

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1178 of 2012 & 392 of 2013
and
M.P.No.1 of 2013 & C.M.P.No.10205 of 2016

C.M.A.No.1178 of 2012:

S.Deepak Kothari .. Appellant/Petitioner

Vs.

1.N.Lakshmi

2.The New India Assurance Company Limited,
No.45, Moore Street,
Chennai - 600 001. .. Respondents/Respondents

C.M.A.No.392 of 2013:

The New India Assurance Company Limited,
No.45, Moore Street,
Chennai - 600 001. .. Appellant/2nd Respondent

Vs.

1.S.Deepak Kothari ..1st Respondent/Petitioner

2.N.Lakshmi ..2nd Respondent/
1st Respondent

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.12.2010 made in M.C.O.P.No.4916 of 2006 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court No.III, Chennai.

In C.M.A.No.1178 of 2012:

For Appellant : Mr.G.Balaji Prasad
For R2 : Mr.K.Vinod
for Ms.Elveera Ravindran

In C.M.A.No.392 of 2013:

For Appellant : Mr.K.Vinod
for Ms.Elveera Ravindran

For R1 : Mr.G.Balaji Prasad
for Mr.S.Gangaramprasad

For R2 : No appearance

C O M M O N J U D G M E N T

The matter is heard through "Video Conferencing".

2.These Civil Miscellaneous Appeals have been filed against the award dated 22.12.2010 made in M.C.O.P.No.4916 of 2006 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court No.III, Chennai.

3.Both the appeals arise out of the same accident and same award and hence disposed of by this common order. The parties are referred to as per their respective ranks in the claim petition for the sake of convenience.

4.The claimant filed the above said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 30.09.2006.

5.According to the claimant, on 30.09.2006 at about 15.10 hours, while he was riding his Kinetic Honda scooter bearing Registration No.TN 04 K 2550 from West to East on Koyambedu - Poonamallee High Road near Indian Chicken Biryani Center shop, the driver of the lorry bearing Registration No.TN 09 AE 1915 belonging to 1st respondent who was driving the lorry from behind, came in a rash and negligent manner and dashed against the scooter rode by the claimant and caused the accident. In the accident, the claimant sustained grievous injuries all over the body. Therefore, he filed the above said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by them against the respondents, being the owner and insurer of the lorry respectively.

6.The 1st respondent-owner of the lorry filed counter statement and denied various averments made by the claimant. According to 1st respondent, the lorry bearing Registration No.TN 09 AE 1915 is covered by the Insurance Policy issued by the 2nd respondent on the date of accident with Policy No.710400/31/05/02333 for the period from 08.11.2005 to 07.11.2006. Hence, the 1st respondent is not liable to pay any compensation to the claimant. The quantum of compensation claimed by the claimant is exorbitant and prayed for dismissal of the claim petition as against the 1st respondent.

7.The 2nd respondent-Insurance Company filed separate

counter statement and denied all the averments made by the claimant. According to 2nd respondent, the 1st respondent's lorry was not involved in the accident and the 1st respondent's lorry was not insured with the 2nd respondent. The driver of the 1st respondent's lorry was not possessing valid driving license at the time of accident. Hence, the 2nd respondent is not liable to pay any compensation to the claimant. The 1st respondent's lorry was not having valid permit, fitness certificate and other vehicular records at the time of accident. The accident has not occurred as alleged by the claimant and the 1st respondent has not intimated about the accident to the 2nd respondent. The accident has occurred only due to negligence on the part of the claimant and hence, the owner and insurer of the scooter rode by the claimant has to be impleaded as necessary parties. The claimant has to prove his age, avocation, income, disability and period of treatment taken by producing valid documents. The injuries sustained by the claimant are only simple in nature and the injuries mentioned in the claim petition are not correct. In any event, the quantum of compensation claimed by the claimant is highly excessive and prayed for dismissal of the claim petition.

8. Before the Tribunal, the claimant examined himself as P.W.1, Dr. Saravanabavanantham was examined as P.W.2 and Dr. R. Rajappa was examined as P.W.3 and 12 documents were marked as Exs. P1 to P12. The respondents did not let in any oral and documentary evidence.

9. The Tribunal considering the pleadings, oral and documentary evidence let in by the claimant, held that the accident has occurred only due to rash and negligent driving by the driver of the lorry belonging to 1st respondent and directed the respondents to jointly and severally pay a sum of Rs.2,38,000/- as compensation to the claimant.

