

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 04.09.2020

JUDGMENT DELIVERED ON : 16-10-2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

CIVIL MISCELLANEOUS APPEAL NO.3284 OF 2019
AND
CIVIL MISCELLANEOUS APPEAL NO.679 OF 2020

C.M.A.No.3284 of 2019

B.Stalin

.. Appellant/
Petitioner

Versus

1. R.Maheswari

2. National Insurance Co. Ltd.,
No.190, Anna Salai
Chennai - 600 006

.. Respondents/
Respondents

C.M.A. No. 679 of 2020

National Insurance Co. Ltd.,
No.190, Anna Salai
Chennai - 600 006

.. Appellant/
2nd Respondent

Versus

1. B.Stalin

.. 1st Respondent/Petitioner

2. R.Maheswari

.. 2nd Respondent/1st Respondent

Common Prayer:-

Civil Miscellaneous Appeals filed under Section 173 of The Motor Vehicles Act against the Order and Decree dated 22.03.2019 passed in MACTOP No. 1642 of 2014 on the file of II Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

C.M.A.No.3284 of 2019

For Appellant : Mr.K.Suryanarayanan
For Respondents : Mr.M.Krishnamurthy for R2
R-1 set ex-parte before the Tribunal

C.M.A.No.679 of 2020

For Appellant : Mr.M.Krishnamurthy
For Respondents : Mr.K.Suryanarayanan for R1
R-2 set ex-parte before the Tribunal

COMMON JUDGMENT

R.Subbiah, J

Both these appeals are filed assailing the Order and Decree dated 22.03.2019 passed in MACTOP.No.1642 of 2014 on the file of II Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

2. Not being satisfied with the award passed by the Tribunal in MACTOP No.1642 of 2014 on 22.03.2019, the claimant has filed C.M.A.No.3284 of 2019 for enhancement of compensation amount.

3. As against the very same award dated 22.03.2019, the Insurance Company has filed CMA No.679 of 2020 questioning the quantum of compensation awarded by the Tribunal to the claimant.

4. Thus, both the appeals arise out of a common Judgment passed by the Tribunal on 22.03.2019. The parties to these appeals are one and the same, besides common arguments have been advanced by the counsel for both sides. Therefore, these appeals are taken up for hearing together and are disposed of by this common judgment.

5. For the sake of convenience, the parties shall be referred to as per their rank in C.M.A. No. 3284 of 2019. The appellant in the said appeal shall hereinafter be referred as "claimant" and the second respondent therein as "Insurance Company" .

6. According to the claimant, on 24.12.2013 at about 00.15 hours when he was riding his motor cycle bearing Registration No. TN 25 AA 3834 at Kalliamman Koil Street, in front of Nanas Guest House, Koyambedu, the car bearing Registration No. TN 22 BP 9826 came in the opposite direction in a rash and negligent manner and dashed against the motor cycle driven by him. In the

impact, the claimant sustained grievous head injury, fracture in his right leg, injury in his spinal cord, fracture in his skull, facial injury and multiple internal injuries all over the body. He was taken to Kilpauk Medical College Hospital, Chennai for treatment, from where he was shifted to Vijaya Health Centre, Vadapalani, Chennai for further treatment. According to the claimant, at the time of accident, he was 28 years old and working as Senior Operative Executive in M/s.High Power Advertising Agency and drawing a sum of Rs.20,000/- per month. It is his further contention that due to the injuries he had sustained in the accident, he was not able to discharge his work, as he was doing before. He also claimed that the driver of the car is responsible for the accident and therefore, he filed the claim petition seeking a sum of Rs.1,00,00,000/-.

7. The Insurance Company resisted the claim petition by filing a counter statement before the Tribunal and contended that there was no negligence on the part of the driver of the car at the time of accident. It was the claimant who had driven the two wheeler in a rash and negligent manner and caused the accident. The Insurance Company also denied the age, income and other details furnished by the claimant in the claim petition. In effect, it was specifically contended that the compensation amount claimed at Rs.1 crore is excessive and onerous and prayed for dismissal of the claim petition.

8. Before the Tribunal, in order to prove the averments made in the claim petition, the claimant examined himself as PW1 and Dr.Saravanabavanandam as PW2. The claimant has also marked Exs. P1 to P9 on his side. On behalf of the respondents in the claim petition, neither any witness was examined nor document was marked.

9. The Tribunal, on appreciation of the oral and documentary evidence filed on behalf of the claimant concluded that Ex.P1 - First Information Report was filed only against the driver of the car insured with the appellant/Insurance Company. Even during the cross-examination of PW1, the Insurance Company could not effectively bring out anything to show that there was any negligence attributable on the part of the claimant. Therefore, it was held that the driver of the car alone was responsible for the accident and as such, the Insurance Company, as Insurer of the Car, is liable to pay the compensation amount.

