

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.02.2020

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

CMA.Nos.2162 & 2163 of 2011

and

Cross.Ob.No.80 of 2012

and

M.P.Nos.1&1 of 2011 and 1 & 1 of 2012

C.M.A.No.2162 of 2011

The National Insurance Company Ltd.,
No.751, Anna Salai,
Chennai-600 002. ... Appellant/2nd Respondent

Vs.

1.R.Gopalakrishnan ... 1st respondent/Petitioner

2.M/s.Athipappa Chemicals (P) Ltd.,
A-52 to A-55, PIPDIC Industrial Estate,
Mettupalayam,
Pondicherry. ... 2nd respondent/1st respondent
(R2- set exparte in lower Court)

Prayer in C.M.A.No.2162 of 2011: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Award passed in M.C.O.P.No.1873 of 2003 dated 28.02.2011 by the IV Judge, Court of Small Causes, Motor Vehicle Accidents Claims Tribunal, Chennai.

For Appellant : Mr.S.Arunkumar

For Respondents : No appearance for R1
: Ex-parte R2

C.M.A.No.2163 of 2011

The National Insurance Company Ltd.,
No.751, Anna Salai,
Chennai-600 002. ... Appellant/2nd Respondent

Vs.

1.B.Ganesan ... 1st Respondent/Petitioner

2.M/s.Athipappa Chemicals (P) Ltd.,
A-52 to A-55, PIPDIC Industrial Estate,
Mettupalayam,
Pondicherry. ... 2nd Respondent/1st Respondent
(R2- set exparte in lower Court)

Prayer in C.M.A.No.2163 of 2011: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Award passed in M.C.O.P.No.1874 of 2003 dated 28.02.2011 by the IV Judge, Court of Small Causes, Motor Vehicle Accidents Claims Tribunal, Chennai.

For Appellant : Mr.S.Arunkumar

For Respondents : Mrs.Vasantha mala for R1
: Ex-parte R2

Cross.Ob.No.80 of 2012
in
C.M.A.No.2163 of 2011

B.Ganesan ... Cross objector

Vs.

1.The National Insurance Company Limited,
No.751, Anna Salai,
Chennai-2.

2.M/s.Athipappa Chemicals (p) Ltd.,
A-52 to A-55 PIPDIC Industrial Estate,
Mattupalayam,
Pondicherry.

... Respondents

(R2-Set exparte in Lower Court)

Prayer: Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure, against the decree and Judgment dated 28.02.2011 passed in MCOP.OP.No.1874 of 2003 on the file of the IV Judge, Court of Small Causes, Motor Vehicle Accidents Claims Tribunal, Chennai.

For Cross objector : Mrs.Vasantha mala

For Respondents : Mr.S.Arun Kumar for R1
Ex-parte for R2

COMMON JUDGMENT

The National Insurance Company Limited represented by its Managing Director, Chennai, the second respondent in MCOP.Nos.1873 & 1874 of 2003 on the file of the Motor Accidents Claims Tribunal, IV Judge,Court of Small Causes, Chennai has filed the present appeals questioning the quantum of compensation awarded by the Tribunal. The claimants in the said MCOP viz, C.M.A.No.2163 of 2011 filed the Cross Objection. No.80 of 2012 seeking enhancement of compensation awarded by the Tribunal for the injuries sustained by him in a road accident that took place on 20.12.2002.

2. The parties are referred to as per their ranking before the Tribunal and at appropriate places their ranks in the present Civil Miscellaneous Appeals would also be indicated.

3. The case of the claimants is that on 20.12.2002, while the claimants were travelling in a motorcycle bearing Registration No. TN 10-A-8395 along Vadamalapet Railway Bridge in Renigunta-Chennai National Highways, at about 10.45 am, a lorry bearing Reg.No.PY-01-R-1116 came in a rash and negligent manner and hit the motorcycle, as a result, the claimants sustained grievous injuries all over their body and they were taken to the Tirupathi hospital for taking treatment and they were admitted as in patient from 21.12.2002 to 09.01.2003 for further treatment. Therefore, a claim petition has been filed seeking for a sum of Rs.10,00,000/- each to the claimants.

4. The National Insurance Company Limited contested the claim petition. The learned Motor Accidents Claims Tribunal / IV Judge Court of Small Causes, Chennai, after analysing the evidence on record, awarded a compensation of Rs.8,74,200/- together with interest at the rate of 7.5% per annum to the claimant in M.C.O.P.No.1873 of 2003 and awarded a compensation of Rs.8,45,420/- together with interest at the rate of 7.5% per annum to the claimant in M.C.O.P.No.1874 of 2003.

5. The learned counsel appearing for the claimants contended that the Tribunal had awarded a sum of Rs.8,74,200/- and Rs.8,45,420/- to the claimants even without considering the facts of the case. The case of the claimant in C.M.A.No.2163 of 2011 is that the Tribunal failed to consider the nature of injuries, period of treatment disability suffered and the loss of earning capacity of the claimant. The claimant had sustained "Traumatic Amputation of right leg, Head Injuries, injuries in right hand and multiple injuries all over the body". He was admitted immediately at S.V.R.R.G.G Government Hospital, Tirupatti and Ramachandra Hospital, Chennai wherein he was operated and his right leg was amputated and underwent many operations for other injuries. Till today he is suffering from the above ailment. The amount awarded under various heads are very meagre hence, prays to enhance the amount awarded by the Tribunal.