10. Against the said award dated 22.12.2010 made in M.C.O.P.No.4916 of 2006, the 2nd respondent has come out with an appeal in C.M.A.No.392 of 2013 and not being satisfied with the amounts awarded by the Tribunal, the claimant has come out with an appeal in C.M.A.No.1178 of 2012.

11. The learned counsel appearing for the 2nd respondent contended that the Tribunal has awarded huge amount as compensation without any basis. The claimant as well as P.W.2 & P.W.3/Doctors have not proved that claimant suffered disability as certified by P.W.2 & P.W.3/Doctors. P.W.2 & P.W.3/Doctors are not the Doctors who treated the claimant. The assessment of disability by P.W.2 & P.W.3/Doctors are excessive and without any basis. The claimant failed to prove that he suffered functional disability and suffered loss of earning power. The

Tribunal erred in awarding compensation by adopting multiplier method. The claimant has not taken any continuous treatment and has not filed any treatment records. In the absence of any materials, the award of the Tribunal by fixing 30% disability is excessive. The amounts awarded by the Tribunal towards pain and sufferings, transportation and extra nourishment are also excessive and prayed for setting aside the award passed by the Tribunal and for dismissal of C.M.A.No.1178 of 2012 filed by the claimant.

12.Per contra, the learned counsel appearing for the claimant contended that at the time of accident, the claimant was aged 25 years, working as Sales Executive in Rajendra Guru Corporation, Chennai and was earning a sum of Rs.5,000/- per month. In the accident, the claimant suffered grievous injuries and disability and proved the nature of injuries and disability by examining P.W.2 & P.W.3/Doctors. The Tribunal omitted the disability certificate issued by P.W.3/Doctor and erroneously reduced the percentage of disability assessed by P.W.2/Doctor from 40% to 30%. Both the Doctors examined the claimant and certified that claimant suffered 80% disability. The Tribunal ought to have granted compensation by fixing monthly income at Rs.5,000/- instead of fixing Rs.3,000/- per month for 80% of disability. The claimant is entitled to get compensation separately for disability as well as loss of earning power. The claimant has taken treatment as inpatient for 21 days. Due to the injuries on his head and skull and disability, he lost amenities and reduced chance of marriage. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation and for dismissal of C.M.A.No.392 of 2013 filed by the 2nd respondent-Insurance Company.

13.Heard the learned counsel appearing for the claimant as well as the learned counsel appearing for the 2nd respondent and perused the entire materials on record.

14.From the materials available on record, it is seen that it is the contention of the claimant in the claim petition that in the accident, he suffered severe injuries in the skull and in the right eye. Due to the injuries sustained by him in the accident, he lost his vision in his right eye. To prove the nature of injuries and disability, the claimant examined himself as P.W.1 and examined two Doctors as P.W.2 & P.W.3. P.W.2/Doctor examined the claimant and certified that the claimant suffered 40% disability and issued Ex.P12 - disability certificate. P.W.3/Doctor examined the claimant and issued disability certificate to show that he suffered 40% disability and issued Ex.P11 - disability certificate. From the materials on record, it is seen that P.W.2 - Doctor has assessed 10% disability for taking tablets. The Tribunal has considered Ex.P11/disability

certificate and reduced the percentage of disability to 30% from 40%. The Tribunal omitted to consider Ex.P12/visual disability certificate issued by P.W.3/Doctor. The 2nd respondent-Insurance Company has not let in any contra evidence to disprove the evidence of P.W.2 & P.W.3/Doctors and Exs.P11 & P12/disability certificates. In any event, both P.W.2 & P.W.3/Doctors have assessed the disability for particular parts of the body at 80% disability in total. In view of the same, the disability assessed by P.W.2 & P.W.3/Doctors are converted into whole body and the same is fixed at 27% loss of earning power. The claimant contended that he was working as a Sales Executive in Rajendra Guru Corporation, Chennai and was earning a sum of Rs.5,000/- per month. He failed to prove the said contention. The Tribunal in the absence of any material evidence, fixed a sum of Rs.3,000/- per month as notional income of the claimant. The accident occurred in the year 2006 and the monthly income fixed by the Tribunal is meagre. Considering the age and nature of work done by the claimant, the monthly income fixed by the Tribunal is enhanced to Rs.5,000/- per month, as claimed by the claimant. The claimant was aged 25 years at the time of accident and the correct multiplier applicable as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another], is '18'. Thus, the amount awarded by the Tribunal towards loss of earning power is modified to Rs.2,91,600/- (Rs.5,000/- X 12 X 18 X 27/100). The claimant has taken treatment in the hospital as inpatient for 21 days in two different spells. The Tribunal has not awarded any amount towards attendant charges and damages to clothes. Hence, a sum of Rs.10,000/- is awarded towards attendant charges and Rs.1,000/- towards damages to clothes. Considering the nature of injuries and period of treatment taken by the claimant, the amounts awarded by the Tribunal towards pain and sufferings, transportation and extra nourishment are meagre and hence, the same are enhanced to Rs.15,000/-, Rs.5,000/- and Rs.7,500/- respectively. The amounts awarded by the Tribunal towards loss of income and medical expenses are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning power	1,95,000/-	2,91,600/-	Enhanced
2.	Pain and sufferings	10,000/-	15,000/-	Enhanced

