

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2730 of 2019
and
C.M.P.No.13818 of 2019

TATA AIG General Insurance Company Limited,
May Flower Building, 2nd Floor, No.72,
Dr.Balasundaram Road (Near RTO Office),
Coimbatore - 641 018. ... Appellant

Vs

1.R.Karthik kumar
2.P.Pandiyan
3.V.Nachammal

..Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree made in M.C.O.P.No.580 of 2014, dated 18.12.2018 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Coimbatore.

For Appellant : Mr.M.B.Raghavan

For Respondents : Mr.F.Terry Chellaraja for
Mr.M.Venkadesh Kumar for R1

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the Insurance Company against the award of Rs.2,00,66,876/- granted to the accident victim who suffered Paraplegia sustaining 100% disability in the accident which occurred on 26.01.2014, when the victim was riding his motorcycle on the Palakkad to Kovia Road and was hit down by the lorry belonging to the 3rd respondent insured with the appellant/insurance Company. Therefore, claim petition. The Tribunal, on contest, found that the accident occurred because of the rash and negligent driving of the lorry and determined the compensation at Rs.2,00,66,876/-. The said award is challenged before this Court.

2.Heard Mr.M.B.Raghavan, learned Counsel for the appellant and Mr.F.Terry Chellaraja, learned Counsel for the 1st respondent.

3.Though it is contended that the accident occurred because of the rash and negligent driving of the lorry by its driver and the tribunal based on PW2 evidence and based on Ex.P.1 viz., FIR which had been filed against the lorry driver, rightly, determined the negligence on the part of the driver of the lorry. It is also to be noted that there is no rebuttal evidence on the side of the appellant/insurance company. Therefore, that finding cannot be interfered with.

4.The condition of the 1st respondent sustaining Paraplegia and he sustaining 100% disability is proved before this Court . The Wound certificate which has been marked as Ex.P.5 and Ex.P.10 & Ex.P.11 viz., Discharge summaries would undoubtedly prove that the claimant sustained Cervical Spine: Tenderness at C5-T2 region X-ray: C7 burst fracture Rtropulsion of fragment causing compression of thecal sac C6 sagittal split fracture. As per Wound certificate the injury is grievous in nature. Ex.C.1 is the disability certificate issued by the Chief Civil Surgeon of Coimbatore Medical College and Hospital, Coimbatore. Ex.C.1 certificate proves that the claimant suffered Paraplegia and he sustained 100% disability. Therefore, 100% disability determined by the tribunal is confirmed.

5.It is claimed by the 1st respondent/claimant that he was working as an Accountant in an Auditor's firm earning about Rs.50,000/- per month. The Tribunal took Rs.30,000/- as monthly income in the absence of proof. However, Ex.P.12 viz., pay slip proves that the claimant was earning Rs.15,000/- per month and the same is taken as monthly income. 100% has been added towards future prospects by the tribunal and the act of the Tribunal of adding 100% is not sustainable and the same is reduced to 40% as per the Judgment of the Honourable Supreme Court in National Insurance Company V. Pranay Sethi and others reported in 2017 ACJ 2700. If 40% is added towards future prospects, the monthly income would be Rs.15,000/- + 40% = Rs.21,000/-.

6.It is proved that the claimant is aged about 28 years as per Ex.P.10 discharge summary and therefore, the right multiplier '17' was adopted by the Tribunal. Therefore, the loss of income would be Rs.21,000/- X 12 X17 = Rs.42,84,000/-. As per Ex.P.7 medical bills, the tribunal rightly awarded Rs.2,36,876/- towards medical expenses.

7.Rs.25,00,000/- awarded towards pain and sufferings is on the higher side and therefore, a sum of Rs.3,00,000/- is awarded as the claimant is a bachelor. In the Judgment of the Hon'ble Supreme Court of India in "Kavita Versus Deepak and others" reported in "2012 (2) TN MAC 362 (SC)", the Apex Court

determined the attendant charges for a 90% disability victim at Rs.2,000/- per month for 25 years. Hence, Rs.60,00,000/- awarded towards attendant charges is reduced to Rs.20,00,000/-.

