IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.3448 of 2017
and
C.M.P.No.21874 of 2017

The Branch Office,
Royal Sundaram Alliance Insurance Company Limited,
No.1-15-22 MI, 1st Floor,
Shanmugam Complex,
New Edapadi Road,
Sankari - 637 301. ... Appellant

vs.

1.V.Ponshankar
2.E.Murugan
3.R.R.Mohan kumar
4.Mushthag Ahamad
5.E.P.Venkatesh
6.Bajaj Allianz General Insurance Company Limited,
D.No.11 (Office No.6-A),
Peoples Park, 3rd Floor,
Government Arts College Road,
Coimbatore - 641 018. ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree in MCOP.No.195 of 2013 dated 09.12.2016 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Erode.

For Appellant	:	Mr.Mohan Babu
For Respondent 1	:	Mr.K.S.Jayaganesan
For Respondent 4	:	Mr.B.Mohan
For Respondent 6	:	Mr.Srinivasan Ramalingam
For Respondents 3 & 5	:	No appearance

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JUDGMENT
[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

This appeal has been filed by the insurance company challenging the award dated 09.12.2016 passed by the Motor

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Accident Claims Tribunal, Special Subordinate Court, Erode in MCOP.No.195 of 2013.

Brief facts leading to the filing of this appeal:

2. The first respondent sustained injuries on 14.02.2010 as a result of an accident caused by a lorry bearing registration No.TN30 R 0826 owned by the third respondent and insured with the Appellant. The accident happened when the first respondent was the pillion rider in a motor bike bearing registration No.TN33 AP 6767 owned by the fifth respondent and insured with the sixth respondent. The accident happened when the first respondent and the rider of the two wheeler were proceeding from Bhavani Kuduthurai to Erode in Bhavani river bridge road, when the lorry (insured with the Appellant) came from behind and dashed against the left side mudguard of the Motor cycle. Due to the accident, the rider of the motor cycle who is the fourth respondent herein fell down from the motor cycle on the left-side side-walk and the first respondent fell down on the right-side rear wheel of the lorry and sustained grievous injuries all over his body.

3. The first respondent preferred a claim before the Motor Accident Claims Tribunal, Special Subordinate Court, Erode in MCOP.No.195 of 2013 against the owners and the insurers of both the vehicles seeking a compensation of Rs.67,50,000/- which was restricted to Rs.60,00,000/- by the first respondent.

4. By an award dated 09.12.2016 passed in MCOP.No.195 of 2013, the Motor Accident Claims Tribunal, Special Subordinate Court, Erode found that the lorry alone is responsible for the cause of the accident and directed the Appellant insurance company who is the insurer of the lorry to pay the first respondent a sum of Rs.55,97,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation (less the period of default, if any payable). However, it was made clear by the Tribunal that the first respondent was not entitled for any interest for future medical expenses assessed at Rs.2,00,000/-.

5. Aggrieved by the Award dated 09.12.2016 passed in MCOP.No.195 of 2013, this Appeal has been filed by the Insurance Company.

6. Heard, Mr.Mohan Babu, learned counsel appearing for the Appellant, Mr.K.S.Jayaganesan, learned counsel appearing for the first respondent, Mr.B.Mohan, learned counsel appearing for the fourth respondent, Mr.Srinivasan Ramalingam, learned counsel for the sixth respondent. Despite service of notice on the respondents 3 and 5 and their names having been printed in the causelist today, no one has entered appearance on their behalf.

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Discussion:

7. The Appellant-insurance company has challenged the adverse finding of negligence on the part of the driver of the lorry and they have also challenged the quantum of compensation assessed by the Tribunal. It is their case that the entire negligence cannot be fastened on the driver of the lorry, when the driver of the motor cycle was also the cause of the accident. The Appellant insurance company has challenged the assessment of notional monthly income of the first respondent who was a student at Rs.10,000/- by the Tribunal. Further it is their case that the amount of Rs.27,67,000/- awarded by the Tribunal towards medical expenses is not supported by reliable evidence.

