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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.3052 of 2017
and
C.M.P.Nos.18528 of 2017

The Branch Manager,
National Insurance Co. Ltd.,
Branch Officer,
Second Floor, North Car Street,
Opposite old Bus stand,
Tiruchengodu, Namakkal District.

... Appellant

Vs

1.Pradeep Raja,
Son of J.K.Balasubramaniam,
Rep. by his next friend guardian
Father J.K.Balasubramaniam,
Son of Kumarasamy,
1/1, Sengattu Thottam,
Bangalapudur Road,
Karattadipalaym Post,
Gobi Taluk, Erode District,
(As per the orders in I.A.1039/13 dated 22.8.2013)

2.P.Vadivel,
S/o.Ponnusamy,
326, Andipalayam,
Mylambadi Village,
Bhavani Taluk, Erode District.

3.The President,
K.S.R.College of Engineering,
Kutchipalayam,
Thokkavadi Post,
Thiruchengode, Namakkal District.

4.Government of Tamil Nadu,
Represented by its Secretary,
Home Department,
St. George Fort, Chennai.



5.The Director General of Police,
DGP Office, Mylapore,
Chennai.

(R4 and R5 suo motu impleaded as Respondents
vide Court order dated 14.06.2018 made in
C.M.A.No.3052/17 and CMP.No.18528/17)

6.The Superintendent of Police,
Erode District.

7.Mr.Gnanaprakasam, SB,
Inspector of Police,
Erode District.

(R6 & R7 suo motu impleaded as party
respondents vide Court order dated 27.07.2018
made in CMA.3052/17.)

... Respondents

PRAYER : Civil Miscellaneous Appeal filed against the Judgment
and Decree dated 17.02.2017 and made in M.C.O.P.No.625/2013 on
the file of in the court of the Motor Accident Claims Tribunal
(Special Subordinate Judge Court) - Erode.

For Appellant : Mr.S.Vadivel

For Respondent : Mr.M.Guruprasad (For R1)

Mrs.R.Anitha, (For R4 and R6)
State Government Counsel

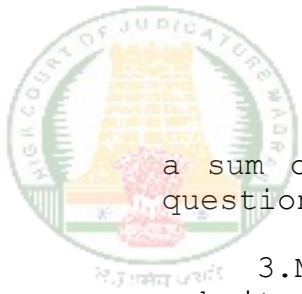
Mr.V.Lakshmi Narayanan (For R7)

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the insurance company,
against the award passed by the Tribunal regarding negligence as
well as against the granting of compensation of Rs.1,03,64,000/-
in favour of the 1st respondent, who sustained injuries in the
accident occurred on 16.08.2012, when he was driving his Marthi
car from Theni to Erode on Karur-Erode main road from South to
North direction and was hit by a college bus, allegedly driven
rash and negligently by the 2nd respondent leading to sustaining
of injuries and consequent loss of eye sight in both the eyes,
apart from other disabilities. Therefore, the claim petition.

2.On contest, the Tribunal found that the accident occurred
because of the rash and negligent driving of the bus and awarded



a sum of Rs.1,03,64,000/-. The said award is being challenged, questioning the finding regarding negligence as well as quantum.

3.Mr.S.Vadivel, learned counsel appearing for the appellant submits that in spite of filing Ex.P.1/FIR against the 1st respondent/claimant, the Tribunal erroneously held that the driver of the bus alone is responsible for the accident and therefore, the said finding has to be reversed. With regard to the compensation, he submits that the Tribunal without any basis and without any supporting documents fixed the monthly income of the injured at Rs.30,000/-. Hence, he seeks for reduction of the compensation.

4.Mr.M.Guruprasad, learned counsel appearing for the 1st respondent submits that the Tribunal held that the accident occurred because of the rash and negligent driving of the driver of the bus, as the independent witness PW2 had categorically stated so in his evidence. Further, he would submit that the compensation amount awarded by the Tribunal is inadequate and the same is required to be increased.

5.This Court has carefully considered the rival submissions and perused the records meticulously.

