

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.1997 of 2014
& Cros.Obj.No.15 of 2016

C.M.A.No.1997 of 2014
M/s. New India Assurance Co. Ltd.,
Divisional Office, Code No.710802,
Having its office at
No.109, Nungambakkam High Road,
Chennai - 600 034. ... Appellant/2nd Respondent

Vs.

1.R.Venkatesan(died) ...Ist Respondent/Petitioner
2.Y.Uma ...2nd Respondent
3.Indumathi ...3rd Respondent
4.Rukmani ...4th Respondent
(R3 and R4 brought on record as
LRs of the deceased R1 vide
court order dated 24.10.2018
made in CMP Nos.18884 to 18886/18
in Cros.Obj.No.15/2016)

Cros.Obj.No.15 of 2016
1.R.Venkatesan(died)
2.Indumathi
3.Rukmani ... Cross Objectors/Claimants
(R2 and R3 brought on record as
LRs of the deceased R1 vide court order
dated 24.10.2018 made in CMP Nos.18884 to 18886/18
in Cros.Obj.No.15/2016)

Vs.

1.M/s. New India Assurance Co. Ltd.,
Divisional Office,
Code No.710802,
No.109, Nungambakkam High Road,
Chennai - 600 034.

2.Y.Uma ... Respondents

PRAYER in CMA 1997 of 2014: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree passed in M.C.O.P.No.308 of 2009 dated 25.10.2013 on the file of the Motor Accident Claims Tribunal (IV Additional District Judge) of Ponneri at Thiruvallur District.

Prayer in Cros.Obj.No.15 of 2016: Cross Objection filed under Order 41 Rule 22 of C.P.C. Against the award dated 25.10.2013 made in M.C.O.P.No.308 of 2009 on the file of the Motor Accident Claims Tribunal (IV Additional District Judge) of Ponneri at Thiruvallur District.

For Appellant
in CMA 1997/14
& for 1st : Mr.J.Chandran
respondent in
Cros.Obj.No.15/16

For Respondents
3 and 4
in CMA 1997/14 : Mr.V.Sivakumar
& for Appellants
2 and 3 in
Cros.Obj.No.15/16

JUDGMENT

(Delivered by M.M.SUNDRESH.,J)

Civil Miscellaneous Appeal No.1997 of 2014 has been preferred by the appellant being the insurer of the vehicle bearing Registration No TN-05-V-7196. The first respondent (since deceased) was the injured person. M.C.O.P.No.308 of 2009 has been filed by the injured claimant originally claiming a sum of Rs.14,00,000/- which has been enhanced to Rs.31,00,000/-.

2. The Tribunal after fixing the liability as against the appellant while taking into consideration Exs.P7 to P19 consist of discharge summary, salary certificate, medical bills, opinion of the Doctor, photograph, X-ray and the employment certificate coupled with the salary certificate, fixed the total compensation at Rs.24,68,200/-. Challenging the same, only on the question of quantum, the present appeal is filed by the appellant. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the respondents have filed Cross Objection for enhancement.

3. The learned counsel appearing for the appellant/Insurance Company submitted that 80% permanent disability taken into consideration by the Tribunal is not correct. The Tribunal, ought to have considered a lesser amount. Therefore, the award passed by the Tribunal requires modification.

4. The learned counsel appearing for the respondents, who have been impleaded in view of the death of the deceased submits that what is required is just compensation. The Tribunal has not awarded any amount towards the future prospects. The fact remains that the deceased injured claimant not only had fractures but turned into a paraplegia. He was totally bedridden as has been held by the Tribunal. Though the Tribunal held that the the deceased injured claimant was bedridden, it has awarded lesser amount, which needs to be enhanced.

5. The Tribunal has given a factual finding after considering the disability certificate and the X-ray marked as Exs.P16 and P17. This was considered along with the evidence of P.W.2. P.W.2 has stated that the injured has been suffering from paraplegia. There was also a fracture in D.4 spinal column and he was not able to control urine and stool. Taking into consideration all these aspects, the final compensation has been arrived at. Therefore, we are not inclined to interfere with the compensation awarded by the Tribunal under the permanent disability. Suffice it to say that the compensation awarded by the Tribunal is certainly just and proper especially when no amount has been awarded towards future prospects.

6. In such view of the matter, we are not inclined to interfere with the award of the Tribunal.

7. The Cross-objection filed, in our considered view, is also liable to be rejected. This is for the reason that the age of the deceased injured claimant himself was stated as 37 years at the time of accident and, therefore, the multiplier '15' ought to have been adopted. Furthermore, the fixation of amount for the permanent disability cannot be correct, strictly speaking. In such view of the matter, we are inclined to dismiss the Cross-Objection.

8. In the result, the Civil Miscellaneous Appeal and the Cross-Objection stand dismissed. No costs. Consequently, connected M.P.No.1 of 2014 is closed.

9. The appellant/insurance company is directed to deposit the compensation amount awarded by the Tribunal along with interest, less the amount if any already deposited, to the credit of M.C.O.P.No.308 of 2009 on the file of the Motor

Accident Claims Tribunal (IV Additional District Judge) of Ponneri at Thiruvallur District, within a period of eight weeks from the date of receipt of a copy of the judgment.

10. We also direct the Tribunal to transfer the entire amount deposited by way of RTGS to the bank account of the claimants within a period of three weeks from the date of deposit of the award amount. On such transfer, the claimants are entitled to withdraw the same.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssm

To

1.The Motor Accident Claims Tribunal,
(IV Additional District Judge) of Ponneri,
Thiruvallur District.

2.The Section Officer,
VR Section, High Court,
Madras-104.

+lcc to Mr.J.Chandran, Advocate Sr.104996
+lcc to Mr.V.Sivakumar, Advocate Sr.104836

C.M.A.No. 1997 of 2014
& Cros.Obj.No.15 of 2016

gmr[co]
srg 17/08/2020