

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.08.2020
CORAM
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2913 of 2006

National Insurance Company Ltd.,
Rep. By its Branch Manager,
No.7, Raja Street, Veerapandi Village,
Gobi Town and Taluk. .. Appellant/3rd Respondent

..Vs..

1. Mahali (Died) ..1st Respondent/Claimant

2. S.Somasundaram

3. T.Vengulakshmi

4. Sundaram Finance Limited,

Rep. By its Manager,

No.21, Pattulos Road,

Chennai-2.

(4th respondent is given up)

5. Palani .. Respondents 2 to 5/1,2&4

R5 brought on record as legal heir of the deceased R1 vide order of this Court dated 18.08.2020 made in CMP. No.8626, 8629 and 8632 of 2020 in CMA No.2913 of 2006

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 17.12.2004 passed in M.C.O.P.No.83 of 2003 on the file of the Motor Accident Claims Tribunal, (I Additional Sub Judge) Gobichettipalayam.

For Appellant : Mrs.N.B.Surekha

For Respondents: R1 deceased

Mr.C.Prabhakaran - R2 and R3

No appearance

R4 - given up

Mr.Ma.Pa.Thangavel - R5

J U D G M E N T

This appeal has been filed by the insurance company challenging the quantum of compensation awarded to the first respondent/injured claimant under the impugned award dated 17.12.2004 passed by the Motor Accident Claims Tribunal, (I Additional Sub Judge) Gobichettipalayam in MCOP. No.83 of 2003.

2. The first respondent/claimant sustained injuries on 26.08.2002 as a result of an accident caused by a bus bearing Registration No.TN 36 E 7992 insured with the appellant.

3. The first respondent/claimant has preferred a claim before the Motor Accident Claims Tribunal (I Additional Sub Judge), Gobichettipalayam in MCOP.No.83 of 2003 seeking compensation for the injuries sustained by him as a result of the said accident.

4. The Motor Accident Claims Tribunal, under the impugned award, directed the Appellant as well as the respondents 2 & 3 jointly and severally to pay a compensation of Rs.1,63,000/- together with interest and costs to the first respondent/claimant as detailed hereunder:

Head	Award passed by the Tribunal (Rs.)
Loss of income	1,17,000/-
Loss of pain and suffering	25,000/-
Medical expenses	10,000/-
Damage to clothing	1,000/-
Extra nourishment	5,000/-
Transportation	5,000/-
Total	1,63,000/-

5. Aggrieved by the award dated 17.12.2004, this appeal has been filed by the insurance company.

6. Heard Mr.B.Surekha, learned counsel for the Appellant/ Insurance Company and Mr.Ma.Pa.Thangavel, learned counsel for the fifth respondent.

7. The first respondent/claimant has sustained the following injuries on 26.08.2002 as a result of an accident caused by a vehicle insured with the Appellant.

a. A cut injury cover the right side head bone deed bleeding;

b. A lacerated injury over the right side back;

c. Abrasion all over the body; and

d. Severe pain all over the body.

8. Before the Tribunal, the claimant has filed six documents, which were marked as Ex.A1 to Ex.A6 and three witnesses were examined on their side viz., the first respondent/claimant herself as PW1, Mr.Selvan - an eyewitness to the accident as PW2, Mr.R.Sugumar, Doctor, who examined her as PW3. On the side of the appellant/insurance company, neither any witness was examined nor any document filed before the Tribunal.

9. The Doctor (PW2), who examined the first respondent has issued a medical certificate (Ex.A6), dated 09.12.2004 stating that the first respondent/claimant has only suffered reduction of 25% in one of his eyes, due to the injuries sustained by him as a result of the accident. The injuries as observed by the Doctor (PW2) in his medical certificate, which was marked as Ex.A6, will clearly reveal that the first respondent has not sustained grievous injuries and he has also not suffered any disability, excepting for minor injury to his eye, which has been reduced to 25% at the time when the Doctor had examined him. There is no evidence produced by the claimant before the Tribunal that he had sustained grievous injuries and that he has suffered disability as a result of the accident.