6.It is evident from the records that at the time of the accident, there was heavy rain and the claimant was driving his car. Further, because of falling of a tree, the route was diverted and the bus was coming in the opposite direction. When the route was diverted, the driver of the bus should have been careful enough to drive the vehicle. Further, PW2/eyewitness had categorically stated that the accident occurred because of the rash and negligent driving of the driver of the bus. No doubt, Ex.P.1/FIR has been filed against the claimant. But the Tribunal rightly observed that taking advantage of the grievous injuries sustained by the claimant, the driver of the bus seized the opportunity and gave a complaint, which has been registered against the claimant. It cannot be expected that the driver of the bus would give a complaint against himself and he would always try to shift the blame on the claimant, which he has rightly done. Therefore, the said FIR cannot be relied on. On the other hand, PW2/eyewitness had categorically stated before the Trial Court that the accident occurred because of the rash and negligent driving of the bus. The evidence on record has to be believed and therefore, the finding reached by the Tribunal, with regard to fixation of negligence on the driver of the bus is confirmed.

7.That apart, the Tribunal found that the police did not even care to take statement from the victim, who was originally admitted in Lotus Hospital, Erode and thereafter, shifted to



KMCH Hospital, Erode and then to Kurinchi Hospital, Coimbatore. Without even examining the claimant, wholly based on the complaint given by the driver of the bus, FIR has been registered.

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8. The injuries sustained by the claimant are as follows:

"1) HI-LEFT EAR BLEED, 2) NASAL BLEED, 3) ORAL BLEED, 4) ECCHYMOSIS BOTH EYES 4) FRONTAL DEPRESSION EDEMA SEFT FACE, 5) CT BRAIN BIFRONTAL CONTUSION, 7) LEFT PARIETAL SDH, 8) # FRONTAL BONE, 9) # A, SKULL BASE 10) # 111 MISSING (Lower two teeth) 11) # B/L MAXILLA, NASAL BONES 12) # MADIBLE, LACERATION RIGHT HAND 2nd WEBS SPACE 3*2 M.

And on final diagnosis the injured petitioner sustained the following injuries like, 1) HEAD INJURY 2) CHEST INJURY - RIGHT HEAMOTHORAX 3) FRACTURE MANDIBLE 4) FRACTURE MULTIBLE FACIAL BONES 5) LEFT OPTIC NERVE INJURY."

The claimant was originally treated as an inpatient from 17.08.2012 to 11.12.2012 at KMCH Hospital, Erode and he was treated in ICU ward in a critical stage, wherein frontal bone (skull) open surgery and surgery on neck for emergency airway was made by key-hole surgery on the neck and on 07.09.2012 surgery was performed on the right side of the head and holes were put to remove the fluid stored inside the skull and on 10.09.2012 shunt surgery was done from skull to Abdomen by way of inter-muscular phase to drain the fluid collection. Due to fractures over both side of the face bone, operation was done with fixing of plates and wiring. The claimant sustained severe injuries on both eyes and operation was done over left eye and suture was made on the right hand.

9. Thereafter, the respondent/claimant was admitted in Kurinchi Hospital, Coimbatore for further treatment for Iaryngoscopy for Tracheostomy closure (emergency air way closure) and he was admitted as an inpatient from 03.01.2013 to 07.01.2013. The claimant was again admitted in MCV Memorial ENT Trust Hospital, Pollachi as an inpatient from 07.01.2013 to 24.01.2013, where surgeries were done for removal of the emergency airway on the neck of the injured claimant, which was done at KMCH, Coimbatore.

10. The claimant was taken to Sri Ramachandra Medical Centre, Chennai, for head injuries, where he was admitted as an inpatient from 26.03.2013 to 02.05.2013, wherein on 10.04.2013 a shunt operation was done on the left side of the head for removal of fluid from left head to abdomen and on 17.04.2013, another operation viz, Cranioplasty was done to close the forehead defect by artificial bone by way of plastic surgery.



Inspite of surgeries and treatments, the 1st respondent/claimant is stated to be bedridden and he lost eyesight in both his eyes and he has completely become immovable. The above injuries, surgeries and treatments have been proved by PW4 and PW5/Doctors and Ex.P.12, Ex.P.15 to Ex.P.19, Ex.P.23, Ex.P.27 and Ex.P.29/Medical records. The wound certificate/Ex.P.28 and disability certificate Ex.P.30 would prove that the claimant sustained 100% disability.

