

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.3545 of 2013

Royal Sundaram Alliance Insurance Co. Ltd.,
Door No.8/H-1, Mangalam Building,
4 Roads, Salem-636 009. Appellant /3rd Respondent

Vs

1. K.Saravanakumar1st Respondent/Petitioner
2. R.Silambarasan
3. A.Alamelu2 & 3 Respondents/Respondents 1 & 2
(R2 & R3 exparte in Tribunal)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 21.12.2012 made in MCOP.No.158 of 2012 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Coimbatore.

For appellant : Mr.E.Rajadurai

For respondents : Not ready in notice reg. R1 to R3

J U D G M E N T

(This Appeal was taken up for hearing through Video Conferencing)

This appeal has been filed by the insurance company challenging the award dated 21.12.2012 passed by the Motor Accident Claims Tribunal (Special Subordinate Court) Coimbatore in MCOP.No.158 of 2012.

2. The first respondent sustained injuries on 06.02.2010 as a result of an accident caused by a lorry, bearing registration No. KA 01 Ad 2788 owned by the third respondent and insured with the appellant/insurance company. The first respondent/injured claimant preferred a claim before the Motor Accident Claims Tribunal, in MCOP. No.158 of 2012 for the injuries sustained by him as a result of the accident.

3. The Motor Accident Claims Tribunal, under the impugned award dated 21.12.2011 passed in MCOP.No.158 of 2012, directed the respondents to pay the first respondent/claimant a compensation of Rs.5,95,945/- together with interest and costs as detailed hereunder:-

Sl.No.	Heads	Awarded by the Tribunal (Rs.)
1	Permanent Disability	3,57,000/-
2	Loss of earning	25,000/-
3	Transportation	5,000/-
4	Extra nourishment	5,000/-
5	Pain and suffering	20,000/-
6	Medical bills	1,83,945/-
	Total	5,95,945/-

4. The appellant/insurance company has challenged the award dated 21.12.2011 on the following grounds:-

a. They are not liable to compensate the claim, since the victim was a rider of the two wheeler bearing Registration No.TN 39 M 0735 and he himself was at fault; and

b. The quantum of compensation awarded by the Tribunal under the impugned award is excessive.

5. Heard Mr.E.Rajadurai, learned counsel for the appellant/Insurance company. Since this Court is going to confirm the award, notice to the respondents 1 to 3 is dispensed with.

6. Before the Tribunal, the first respondent/claimant has filed thirteen documents, which were marked as Exs.P1 to Ex.P13 and three witnesses were examined on his side, namely, the first respondent himself as PW1, Dr.K.Gajendran, Doctor, who examined him as PW2 and Mr.S.Murugan, an eyewitness to the accident as PW3. On the side of the appellant/insurance company, neither any witness was examined nor any document filed before the Tribunal.

7. As regards the first contention raised by the appellant/insurance company with regard to its liability, the Tribunal has rejected the said contention on the ground that even though the FIR was registered against the driver of the lorry (insured vehicle), the same has been closed as 'mistake of facts', the oral evidence adduced by the first respondent/claimant as well as the eyewitness to the accident (PW3) clearly reveal that only due to the rash and negligent driving by the driver of the lorry (insured vehicle) the accident had happened. The first respondent/claimant has also filed a certified copy of the rough sketch issued by the Police Department, which was marked as Ex.P2, which will clearly reveal that the accident happened only due to the fault of the driver of the insured vehicle. Any Motor Accident Claim is adjudicated based on preponderance of probabilities. In the case on hand, as rightly observed by the Tribunal, the preponderance of probabilities, for the cause of the accident is only on the part of the driver of the insured vehicle.

8. This Court has perused the evidence and materials available on record and is in agreement with the view taken by the Tribunal. Therefore, the first contention raised by the appellant questioning its liability is rejected by this Court.

9. As regards the second contention raised by the appellant with regard to the quantum of compensation is concerned, the compensation awarded by the Tribunal under the impugned award cannot be considered to be excessive for the following reasons:

a. As seen from the claim petition filed before the Tribunal, the first respondent/claimant was doing the business of selling Appalam/Pappadam, chocolates and similar items.

b. In the claim petition, he has also pleaded that he is a self employed and was earning not less than Rs. 500/- per day. Since no documentary evidence was been produced by the first respondent/ claimant, the Tribunal has assessed the notional monthly income of the first respondent/claimant at Rs.5,000/-. The year of the accident is 2010. After giving due consideration to the year of the accident, this Court is of the considered view that the assessment made by the Tribunal with regard to the notional monthly income of the first respondent/claimant cannot be considered as unreasonable.

