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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN

C.M.A.No.4391 of 2019

Muthusamy (died)

1. Chinthamani
2. M.Narasimharaj
3. Hemalakshmi

...Appellants/Petitioners

Vs.

1. N. Mahendran
2. Iffco-Tokio General Insurance Co.Ltd.,
Tulsi Towers,
3rd floor, T.V.Samyroad
R.S.Puram, Coimbatore.

...Respondents/Respondents

Cause title accepted vide Court order dated 04.09.2019 made in CMP.No.18834 of 2019 in CMA SR.No.85186 of 2019 (RMDJ)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.11.2017 made in M.C.O.P.No.476 of 2013 on the file of the Motor Accidents Claims Tribunal and Chief Judicial Magistrate, Coimbatore.

For Appellant : Mr.C.Veera Raghavan

For Respondents : No appearance for R1

Mr.J.Michael Visuvasam for R2

J U D G M E N T

The matter is heard through "Video Conferencing".

2. This Civil Miscellaneous Appeal has been filed against the award dated 20.11.2017 made in M.C.O.P.No.476 of 2013 on the file of the Motor Accident Claims Tribunal and Chief Judicial Magistrate, Coimbatore.



3. Originally, the M.C.O.P.No.476 of 2013 on the file of the Motor Accidents Claims Tribunal and Chief Judicial Magistrate, Coimbatore was filed by one Muthusamy (since deceased) seeking compensation for a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 22.05.2011. The appellants 1 to 3 are the legal heirs of the deceased.

4. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the two wheeler bearing Registration No.TN 37 Y 3071. The 1st respondent, being the owner of the said two wheeler, is liable for the act of the deceased Driver, who has driven the said two wheeler at the time of accident and since the policy was also in force and within the period of coverage, the second respondent-Insurance Company, being the insurer of the two wheeler was directed to pay a sum of Rs.5,31,460/- as compensation to the petitioner and to recover the same from the 1st respondent who is the owner of the vehicle.

5. Not being satisfied with the amount awarded by the Tribunal, the appellants (legal heirs) have come out with the present appeal seeking enhancement of compensation.

6. On 22.05.2011, the claimant along with his wife came to Ambal Hospital at Malumichampatti and when he came from west to east to Ambai Coimbatore main road while crossing the main road and reached the Pharmacy shop named "Sudha Pharmacy" a motor cycle bearing Reg.No. TN 37 Y 3071 driven by one K.Vijayakumar came from south to north in a rash and negligent manner, without following the traffic rules and regulations dashed against the petitioner, as a result the petitioner was thrown away and fell down on the road and sustained grievous injuries on his head, hip and abrasions all over his body. Immediately, the injured petitioner was taken to Sree Abirami Hospital for first aid and shifted to Ganga Hospital, Coimbatore and took treatment and discharged on 01.06.2011. Again, the petitioner was admitted at V.R.Hospital, Vinayagapuram, Coimbatore and discharged on 21.07.2011. Due to uncontrolled diarrhea, the petitioner was admitted at Kovai Medical Centre, Coimbatore as inpatient on 21.07.2011 and took treatment and discharged on 16.10.2011 i.e., 87 days. On the same day, the petitioner was admitted in Ahalia Ayurveda Medical College Hospital at Kozhipara, Palakkad and discharged on 22.10.2011. On 23.10.2011, the petitioner was admitted in Ashwin Hospital for



involuntary urination and after a month treatment he was discharged on 22.11.2011. Due to pain and catheter problem, the petitioner was admitted at Sree Reshmika Hospital, Sundarapuram and he was continuing his treatment as inpatient and out patient. Totally the petitioner took treatment as inpatient for 200 days and spent more than Rs.5,00,000/- as medical expenses. The Chettipalayam Police has registered a case against the driver of the two wheeler bearing Reg.No.TN 37 Y 3071 under Cr.No.649/2011 under Section 279 and 337 of IPC who died subsequently. But for the rash and negligent driving of the driver of two wheeler bearing Reg.No.TN 37 Y 3071 the accident would not have occurred. The 1st respondent is the owner and the second respondent is the insurer of the two wheeler. Therefore, the second respondent-Insurance Company, being the insurer of the two wheeler is directed to pay a sum of Rs.5,31,460/- as compensation to the petitioner and to recover the same from the 1st respondent who is the owner of the vehicle.