10. As regards the quantum of compensation, the Tribunal disbelieved the disability assessed by the Doctor/PW2 at 55% and relied on the disability assessed by the Medical Board. Further, the Tribunal had taken note of the period of treatment in the hospital from 25.12.2013 to 07.02.2014, the expenses incurred by the claimant towards hospitalisation and other

documentary evidence, concluded that by reason of the injuries sustained by the claimant, he could not discharge his normal work as before. Further, by taking note of Ex.P6, pay slips produced by the claimant, which is also reflected in Ex.P7, Bank Statement, the Tribunal concluded that the claimant was in receipt of Rs.15,000/- as net salary per month through his employment. Accordingly, the Tribunal awarded a sum of (Rs.15,000 x 12 x 16 x 50/100) Rs.14,40,400/- towards loss of earning capacity by adopting multiplier method. Similarly, on the basis of Ex.P4 series produced by the claimant to show that he had incurred a sum of Rs.7,04,796/- towards food and nutrition, the Tribunal awarded a sum of Rs.7,10,000/- thereof. The Tribunal also awarded various other amounts towards non-pecuniary compensation and arrived at a total sum of Rs.23,50,000/- as compensation.

11. Assailing the order passed by the Tribunal, the learned counsel for the claimant/appellant in CMA No. 3284 of 2019 contended that the amount awarded by the Tribunal is not commensurate with the nature of injuries and the consequent disablement suffered by the claimant. It is his contention that the claimant was admitted in the hospital from 25.12.2013 to 07.02.2014 for a period of about 45 days as in-patient. The claimant also examined PW2, Doctor, who assessed his disability at 55%. However, the claimant was sent to Medical Board constituted at the Rajiv Gandhi Government Hospital for assessment of disability suffered by him. The Board has opined that due to the injuries sustained by the claimant, there is a loss of average intelligence of the claimant and assessed the disability at 50%. According to the learned counsel for the claimant, the Tribunal ought to have taken note of the disability assessed by the Medical Board with respect to the injuries sustained by the claimant in his head and also the various other injuries sustained, to arrive at 100% disability. Further, the claimant has produced Exs. P5 and P6 as a proof of his income, however, the Tribunal had taken only a sum of Rs.15,000/- without any basis. Similarly, the amount awarded by the Tribunal towards loss of amenities, transportation and extra nourishment are meagre and they required to be enhanced adequately.

12. Per contra, the learned counsel appearing for the Insurance Company vehemently contended that the Tribunal disbelieved the evidence of PW2/Doctor examined on the side of the claimant. The Tribunal placed reliance on the deposition of the PW2/Doctor, who had stated that he did not treat the claimant and he had only seen the discharge certificate issued to him to assess his disability at 55%. Therefore, the claimant was referred to Medical Board for examination. The Medical Board, under Ex.C1, Certificate, had categorically opined that

on 20.04.2018, the claimant appeared and they have examined him clinically. It was further stated that the claimant does not come under "disabled category" at all and the clinical psychological report indicates his "Intelligence Quotient" (IQ) as below 75. The Board therefore, assessed the disability of the claimant only at 20%. However, the opinion rendered by the Medical Board was also rejected by the Tribunal and the disablement of the claimant was assessed at 50%. In this context, the learned counsel for the appellant produced a copy of the compilation titled "Assessment and Certification" edited by Dr.Ratnesh Kumar, Director, National Institute for the Orthopaedically Handicapped to contend that, if a person's IQ is assessed to be below 75%, then his IQ is construed to be borderline mental disability and in such event, his disability need not be treated as a permanent disability warranting compensation to be awarded on the basis of multiplier method. To strengthen this submission, the learned counsel for the appellant placed reliance on the decision of a Division Bench of this Court in the case of the New India Assurance Co. Ltd., Branch Office, Door No. 66-C, North Car Street, Tiruchengode Vs. Boopathy Kannan and two others, reported in 2013 (1) TN MAC 445, wherein, it was held as follows:-

"9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence; (i) Whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement; (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability, then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability, then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the Claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his future capacity."

13. By placing reliance on the above decision, it is contended by the learned counsel for the appellant/Insurance

Company that the Tribunal has not concluded as to whether the disability said to have suffered by the claimant would affect his earning capacity. However, in para No.12, it was concluded that the injuries had affected the claimant's speaking ability, besides, his bones are fractured and nailings were done. Such a conclusion had been arrived at by the Tribunal on its own without any supporting evidence. Therefore, according to the learned counsel for the appellant/Insurance Company, the Tribunal proceeded to award compensation by resorting to multiplier method without any basis. Thus, it is the vehement contention of the learned counsel for the Insurance Company that the assessment of compensation by the Tribunal by resorting to multiplier method, is not warranted in the facts and circumstances of the case, when the disability of the claimant was assessed by the Medical Board only at 20%. The Tribunal has not proceeded to award compensation on the basis of the actual disability suffered by the claimant, but it had awarded excessive amount as compensation under the head loss of amenities, transportation and extra nourishment and therefore, he prayed for setting aside the award passed by the Tribunal.