10. The respondent has sustained the following injuries as a result of the accident:

'Multiple fracture in frontal bone, nasal bone fracture, fracture maxillary bone, fracture mandible, fracture both zygomatic bones and orbital roof fracture, blunt injury in his abdomen, sigmoid mesentery tear with impending gangrene of adjacent bowel, teeth were broken, left eye damaged i.e. slightly came out from its normal position, bowel damaged and cut. He also sustained multiple injuries all over his body.'

11. The disability that he has suffered due to the aforesaid injuries are as follows:

'For the fractures in his head/nasal bone/maxilla etc., 9 plates have been inserted in the fracture places. Since teeth were broken, they were tied up with wiring/nailing. Hence, tube is fixed in his gullet (உணவுக் குழல்) near throat outside the body and through the said tube only liquid diet was given for about 28 days from the date of accident. Near his chest right side through syringe only, drips (glucose) were given during the period of his hospitalization. Since his intestines (bowels - குடங்கள்) were damaged inside his stomach, instead of passing faeces (மலம்) through anus (குதம்) and urine (சிறுநீர்) through urethra (சிறுநீர்ப்புறவழி) they were and are passed even now through a tube fixed in his body outside near his stomach which is tied up with wires. This is

unimaginable. Due to the multiple fractures in his frontal bone, nasal bone fracture, fracture maxillary bone, fracture mandible, fracture sphenoid bone, fracture ethmoid bone, fracture both zygomatic bones and orbital roof fracture and due to fixation of plates in those places and also due to breakage of teeth, still the petitioner is not able to take solid food, but taking liquid food only. As stated above, since the petitioner has to pass faeces (மலம்) and urine (சிறுநீர்) through a tube fixed in his body outside near his stomach which is tied up with wires, it is not possible for him to take solid food for a considerable period. Due to fracture above the left eye-brow, his left eye was damaged i.e. Slightly came out from its normal position and hence he is suffering from eye sight left side. He has now become a permanently disabled person. All these facts will clearly go to show that he cannot do his business for a very long period. Thus, he has lost his income and suffering a lot. The sufferings and sorrows undergoing by the petitioner cannot be explained in words and there is no words to explain.''

12. The nature of injuries as well as the disability suffered by the first respondent/claimant has not been disputed by the appellant/insurance company before the Tribunal as seen from the evidence available on record. They have not filed any documentary evidence or let in any oral evidence to disprove the contentions of the first respondent/claimant as regards his injuries. The Doctor has also assessed the whole body disability of the first respondent/claimant at 35% as seen from the disability certificate (Ex.P12). The Doctor, who issued the disability certificate (Ex.P12) has also been examined before the Tribunal as a witness by the first respondent/claimant as PW2. The Tribunal has awarded a total compensation of Rs.5,95,945/- to the first respondent/claimant.

13. After giving due consideration to the nature of injuries sustained by the first respondent/claimant and the disability suffered by him due to the accident as well as his age and avocation, the compensation awarded by the Tribunal under various other heads as indicated above, cannot be considered to be excessive as alleged by the appellant/Insurance Company. No evidence has also been produced by the appellant/Insurance Company before the Tribunal as alleged in this appeal with regard to the alleged reimbursement of medical bills amounting to Rs.1,05,050/- to the first respondent/claimant, out of the total sum of Rs.1,83,945/- awarded by the Tribunal towards reimbursement of medical bills.

14. Therefore, the second contention raised by the first appellant that the quantum of compensation awarded by the

Tribunal is excessive, is also rejected by this Court.

Conclusion:

15. This Court is of the considered view that the grounds raised by the appellant/insurance company in this appeal does not deserve any merit. Accordingly, this Appeal shall stand dismissed.

16. The Appellant/Insurance company is directed to deposit the Award amount together with interest from the date of claim till the date of deposit and costs to the first respondent/claimant as assessed by the Tribunal after deducting the amount, if any, already deposited to the credit of MCOP.No.158 of 2012 within a period of four weeks from the date of receipt of a copy of this Judgment.

17. On such deposit being made, the Tribunal is directed to transfer the compensation amount to the bank account of the first respondent/claimant through RTGS within a period of two weeks thereafter. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor accident Claims Tribunal
Special Subordinate Judge, Coimbatore.

2.The Section Officer,
V.R.Section,
High Court, Madras. सत्यमेव जयते

C.M.A.No.3545 of 2013

GMR (CO)
CB(08/01/2021)

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