11.It is disheartening to note that a meritorious student, who got admission in Medical college and was successfully doing his fourth year M.B.B.S., has lost his eye sight in both eyes and has completely become immovable. It is not a loss to the claimant and his family, but it is a loss to the nation. The Doctor ratio to our population is very less. More Doctors are required for treating more number of people in a densely populated country like India, which is the second highest populated country in the World. If the claimant had successfully completed the medical course, he would have definitely served the country and he would have treated not less than thousands of people. Therefore, it is a nation's loss. The Tribunal determined the notional income at Rs.30,000/- per month and with 50% future prospects, it was fixed at Rs.45,000/-. If the claimant had completed his course, he would have been absorbed in Medical Services, with an initial salary of Rs.56,000/- per month. If he had the potential of getting admission in PG course and other super specialty degrees and in the event of getting those degrees, his income would have been in lakhs. However, taking into consideration that he was in the fourth year at the time of accident, this Court is inclined to determine the notional income of the claimant, a fourth year M.B.B.S., student at Rs.60,000/-, including future prospects.

12.The age of the claimant was 22 years at the time of accident and the applicable multiplier as per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC) is "18". Therefore, the loss of income would be at Rs.1,29,60,000/- (Rs.60,000/- x 12 x 18) .

13.Mr.S.Vadivel, learned counsel appearing for the appellant would submit that income tax has to be deducted from the compensation awarded by the Tribunal. Therefore, 10% is deducted towards income tax. After deducting 10% towards income tax the yearly income would be at Rs.1,16,64,000/- [Rs.1,29,60,000/- (-) 10% of Rs.1,29,60,000/-] .

14.Extra nourishment:

The Tribunal awarded a sum of Rs.50,000/- under this head.



If a person intends to remain as a bachelor, it is his wish, but if he is compelled to remain as a bachelor on account of the accident, it is cruel and unfortunate. In this case, the claimant has been compelled to remain as a bachelor, because of the disability sustained by him in the accident. Therefore for loss of marital prospects a sum of Rs.3,00,000/- is awarded.

20. Loss of amenities:

The Tribunal awarded a sum of Rs.1,00,000/- under this head. The same is confirmed.

21. Dis-figuration:

The Tribunal awarded a sum of Rs.1,00,000/- under this head. The same is confirmed.

22. Permanent disability:

The Tribunal awarded a sum of Rs.3,00,000/- under this head. The same is confirmed.

23. Transportation:

The Tribunal awarded a sum of Rs.95,000/- under this head. The same is confirmed.

Head	Amount (Rs.)
Loss of income	11664000
Extra nourishment	100000
Medical expenses	1543222
Future medical expenses	500000
Attendant charges	900000
Pain and suffering	200000
Loss of marital prospects	300000
Loss of amenities	100000
Dis-figuration	100000
Permanent disability	300000
Transportation	95000
Total	15802222

24. Hence, the total compensation payable in this case is Rs.1,58,02,222/- rounded off to Rs.1,58,00,000/-. The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed.

25. Though the Insurance company has filed the appeal, the facts and circumstances enable this Court to enhance the compensation. Accordingly, award of the Tribunal (i.e.,)



Rs.1,03,64,000/- is enhanced to Rs.1,58,00,000/-, invoking Order 41 Rule 33 of CPC and Section 151 of CPC and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are benevolent in nature and what is required to be awarded is just and reasonable compensation. Neither it could be inflated nor inadequate. Therefore, even in the absence of appeal/cross-appeal by the claimant, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme Court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC).

26.The 1st respondent/claimant is directed to pay the requisite court-fee, if any, within a period of two weeks from the date of receipt of a copy of this order, If the requisite court-fee is not paid by the claimant, the Tribunal is directed to deduct the requisite court fee from the compensation awarded to the claimant and thereafter, transfer the remaining award amount to the claimant's account.

27.The Insurance company is directed to deposit the entire award amount along with interest and costs as per the modified award passed by this Court, within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer a sum of Rs.75,00,000/- to the personal bank account of the 1st respondent/claimant through RTGS within a period of one week thereon. The remaining award amount shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, for a period of five years in favour of the 1st respondent/claimant. The 1st respondent/claimant is permitted to withdraw interest accruing on such deposit once in three months.

28.Accordingly, this appeal is dismissed, suo motu enhancing the award of the Tribunal from Rs.1,03,64,000/- to Rs.1,58,00,000/- with interest. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

1. The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Erode.

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2. COPY TO
The Section Officer,
VR Section,
High Court, Madras-104.

+1cc to Mr.S.Vadivel, Advocate, S.R.No.41145

+1cc to Mr.Guruprasad, Advocate, S.R.No.41167

C.M.A.No.3052 of 2017

JPL(CO)
CT 26/04/2022