8. This Court has perused and examined the impugned award as well as the materials and evidence available on record.

9. Before the Tribunal, the first respondent has produced 28 documents which were marked as Ex.P1 to Ex.P28 and 10 witnesses were examined on his side. On the side of the Appellant as well as other respondents, 7 documents were marked as Ex.R1 to Ex.R7 and two witnesses were examined on their side.

10. Ex.P1 - FIR was registered only against the driver of the lorry bearing registration No.TN30 R 0826 which is insured with the Appellant. The complainant is the person who took the first respondent from the place of accident to the hospital by Ambulance immediately after the accident. The driver of the lorry, E.Murugan who is the second respondent herein was not examined before the Tribunal as a witness by the Appellant insurance company. Both PW1 who is the first respondent and PW2 who is the eye witness to the accident have deposed that only due to the rash and negligent driving by the driver of the lorry, the accident had happened.

11. The driver of the lorry who is the second respondent in this appeal and is the only person competent to speak about the accident apart from the first respondent and other eye-witnesses, also did not comeforward to give evidence before the Tribunal. It is the case of the first respondent that the lorry coming from behind had dashed against the backside mud guard of the motor cycle in which he was travelling as the pillion rider and as a result of the accident, the rider of the motor cycle was thrown on the left side in the sidewalk and the first respondent was thrown out in the right side and fell on the back wheel of the lorry and sustained grievous injuries.

12. As per the evidence of PW1 and PW2, it is noticed that the lorry attempted to overtake the motor cycle in which the first respondent was travelling and then proceeded towards left side without giving any signal. The lorry dashed against the left backside mudguard of the motor cycle resulting in grievous

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injuries caused to the first respondent who fell below the back tyre of the lorry. The evidence of PW1 and PW2 has not been controverted by the Appellant insurance company by producing any contra evidence or at least by examining the driver of the lorry which is insured with them. The Tribunal has applied the doctrine of preponderance of probabilities and held that the driver of the lorry alone was responsible for the cause of the accident.

13. We have also perused FIR(Ex.P1), Rough Sketch(Ex.P2), Observation Mahazer(Ex.P3), MVI Report for both the vehicles (Ex.P4 & Ex.P5) as well as considered the oral evidence let in by the parties which will clearly reveal that the accident had happened only due to the rash and negligent driving by the driver of the lorry (insured vehicle). There is no iota of evidence to show that the deceased or the rider of the two wheeler was also responsible for the accident. Having considered all these factors, the Tribunal has rightly concluded that the entire negligence for the cause of the accident is on the driver of the lorry which is insured with the Appellant.

14. The first respondent was a student at the time of the accident and he was aged 20 years. He sustained the following injuries: "Fracture in right side hip, right leg right knee, ankle, pelvic bones, abdomen injuries with wall condusion and damages caused in perineal and urinary functioning system with productive system". He also lost the muscles in right leg and hip. He was hospitalised at Kovai Medical Centre and Hospital, Erode for two days from 14.02.2010 to 15.02.2010 and thereafter, he was hospitalised at Kovai Medical Centre and Hospital, Coimbatore from 16.02.2010 to 08.03.2010. During the said period, he underwent twelve surgeries. Thereafter, he was admitted in Ganga Medical Centre and Hospital, Coimbatore from 08.03.2010 to 13.08.2010, 30.08.2010 to 31.08.2010, from 07.11.2010 to 25.11.2010, from 18.04.2011 to 20.04.2011, from 08.06.2000 to 29.06.2011, from 26.09.2011 to 06.10.2011 and during the said period, he underwent eight surgeries. Thereafter, he was admitted in Vedanayagam Hospital Limited, Coimbatore for treatment of "Percutaneous cystolithotripsy from 20.02.2012 to 22.02.2012. Again he was admitted in the same hospital for the treatment of "Progressive perineal urethroplasty" from 03.03.2012 to 05.03.2012. On 02.06.2012, he was admitted and treated for "cystoscopy" and on 06.10.2012, he was admitted and treated for "cystoscopy plus stone removal"in the same hospital.

