is the case of the claimant/first respondent herein that at the time of accident, he was working as a Supervisor and in his rest hours, he was doing electrician work and earning a sum of Rs.6,750/- per month. In order to prove his claim, on the side of the claimant, the claimant himself as PW.1, besides examining one Dr. Venugopal examined as PW.2 and ten documents were marked as Exs. P1 to P10. On the side of the respondents, before the Tribunal, neither oral nor documentary evidence was adduced.

4. The finding of the Tribunal with regard to rash and negligent driving on the part of the second respondent herein, who is the owner of the vehicle, is not in dispute and accordingly the said finding of the Tribunal is hereby confirmed. Since the present appeal has been filed, challenging the quantum of compensation only, this Court is not dealing with the other aspects of the award passed by the Tribunal.

5. On the point of quantum, I have heard the counsel for both parties and perused the materials available on record.

6. Based upon Ex. P1/FIR and deposition of PW.1, who was the injured claimant, and Doctor/PW.2, who stated in his deposition that the claimant sustained injuries in the accident, was issued Ex. P3/wound certificate, Ex. P9/disability certificate and Ex. P10/X-ray. PW.2/Doctor fixed the disability of the claimant at 35%. On re-appreciation of evidence and taking note of the fact that the injuries sustained by the claimant/PW.1 in the said accident, as spoken to by PW.2/Doctor that he suffered left clavicle bone fracture and injuries in his both left foot and knee and considering the said plea of PW.1/Claimant and PW.2/Doctor, the Tribunal has fixed his disability at 30% and awarded a sum of Rs.15,000/- under the head of disability. After analysing the evidence and the medical records, it seen that the injuries are only simple in nature. Hence, this Court feels that the award passed by the Tribunal on all the heads except the head of disability are just fair and reasonable. Hence, the award passed under the head disability is hereby set aside.

7. After going through the evidence of PW.2/Doctor, and also taking note of the fact that the disability is functional disability, by applying multiplier '14' and also considering the avocation of the claimant, the Tribunal has taken his monthly income which is also reasonable one at Rs.1,000/-, but without considering the age of the claimant, the Tribunal has adopted

multiplier '14' and awarded a sum of Rs.1,68,000/- (Rs.1000 x 12 x 14) towards loss of earning. As per the oft-quoted Judgment of Supreme Court in the case of Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC, the Tribunal should have adopted multiplier '18'. Hence, this Court feels that to enhance the loss of earning, based upon the disability which is a functional disability and as he could not perform his work as before the accident, by applying multiplier '18', the loss of earning is re-assessed and calculated at Rs.2,16,000/- (1000 x 12 x 18). The Tribunal awarded under the head of pain and suffering a sum of Rs.10,000/- which is hereby enhanced to Rs.15,000/- and for medical expenses a sum of Rs.6,700/- is awarded, based upon Ex.P8/medical bills, which was incurred by the claimant. However, the Tribunal has failed to consider the period of hospitalization and did not award any amount towards the heads of transportation charges and loss of amenities. Hence, under each of these heads, Rs.15,000/- is awarded and towards attender charges a sum of Rs.5,000/- is awarded to the claimant as compensation. Further, the Tribunal has also not awarded any amount towards extra-nourishment, and taking note of the disability of the claimant, this Court feels that awarding a sum of Rs.7,000/- towards extra-nourishment would be proper.

8. Therefore, in the light of the decision of this Court in Managing Director, State Express Transport Corporation Limited, Vs. Radha and others reported in 2018 (1) TN MAC 592 (DB), wherein it is held that the Court could take suo motu decision to enhance the compensation award amount without any appropriate petitions made by the claimants/victims as per the Order XLI, Rule 33 of CPC and Section 151 of CPC as well as Article 227 of the Constitution of India. Hence, the relevant portion of the above said Judgment paragraph No.9 is extracted hereunder:-

"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.17,83,600/- 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 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 Honourable Supreme Court in Nagappa v. Gurdayal Singh, 2004 (2) TN MAC 398 (SC)."

8. Consequently, the total compensation amount of Rs.1,99,700/- awarded by the Tribunal is hereby modified and enhanced to Rs.2,69,700/-. The break up details of the enhanced compensation amount are as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Disability	Rs.15,000/-	-
Loss of earning power	Rs.1,68,000/-	Rs.2,16,000/-
Medical expenses	Rs.6,700/-	Rs.6,700/-
Pain and suffering	Rs.10,000/-	Rs.15,000/-
Transportation charges	-	Rs.10,000/-
Loss of amenities	-	Rs.10,000/-
Attendant charges	-	Rs.5,000/-
Extra nourishment	-	Rs.7,000/-
Total	Rs.1,99,700/-	Rs.2,69,700/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation amount of Rs.1,99,700/- awarded by the Tribunal is hereby enhanced to Rs.2,69,700/-, with interest at the rate of 7.5% per annum, from the date of petition till the date of realisation. The appellant/Insurance company is directed to deposit the enhanced award amount as awarded by this Court, along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the first respondent/claimant is permitted to withdraw the amount along with interest and costs, after adjusting the amount if any, already withdrawn. The claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

klt

To

1. The Additional District Court,
Fast Track Court No.2, Cuddalore.

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

+1cc to Mr.Jagadev, Advocate, S.R.No. 26951
+1cc to Mr.Baskar, Advocate, S.R.No. 25861

CMA.779 of 2012

MG (CO)
GN (27/11/2019)



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