

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 21.03.2019]

[PRONOUNCED ON : 18.07.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.947 of 2012

and

M.P.No.1 of 2012

The Branch Manager,
M/s. Reliance General Insurance Company Ltd.,
Ground Floor, Vivyan Plaza,
No.89, 100 Feet Road, Mudaliarpeta,
Pondicherry - 605 004. Appellant/2nd Respondent

.. Vs ..

1. G.Murugan
2. K.N.Balasubramanian
[2nd Respondent ex-parte in Lower Court]
... Respondents/1st Respondents

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 08.11.2011 made in M.C.O.P.No.1375 of 2009 on the file of the Motor Accidents Claims Tribunal, II Additional Subordinate Court, Cuddalore.

For Appellant : Mr.N.Vijayaraghavan

For R-1 : Ms.A.Subadra
for Mrs.M.Malar

For R-2 : Ex-parte

JUDGMENT

The Insurance Company has filed this civil miscellaneous appeal challenging the quantum of compensation awarded by the Tribunal.

2. The short facts that are essential for the disposal of this appeal is that on 28.06.2009 at about 10.30 p.m., when the claimant was a duty driver, waiting with his lorry bearing Registration No.A.P.09.Y.3495 from 10.30 a.m. to load Dry Ash from 11 mines, Neyveli Township, standing near II Main gate,

the vehicle viz., TARAS Tipper Lorry bearing Registration No.TN-37-AY-8381, belonging to the first respondent (before the Tribunal), was driven by its driver in a rash and negligent manner reversely, without following the traffic rules and regulations and lost his control resulting with the accident by the crown back wheel tyre of such vehicle ran over the claimant's right foot. As a result of which, the claimant sustained crush injuries over his right foot and immediately, he was admitted in the Government Hospital, Cuddalore and then transferred to Government Hospital, Puducherry, for advance treatment and then, he was referred to the Government Hospital at Chennai. The accident had occurred only due to the rash and negligent driving of the driver of the vehicle belonging to the first respondent (before the Tribunal). For the injuries sustained by him, the injured/claimant has filed a claim petition in M.C.O.P.No.1375 of 2009 before the Tribunal claiming a sum of Rs.7,00,000/- as compensation.

3. Before the Tribunal, on behalf of the claimant, the injured/claimant examined himself as P.W.1 and Dr.R.Venugopal was examined as P.W.2 and one Mr.D.Sathasivam was examined as P.W.3 and documents Exs.P.1 to P.13 were marked. On the side of the second respondent (before the Tribunal)/Insurance Company, no witness was examined and no document was marked.

4. The Tribunal, after considering both oral and documentary evidence adduced on the side of the claimant, awarded a sum of Rs.5,07,110/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit and costs to the claimant. As against the said award passed by the Tribunal, the Insurance Company has preferred this appeal before this Court.

5. The factum of the accident, manner of the accident and rash and negligent driving on the part of the driver of the vehicle belonging to the first respondent (before the Tribunal) are not challenged in the cross-examination and hence, the finding to that effect is hereby confirmed.

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

7. On a perusal of the records, it is seen that P.W.2, Doctor had deposed that the claimant was working as a driver and due to the accident, his two fingers were amputated in his right leg and the disability as to the whole body was fixed by P.W.2 at 55%, but the Tribunal has taken it as 50%.

8. Considering the fact that the injuries sustained by the claimant being functional disability, the Tribunal has applied multiplier method and adopted multiplier of 15 and fixed the notional income of the claimant as Rs.5,000/- and awarded a sum of Rs.4,50,000/- [$\text{Rs.5000} \times 12 \times 50\% \times 15 = 4,50,000/-$] towards loss of income. Further, the Tribunal has awarded a sum of Rs.30,000/- towards pain and suffering; a

sum of Rs.10,000/- towards extra nourishment; a sum of Rs.15,000/- towards transportation and a sum of Rs.2,110/- towards medical expenses. In total, the Tribunal has awarded a sum of Rs.5,07,110/- towards compensation to the claimant.

9. Learned counsel appearing for the appellant/insurance company would submit that the compensation awarded by the Tribunal is on the higher side and excessive and hence, prayed for allowing of this appeal.

10. Learned counsel appearing for the first respondent/claimant would submit that the compensation awarded by the Tribunal is just and reasonable, considering the nature of injuries sustained by the claimant and hence, prayed for dismissal of this appeal

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 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)."