14. We have carefully considered the submission of the counsel for both sides and perused the materials placed on record, including the award passed by the Tribunal.

15. At the outset, it has to be stated that the appellant/Insurance Company has filed C.M.A.No.679 of 2020 only against the quantum of compensation awarded by the Tribunal. The appellant/Insurance Company has not questioned their liability to pay the compensation amount.

16. For the purpose of awarding compensation to the claimant, the Tribunal assessed the evidence of PW2/Doctor. The Tribunal disbelieved the evidence of the Doctor/PW2 on the ground that he has not treated the claimant at any point of time and he assessed his disability only on the basis of discharge certificates of the claimant furnished to him. We are also of the view that when the Doctor did not treat the claimant and had assessed the disability only on the basis of the discharge summary issued to the injured, the Tribunal is right in refusing to accept such deposition of PW2 as trustworthy.

17. In the light of the unacceptable testimony of PW2/Doctor, the Tribunal referred the claimant to the Medical Board. In this regard, the Tribunal has observed in para No.11 of the Judgment as follows:-

"11. Based on the above evidence this Tribunal holds that the evidence of PW2 is liable to be rejected. During the course of mediation, the Doctor

without having him examined clinically had issued a disability certificate Ex.C1, assessing the disability at 20% whole body. It is also not issued on the basis of any acceptable assessment. Therefore, it also cannot be accepted as a valid assessment. Thereafter, the petitioner was referred to Medical Board, Rajiv Gandhi Government Hospital, for assessment of disability. They had issued a certificate which was marked as Ex.C2. It is not disputed by the respondent. At the first instance the preamble reads as "Thiru. B. Stalin, II Judge MACT Court of Small causes, Chennai - 104 MCOP No. 162 of 2014 has appeared before the Regional Medical Board..... on 20/04/2018." Then it is noted that on assessment ".....He does not come under disabled category....." "Clinical psychological report 23.04.2018. IQ is 75 i.e., below average of intelligence....." The Certificate was signed by the Member, Senior Civil Surgeon on 20.04.2018. The Petitioner has appeared on 20.04.2018 and the Civil Surgeon has also signed the Certificate on 20.04.2018, but the Clinical Psychological Report was received only on 23.04.2018. This shows that the certificate has been signed 3 days prior to the receipt of the Clinical Psychological Report. When the Board has found that he does not come under the disabled category, they had issued a certificate holding him to be disabled by 50%. Hence, this Tribunal is inclined to note the injuries and treatment given as found in the discharge summary, which shows that even at the time of discharge he required physiotherapy and speech therapy. Injuries sustained is head injury. It shows that even his speech has been affected because of the accident. Therefore, this Tribunal holds that the petitioner has sustained 50% disability because of the accident that he had suffered on 24.12.2013."

18. It is evident from the above observations of the Tribunal that the Medical Board itself has assessed the disability of the claimant at 50%. It is further found that due to the injuries sustained in the accident, the speech of the claimant had impaired and it warrants continued treatment to be provided to him. The Tribunal also referred to the fact that the claimant suffered fracture of bone and nailings were done to him during the period of hospitalisation. It is in those circumstances, the Tribunal resorted to award compensation by adopting multiplier method and we see no reason to interfere

with such a conclusion arrived at. We also find that the claimant was hospitalised for atleast 45 days as in-patient. In support of the expenses incurred by the claimant, he has also produced Ex.P4, medical bills to substantiate that he had spent Rs.7,04,796/- towards food and nutrition and based on Ex.P4, the Tribunal awarded a sum of Rs.7,10,000/- as compensation. In effect, the Tribunal, by analysing the oral and documentary evidence, has rightly assessed the compensation payable to the claimant, which, in our opinion, is commensurate with the nature of injuries sustained by the claimant. In such circumstances, we are of the view that there is no necessity to either enhance or reduce the compensation amount awarded by the Tribunal in favour of the claimant.

19. In the result, we confirm the Judgment and Decree dated 22.03.2019 passed in MACTOP No.1642 of 2014 on the file of II Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai. Consequently, both the Civil Miscellaneous Appeals fail and they are dismissed. No costs. Consequently, connected CMP No.4065 of 2020 in CMA No.679 of 2020 is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

cs/rsh

To

1. The Motor Accidents Claims Tribunal,
The II Judge (Court of Small Causes),
Chennai.
2. The Section Officer,
V.R. Section,
High Court, Madras.

+2cc to Mr.M.Krishnamurthy, Advocate, S.R.No.34537 & 34538
+1cc to Mr.K.Suryanarayanan, Advocate, S.R.No.34490

CMA.No.3284 of 2019
and CMA.No.679 of 2020

AD(CO)
CS/17/06/2021