7. The learned counsel appearing for the appellants contended that in the accident, Muthusamy sustained injuries in head, neck and pain in both upper limbs and unable to move both lower limbs. The petitioner took treatment at different hospitals and he was in hospital for nearly 187 days which is evident from Ex.P.7 to Ex.P.18. The Tribunal failed to consider that the deceased appellant (Muthusamy) was taking continuous treatment from the date of accident till his death due to the accident, hence the Tribunal ought to have adopted reasonable compensation and also failed to adopt multiplier method while awarding compensation. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

8. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that once the person died cause of action arose and multiplier method cannot be adopted after the award has been passed and this Court can only consider pecuniary loss and cannot apply multiplier method. Even going by the records, more so, discharge summary issued by the hospital the age of the claimant was 70 years but contended that the age of the claimant was 62 years on the date of accident which is not correct. Hence, the award of the Tribunal is perfect and in order and does not require any interference by this Court and prayed for dismissal of the appeal.

9. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

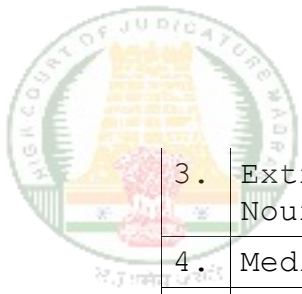


10. From the award passed by the Tribunal, it is seen that the deceased Muthusamy met with a road accident on 22.05.2011 and sustained grievous injuries all over his body. The injured was in the hospital for 187 days. The Tribunal has passed an award granting compensation of Rs.5,31,460/- under different heads. On 20.11.2018, Muthusamy passed away. The learned counsel for the appellants contended that the compensation should have been awarded by applying multiplier method and that the claimant was in the hospital for 187 days. The learned counsel for the Insurance Company submitted that once the person dies the cause of action arose and multiplier method cannot be adopted after the award has been passed and that the Court can consider only grant of pecuniary damages and cannot apply the multiplier method. Even going by the records, more so, discharge summary issued by the hospital, the claimant age was 70 years, but, contended that the age of the claimant was 62 years on the date of accident, which is not correct. Hence, the award of the Tribunal is perfectly in order and does not require any interference by this Court.

11. The Tribunal has considered Ex.P.22, Ex.P.23, Ex.P.24 and Ex.P.25 and correctly rejected that no compensation could be paid under the head loss of income though the petitioner was doing agricultural work after retirement.

12. Taking note of the injuries and long hospitalization and considering the facts and circumstances of the present case on hand, loss of income in the present case has to be granted. Fixing the notional income as Rs.6,000/- p.m. and considering that the claimant was in the hospital for many months, compensation of Rs.54,000/- is granted under the head loss of income. As stated supra the claimant was in the hospital for 187 days and the injuries clearly show that for 187 days the claimant would have been under the assistance of an attender and the attender would have made several visit to the hospital apart from Transport charges. 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.	Pain and sufferings	50,000/-	50,000/-	Confirmed
2.	Attender Expenses	30,000/-	1,00,000/-	Enhanced



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3.	Extra Nourishment	50,000/-	1,00,000/-	Enhanced
4.	Medical Bills	2,81,460/-	2,81,460/-	Confirmed
5.	Transport expenses	20,000/-	50,000/-	Enhanced
6.	Permanent partial disability @ 50% Rs.2,000/- per percentage	1,00,000/-	1,00,000/-	Confirmed
7.	Loss of income	-	(Rs.6,000x9mont hs) 54,000/-	Enhanced
	Total	Rs.5,31,460/-	Rs.7,35,460/-	Enhanced by Rs.2,04,000/- -

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,31,460/- is hereby enhanced to Rs.7,35,460/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the enhanced 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.476 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Coimbatore. On such deposit, the first appellant/wife is permitted to withdraw the entire enhanced 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. The appellant is directed to pay the necessary Court fee, if any on the enhanced amount of compensation now determined by this Court. As far as pay and recovery is concerned award of the Tribunal is not disturbed. No costs.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar



1. The Motor Accidents Claims Tribunal
and Chief Judicial Magistrate, Coimbatore.

2. The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.C.Veeraraghavan, Advocate sr 39530.

+1 CC to Mr.J.Michael Visuvasam, Advocate sr 39573.

C.M.A.No.4391 of 2019

SJ(CO)
SP(25/02/2022)