8.Further, Rs.25,00,000/- awarded towards Loss of amenities is on the higher side and the same is reduced to Rs.5,00,000/- and Rs.25,00,000/- awarded towards future medical expenses is on the higher side and the same is reduced to Rs.10,00,000/-. Rs.1,00,000/- awarded towards transportation and Rs.1,00,000/- awarded towards extra nourishment are reasonable and the same is confirmed. Rs.10,000/- awarded towards damage to clothing is low and the same is enhanced to Rs.20,000/-. Therefore, the sum of Rs.2,00,66,876/- awarded by the tribunal is modified as follows:

SI.No	Head	Amount (Rs.)
1.	Loss of income	42,84,000/-
2.	Medical expenses	2,36,876/-
3.	Pain and Sufferings	3,00,000/-
4.	Attendant Charges	20,00,000/-
5.	Loss of amenities	5,00,000/-
6.	Future Medical expenses	10,00,000/-
7.	Transportation	1,00,000/-
8.	Extra nourishment	1,00,000/-
9.	Damages to clothing	20,000/-
	Total	85,40,876/-

9.Hence, the appeal is partly allowed, reducing the award of Rs.2,00,66,876/- to Rs.85,40,876/-. The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed.

10.The appellant/Insurance company is directed to deposit the entire award amount as per the order of this Court before the Tribunal along with interest and costs (except the amount awarded towards "future medical expenses") after deducting the amount, if any, already deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the tribunal is directed to transfer Rs.35,40,876/- through RTGS to the account of the claimant and the balance amount of Rs.50,00,000/- shall be deposited in any one of the nationalized banks in interest bearing Fixed Deposit till the lifetime of the victim and the interest is directed to be withdrawn every month by the claimant. It is made clear that at no point of time, the amount deposited in the Fixed Deposit shall be withdrawn during his lifetime.

11. Accordingly, the appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
Special Subordinate Court,
Coimbatore.

+1cc to Mr.M.Venkadesh , Advocate SR.No. 64314

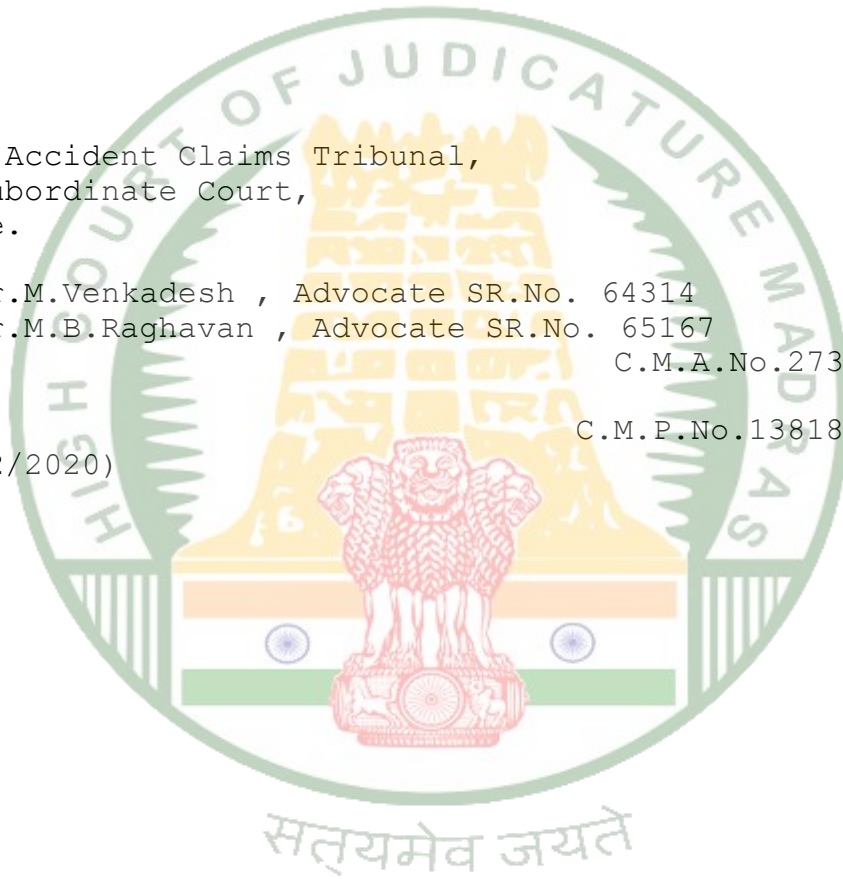
+1cc to Mr.M.B.Raghavan , Advocate SR.No. 65167

C.M.A.No.2730 of 2019

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A.SK(03/02/2020)



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