C.M.A.No.2162 of 2011

6. It is seen that the claimant was working as senior Supervisor in J.K.S.Enterprises and is a land lord and earning Rs.10,000/- per month. Since there is no proof to show the same, as per the precedents, his notional income was fixed at Rs.3,000/- per month. The doctor assessed the disability as 100% and the same is reduced and fixed as 90%. Further, the Tribunal has fixed the multiplier as 18 and awarded a sum of Rs.5,83,200/- ($3000 \times 12 \times 18 \times 90\% = \text{Rs.5,83,200/-}$) towards loss of earning power", which is just and reasonable and the

same is hereby confirmed. The Tribunal has awarded a sum of Rs.25,000/- each towards "Transportation", "Extra Nourishment", "Attender Charges" and "loss of amenities of life" and the same are very reasonable. Hence, this Court is not inclined to interfere with the same. The Tribunal has awarded a sum of Rs.2,000/- towards "Damages to clothes" and the same is hereby confirmed. After, considering the medical bills and receipts, the Tribunal has awarded a sum of Rs.1,39,000/- towards "medical expenses", which is hereby confirmed. The Tribunal has awarded a sum of Rs.50,000/- towards "pain and sufferings", which is just and reasonable and the same is hereby confirmed. The compensation amount awarded by the Tribunal under various heads are extracted here under:

Sl. No.	Heads	Amount
1.	Transportation	Rs.25,000/-
2.	Extra Nourishment	Rs.25,000/-
3.	Damages to Clothes	Rs.2,000/-
4.	Medical Expenses	Rs.1,39,000/-
5.	Attender Charges	Rs.25,000/-
6.	Loss of amenities of life	Rs.25,000/-
7.	Pain and Sufferings	Rs.50,000/-
8.	Loss of earning power	Rs.5,83,200
	Total	Rs.8,74,200/-

This amount would carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. Since, the amount awarded by the Tribunal are just and reasonable, this Court does not find any reason to interfere with the award passed by the Tribunal.

7. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

C.M.A.No.2163 of 2011

and

Cross.Objection.No.80 of 2012

8. It is seen that the C.M.A.No.2163 of 2011 has been filed by the Insurance Company to set aside the order passed in M.C.O.P.No.1874 of 2003 and the Cross Objection has been filed by the claimant to enhance the award amount awarded by the Tribunal in M.C.O.P.No.1874 of 2003.

9. It is seen that, at the time of accident the claimant was aged about 26 years. In Ex.P23 copy of driving license, the date of birth is mentioned as 04.06.1975. The accident took place on 20.10.2002. According to the claimant, at the time of accident, he was working as Executive in M/s.Brent Wood Investment and earning a sum of Rs.6,000/- per month. To prove the avocation and income, his salary certificate is marked as Ex.P21 which shows that he was drawing a monthly salary of Rs.4,950/- . Hence, the Tribunal has fixed the income of the claimant as Rs.4,950/- . P.W.5/Doctor has assessed his disability as 60% for amputation of right leg and the same was accepted by the Tribunal. The Tribunal fixed the multiplier as 18 and awarded a sum of Rs.6,41,520/- (4950 X 12 X 18 X 60% = Rs.6,41,520/-) towards "loss of earning power", which is just and reasonable and the same is hereby confirmed. The Tribunal has awarded a sum of Rs.25,000/- each towards "transportation", "Extra Nourishment", "attender charges" and "loss of amenities of life" the same are hereby confirmed. The Tribunal has awarded a sum of Rs.2,000/- towards "damages to clothes" the same is also hereby confirmed. After considering the medical bills and receipts the Tribunal has awarded a sum of Rs.51,900/- towards "Medical expenses", the same is confirmed hereby. The Tribunal has awarded a sum of Rs.50,000/- towards "Pain and sufferings", the same is also hereby confirmed. Taking note of the fact that the claimant has lost his entire marital life because of this accident, this Court is inclined to award a sum of Rs.50,000/- towards "loss of Marital Life" in addition to the amount awarded by the Tribunal. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl. No.	Heads	Amount
1.	Transportation	Rs.25,000/-
2.	Extra Nourishment	Rs.25,000/-
3.	Damages to Clothes	Rs.2,000/-
4.	Medical Expenses	Rs.51,900/-
5.	Attender Charges	Rs.25,000/-
6.	Loss of amenities of life	Rs.25,000/-
7.	Pain and Sufferings	Rs.50,000/-
8.	Loss of earning power	Rs.6,41,520/-
9.	Loss of marital life	Rs.50,000/-
	Total	Rs.8,95,420/-

This amount would carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

10. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. The Cross objection petition is partly allowed and the connected miscellaneous petitions are closed.

(ii) The compensation amount is enhanced from Rs.8,45,420/- to Rs.8,95,420/-. The claimant is directed to pay the necessary court fee for the enhanced compensation amount within a period of six weeks from today and the Registry is directed to draft the decree only after the payment of Court fee.

(iii) The Insurance Company is directed to pay the enhanced compensation amount together with interest at the rate of 7.5% per annum on Rs.8,95,420/- from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order to the credit of M.C.O.P.No.1874 of 2003. On such deposit being made by the Insurance company, the claimant is at liberty to withdraw the same.

Sd/-

Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

sbn

To

The Motor Accident Claims Tribunal,
IV Court of Small Causes,
Chennai.

+2cc to Mr.UM.Ravi Chandran, Advocate SR.No.9929, 9930

CMA.Nos.2162 & 2163 of 2011

and

Cross.Ob.No.80 of 2012

and

M.P.Nos.1&1 of 2011 and 1 & 1 of 2012

RSI (CO)

GMV (30/04/2021)