15. Discharge summaries of the first respondent from the respective hospitals which were marked as Ex.P8, Ex.P9, Ex.P10 & Ex.P12 prove his hospitalization periods and the various surgeries and treatment he underwent.

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16. The first respondent apart from wound certificate and discharge summaries and other medical reports has filed the following documents to prove the medical expenses sustained by him during the above mentioned periods as an inpatient in various hospitals:

Ex.No.	Date	Hospital	Amount (Rs.)
Ex.P15	14.02.2010 to 16.02.2010	Kovai Medical Centre & Hospital, Erode	40,000/-
Ex.P16	16.02.2010 to 08.03.2010	Kovai Medical Centre & Hospital, Coimbatore	4,65,000/-
Ex.P17 Totally 11 bills	17.05.2010 to 06.10.2011	Ganga Hospial bills	14,45,110/-
Ex.P18 Totally 17 bills	From 13.02.2012 to 12.12.2012	Vedanayagam Hospital	1,78,624/-
Ex.P20 Totally 18 bills	From August 2010 to February 2012	SG Met Hospital, Senior Physiotherapist Mr.L.Prabu cash bills	52,3200/-
Ex.P21 Totally 19 bills	From 01.09.2010 to 01.02.2012	House nursing Doctor bills (Dr.P.John Kennady PAAN)	1,74,400/-
Ex.P22		Medical bills, receipts	96,639/-
Ex.P23 Totally 35 bills	From 14.08.2010 to 08.10.2011	Erode Surgical Centre cash invoices	14,814/-
		Total	24,66,887/-

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17. In the above said bills, the person who issued Ex.P23 bills for surgical instruments to the first respondent for the period from 14.08.2010 to 13.09.2010 under 35 cash invoices for Rs.14,814/- was examined as PW3. The person who provided physiotherapy to the first respondent from 16.08.2010 to 18.02.2012 was examined as PW5. PW5 is working as a Senior Physiotherapist at SG Met Hospital, Erode. He is the person who

issued Ex.P20 (18 cash bills) from 27.08.2010 to 18.02.2012 for Rs.52,300/- to the first respondent. PW6 is the Doctor who cleaned and dressed the injuries of the first respondent daily by coming to the home of the first respondent. For his service, he received his professional fees from the first respondent and the receipts for the period from 01.09.2010 to 01.02.2012 totally 19 receipts for Rs.1,74,400/- were marked as Ex.P21. PW7 is Dr.Senthilvelu who was the Ortho surgeon and working at Kovai Medical Centre, Erode. PW7 treated the first respondent from 14.02.2010 to 16.02.2010 and for his professional service, he raised bills for Rs.40,000/- which were marked as Ex.P15.

18. PW8 is Dr.Ganesh Gopalakrishnen who treated the first respondent at Vedanayagam Hospital, Coimbatore. At Vedanayagam Hospital, Coimbatore the first respondent was treated as inpatient four times and four surgeries were performed on him. The discharge summaries were marked as Ex.P12 and the O.P.Sheets were marked as Ex.P13. The hospital bills issued by the Vedanayagam Hospital, Coimbatore under 17 cash bills were marked as Ex.P18. PW8, Dr.Ganesh Gopalakrishnan, professor of Urology and consultant Urologist, Vedanayagam Hospital, Coimbatore has issued a disability certificate which was marked as Ex.P26 regarding the sexual organ disability of the first respondent. In Ex.P26, it was mentioned as follows: "Mr.Ponshankar has erectile dysfunction secondary to pelvic trauma, PDE5 inhibitors have failed to elicit any response. He has to undergo penile prosthesis implantation for erectile dysfunction. This is of serious concern in a young unmarried male, with a 30% disability." The doctor has also deposed that the disability is permanent.