3.	Loss of income	10,000/-	10,000/-	Confirmed
4.	Medical expenses	18,000/-	18,000/-	Confirmed
5.	Extra nourishment	3,000/-	7,500/-	Enhanced
6.	Transportation	2,000/-	5,000/-	Enhanced
7.	Attendant charges	-	10,000/-	Granted
8.	Damages to clothes	-	1,000/-	Granted
	Total	Rs.2,38,000/-	Rs.3,58,100/-	Enhanced by Rs.1,20,100/-

15.The compensation awarded by the Tribunal at Rs.2,38,000/- is hereby enhanced to Rs.3,58,100/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are jointly and severally directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.4916 of 2006 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court No.III, Chennai. On such deposit, the claimant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal.

16.In the result, C.M.A.No.1178 of 2012 filed by the claimant is partly allowed and C.M.A.No.392 of 2013 filed by the 2nd respondent-Insurance Company is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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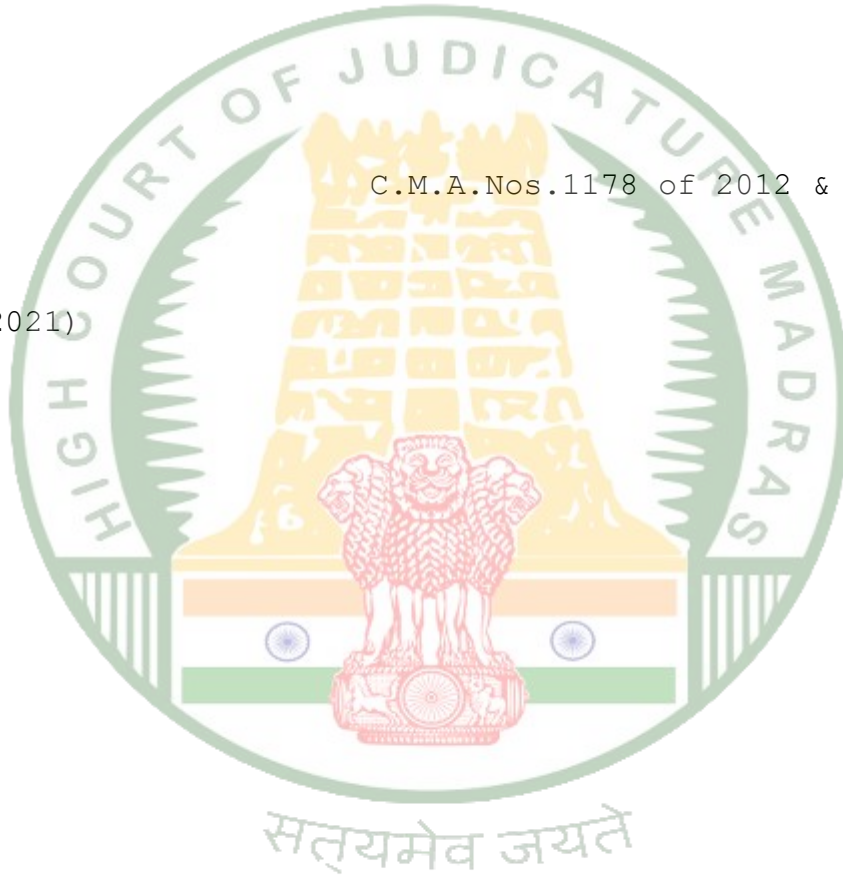
The Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Fast Track Court No.III,
Chennai.

+1cc to Mr.G.Balaji Prasad, Advocate, S.R.No.42822

+2cc to Ms.Elveera Ravindran, Advocate, S.R.No.42702 & 42703

C.M.A.Nos.1178 of 2012 & 392 of 2013

VG1 (CO)
KM(22/04/2021)



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