12. On a perusal of the documentary evidence Ex.P.8-Xerox copy of driving licence, it appears that the date of birth of the injured/claimant is 01.02.1971 and the date of the accident is in June 2009 and hence, at the time of the accident, P.W.1-injured is aged about 38 years. P.W.2-Doctor had issued disability certificate under Ex.P.11 and assessed the disability at 55%. Taking into consideration the nature

of the amputation being on the fingers in the left leg and the claimant being the driver by profession, he definitely reduced his functional disability and hence, the essential criteria fixed by the Hon'ble Apex Court in Rajkumar Vs. Ajaykumar & another case reported in 2010 (2) TN MAC 581 SC, is being satisfied and the multiplier method adopted by the Tribunal is justifiable and the compensation that could be awarded to the claimant is re-assessed as under:-

As per the decision of the Hon'ble Supreme Court in Sarla Verma v. Delhi Transport Corporation [2009 (2) TN MAC 1 (SC)], considering the age of the injured as 38 at the time of the accident, multiplier of 15 has to be adopted and hence, the multiplier adopted by the Tribunal is confirmed. It appears from the evidence of P.W.3-employer of the claimant that the injured/claimant was working as driver and earning a sum of Rs.10,000/- per month. The Tribunal has fixed the salary of the injured/claimant as Rs.5,000/- per month. Taking note of the Salary Certificate of the injured/claimant, this Court is of the considered view that the income of the injured/claimant has to be fixed as Rs.4,000/-. Taking note of the fact that at the time of the accident, the deceased was aged 38 years, following the judgment of the Honourable Supreme Court of India in the case of National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), 40% has to be added towards future prospects. Accordingly, loss of income is calculated as follows:-

[Rs.4,000 + Rs.1,600 (40% of Rs.4,000) x 12 x 15 x 50% = Rs.5,04,000/-]

13. The Tribunal has awarded a sum of Rs.30,000/- to the claimant towards pain and suffering; a sum of Rs.10,000/- under the head of extra nourishment; a sum of Rs.15,000/- under the head of transportation and a sum of Rs.2,110/- towards medical expenses and the same are confirmed. The Tribunal has not awarded any amount towards attender charges and hence, taking into consideration the fact that the claimant was taking treatment as inpatient for 70 days, this Court awards a sum of Rs.15,000/- towards attender charges. Further, this Court awards a sum of Rs.15,000/- towards loss of amenities. In all, the first respondent herein/claimant is entitled to a sum of Rs.5,91,110/- as total compensation.

14. Accordingly, the award of the Tribunal stands modified as follows:-

Sl. No.	Head	Amount awarded by the Tribunal	Amount granted by this Court
1.	Loss of income	Rs. 4,50,000/-	Rs. 5,04,000/-
2.	Pain and Suffering	Rs. 30,000/-	Rs. 30,000/-

Sl. No.	Head	Amount awarded by the Tribunal	Amount granted by this Court
3.	Extra Nourishment	Rs. 10,000/-	Rs. 10,000/-
4.	Transportation	Rs. 15,000/-	Rs. 15,000/-
5.	Medical Expenses	Rs. 2,110/-	Rs. 2,110/-
6.	Attender charges	Nil	Rs. 15,000/-
7.	Loss of Amenities	Nil	Rs. 15,000/-
	Total	Rs. 5,07,110/-	Rs. 5,91,110/-

15. In the result,

I. This Civil Miscellaneous Appeal is disposed off, enhancing the compensation from Rs.5,07,110/- to Rs.5,91,110/-.

II. The interest granted by the Tribunal at 7.5% stands confirmed.

III. The appellant-Insurance Company is directed to deposit the enhanced compensation amount within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

IV. On such deposit, first respondent herein/claimant is permitted to withdraw the enhanced compensation amount, less the amount already withdrawn, if any.

V. The first respondent herein/claimant shall pay necessary Court fee, if any, on the enhanced compensation before this Court.

VI.No order as to costs. The connected
miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. II Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Cuddalore.
2. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.M.B.Gopalan, Advocate Sr.61416
+1cc to M/s.M.Malar, Advocate Sr.62490

C.M.A.No.947 of 2012

gj[col]
srg 26/12/2019

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