10. While that be so, the Tribunal ought not to have adopted the multiplier method in assessing the compensation to the first respondent/claimant. The injuries as indicated by this Court will clearly reveal that they are only simple injuries.

11. In view of the erroneous assessment made by the Tribunal by adopting the multiplier method, this Court is modifying the same by assessing the compensation payable to the first respondent/claimant towards the simple injuries on a lumpsum basis. The Tribunal has awarded a sum of Rs.1,17,000/- to the first respondent/claimant as compensation towards loss of his earning power, which cannot be sustained, in view of the reasons stated above. This Court, after giving due consideration to the nature of injuries sustained by the first respondent/claimant, awards a lumpsum compensation of Rs.25,000/- to the first respondent/claimant towards the simple injuries sustained by him instead of Rs.1,17,000/- erroneously awarded by the Tribunal by adopting the multiplier method, under the impugned award.

12. Insofar as the compensation awarded by the Tribunal towards pain and suffering is concerned, the same is also excessive, since the first respondent/claimant has only sustained simple injuries. Accordingly, the same is reduced to Rs.10,000/- from Rs.25,000/-.

13. Insofar as the compensation awarded by the Tribunal towards medical expenses is concerned, the same ought not to have been granted by the Tribunal, since no medical bills have been produced by the first respondent/claimant, before the Tribunal. However, the Tribunal has erroneously awarded Rs.10,000/- towards medical expenses, which is incorrect and therefore, the same will have to be removed.

14. Further, the Tribunal has also awarded Rs.1,000/- towards disability compensation to the first respondent/claimant, which he is not legally entitled to, since the Doctor himself has stated in the medical certificate, Ex.A6 that he has not suffered any disability. Therefore, the disability compensation of Rs.1,000/- awarded by the Tribunal, is also removed by this Court.

15. Insofar as the compensation assessed by the Tribunal towards extra nourishment charges at Rs.5,000/- and transportation at Rs.5,000/- are concerned, the same is a just compensation and there is no scope for any interference by this Court. However, the Tribunal has failed to award any compensation towards attender charges and loss of amenities under the impugned award. Even though the first respondent/claimant has sustained only simple injuries, the injuries to his eye as stated in the medical certificate (Ex.A6) would have required the assistance of an attender and therefore, this Court, conservatively, awards Rs.2,500/- each as compensation to the first respondent/claimant towards attender charges and loss of amenities.

16. For the foregoing reasons, the compensation awarded by the tribunal under the impugned award to the first respondents/claimants is reduced from Rs.1,63,000/- to Rs.50,000/- in the following manner:

Heads	Award passed by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of income	1,17,000/-	25,000/-
Loss of pain and suffering	25,000/-	10,000/-
Medical expenses	10,000/-	
Damage to clothing	1,000/-	
Extra nourishment	5,000/-	5,000/-
Transportation	5,000/-	5,000/-
Attender charges		2,500/-
Amenities		2,500/-
	1,63,000/-	50,000/-

Conclusion:

17. In the result, the appeal is partly allowed by reducing the compensation from Rs.1,63,000 to Rs.50,000/-. No costs.

However, the rate of interest fixed by the Tribunal at the rate of 9% is confirmed. The appellant/ insurance Company as well as the respondents 2 and 3 are jointly and severally directed to deposit the modified award amount i.e, Rs.50,000/- along with interest and costs, after deducting the amount, if any, already deposited, to the credit of MCOP.No.83 of 2003 within a period of four weeks from the date of receipt of a copy of this Judgment.

18. On such deposit being made, the Tribunal is directed to transfer to the bank account of the fifth respondent, who is the legal heir of the claimant/first respondent (deceased) as per the order of this Court through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

rli

To

The I Additional Sub Judge,
Motor Accident Claims Tribunal,
Gobichettipalayam.

+1cc to Mrs.N.B.Surekha , Advocate SR.No. 27303

C.M.A.No.2913 of 2006

A.SK(04.01.2021)

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