19. PW9 is the Doctor, K.Kesavamoorthy who was working as Chief Doctor, Casual department at Kovai Medical Centre and Hospital, Coimbatore and through him Ex.P9 was marked which was the discharge summary of the first respondent for the treatment from 16.02.2010 to 08.03.2010. Ex.P26 is the bill issued by Kovai Medical Centre and Hospital, Coimbatore which was identified by the Doctor K.Kesavamoorthy PW9. PW9 (Doctor) has deposed that the first respondent was admitted at Kovai Medical Centre and Hospital, Coimbatore for the treatment of hip bone fracture and lower abdomen injury and also for loss of muscle and bones from hip to foot on the right side. He has also deposed that the first respondent is having a problem in his kidney.

20. PW10 is the doctor Madhu Periyasamy who was working as a Registrar in plastic surgery at Ganga Medical Centre and Hospital Private Limited, Coimbatore and he has deposed that during the period of treatment as inpatient from 08.03.2010 to 13.08.2010, the first respondent underwent five surgeries towards treatment for his loss of muscle and skin on right thigh, right buttocks, right hip area and underwent plastic

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surgery, during that operation an artificial pathway for discharging the urine and motion were created for the first respondent. By considering the disabilities, the Doctor issued Ex.P24 which is the disability certificate to the extent of 57.3%. Ex.P10 is the six discharge summaries for treatment from 08.03.2010 to 06.10.2011 from the Ganga Medical Centre and Hospital, Coimbatore.

21. Ex.P17 are the 11 hospital cash bills for a sum of Rs.14,45,110/- and the said bills were identified by PW10. In Ex.P24 disability certificate, the Doctor has described the treatment provided to the first respondent in an elaborate manner and assessed the disability with all particulars. Ex.P27 is the photographs of the first respondent after the accident.

22. The Tribunal after analysing all the exhibits has come to the conclusion that at least for two years, the first respondent might not be able to move or do any work without the help of the attender and he will be requiring constant medical care for his entire life. The bills produced by the first respondent are all original bills and no suspicion arises in the genuineness of the said bills. Considering all the material and evidence available on record, the Tribunal has rightly awarded a sum of Rs.27,87,000/- towards medical expenses. We do not find any infirmity in the said finding.

23. Before the Tribunal to prove that he was a student, the first respondent has filed his school transfer certificate dated 27.11.2013 which was marked as Ex.P28. The accident happened in the year 2010. The Tribunal has assessed the notional monthly income of the deceased at Rs.10,000/- which in our considered view is a correct assessment.

24. The first respondent was aged 20 years at the time of the accident as evidenced from the school Transfer Certificate viz., Ex.P28. The Tribunal has rightly added 50% towards loss of future prospects following the Constitution Bench Judgment of the Hon’ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and Others reported in 2017 (16) SCC 680.

25. The Tribunal has rightly assessed the functional disability of the first respondent, due to the accident at 60% and has rightly applied the multiplier of 18 while assessing the compensation for loss of earning power as the first respondent has sustained grievous injuries which has completely made him permanently immobilised.

26. The Tribunal has assessed the total compensation payable to the first respondent by the Appellant insurance company in the following manner:

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Sl.No.	Headings	Amount in Rs.
1	Transport expenses	40,000/-
2	Extra nourishment	50,000/-
3	Medical expenses	27,87,000/-
4	Pain and sufferings	7,00,000/-
5	Disability	96,000/-
6	Loss of earning power	19,44,000/-
	Total	55,97,000/-

27. The compensation awarded by the Tribunal under various heads is a correct one and there is no infirmity in the same. We do not find any merit in this appeal.

Conclusion:

28. For the foregoing reasons, the Appeal is dismissed and the award passed by the Tribunal as well the interest and cost is confirmed. The Appellant is directed to deposit the entire award amount as per the order of the Tribunal along with interest and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.195 of 2013 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the entire award amount, along with interest accrued to the first respondent through RTGS within a period of four weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

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Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Special Subordinate Court, Erode.

2.The Section Officer,
VR Section, High Court,
Chennai.

+1cc to Mr.M.B.Gopalan, Advocate, S.R.No. 80827
+1cc to Mr.K.S.Jayaganesan, Advocate, S.R.No. 80088

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