



WEB COPY

CMA NO.3596 OF 2014**IN THE HIGH COURT OF JUDICATURE AT MADRAS****JUDGMENT RESERVED ON: 22 / 03 / 2024****JUDGMENT DELIVERED ON: 15 / 04 / 2024****CORAM:**

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

CMA NO.3596 OF 2014
AND MP NO.1 OF 2014 IN CMA NO.3596 OF 2014

M/s.Royal Sundaram Alliance Insurance Co. Ltd.,
 Rep. By its Manager
 Corporate Claims Department
 “Sundaram Towers” No.45 & 46, Whites Road,
 Chennai – 600 014.

... Appellant /
 2nd Respondent

Vs.

1.Ganesan (Died)

... 1st Respondent /
 Petitioner

2.R.Ramkumar

... 2nd Respondent
 1st Respondent

3.Pavadaisamy

4.P.Yasothai

5.Minor G.Harish

(R5 represented by his Grandmother P.Yasothai)

(R1 – Died. RR3 to R5 brought on record
 as LR's' of the deceased R-1 Viz., P.Ganesan
 vide Court order dated 02.02.2023 made in
 CMP Nos.22586, 22588, 22589 and 22591
 of 2022 in CMA No.3596 of 2014)

... Respondents



CMA NO.3596 OF 2014

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award dated 22.07.2014 passed in M.A.C.T.O.P. No.186 of 2011 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Pondicherry.

For Appellant : Mr.M.B.Raghavan
for M/s.M.B.Gopalan

For Respondent-1 : Died

For Respondent-2 : No appearance

For Respondents 3 to 5: No appearance

J U D G M E N T

R.SAKTHIVEL, J.

This Civil Miscellaneous Appeal is preferred by the Insurance Company, challenging the quantum of compensation awarded viz., Rs.23,28,000/- by the 'Presiding Officer, Motor Accident Claims Tribunal, (II Additional District Court) Pondicherry' (henceforth 'Tribunal') in M.A.C.T.O.P. No.186 of 2011, for the grievous head injury sustained by the first respondent / petitioner in the accident that took place on November 9th, 2008 at about 16.15 hours on the Pooranankuppam Road near Hotel Kailash.



CMA NO.3596 OF 2014

2.For the sake of convenience, henceforth the parties will be referred to as per their array in the Original Petition.

Petitioner's case

3.On November 9th, 2008 at about 16.15 hours, while the petitioner was nearing Hotel Kailash in Pooranankuppam Road in his Motor Cycle, the Car bearing Registration No.TN-09-R-6613 approaching from the opposite direction driven in a rash and negligent manner collided with the petitioner's motorcycle and caused the accident. Consequently, the petitioner sustained severe injury on his head and was brought to the Government General Hospital and subsequently, he was admitted in PIMPS Hospital and then in MIOT Hospital, Chennai and was under treatment till November 19th, 2008. Later, he was again admitted in PIMPS Hospital and received treatment as in-patient till December 8th, 2008. It was contended that the accident occurred due to the rash and negligent driving of the driver of the Car. The petitioner sought for a compensation of Rs.29,00,000/-. The quantum sought was justified by claiming that the petitioner was doing fishing work and earning a sum of Rs.40,000/- per



4.Respondents resisted the claim contending that there was a delay in reporting the matter and that the petitioner also contributed to the accident. According to the Respondents, it was the petitioner who suddenly crossed the road in a motorcycle and invited the accident. On the quantum of compensation claimed, it was contended by the Respondents that the age, occupation and income of the petitioner were to be proved by him and that the driving licence, insurance particulars were not produced by the petitioner and that the compensation claimed is excessive. Further, the claim petition is bad for non-joinder of necessary parties.

5.Before the Tribunal, on the side of the petitioner, the petitioner himself was examined as P.W.1, one Dr.D.Sivaradje was examined as P.W.2 and Ex-P.1 to Ex-P.51 documents were marked. On the side of the respondents, first respondent one Mr.R.Ramkumar was examined as R.W.1 and Ex-R.1 was marked.



CMA NO.3596 OF 2014

WEB COPY

6.The Tribunal, having considered both oral and documentary evidence on record, concluded that the accident was caused by the rash and negligent driving of the car's driver. In reaching this determination, the Tribunal calculated compensation under various heads and ultimately awarded a total sum of Rs.23,28,000/- with interest at a rate of 7.5% per annum from the date of the petition until payment, as compensation to the claimant. The breakdown of the compensation amount awarded by the Tribunal is as follows:

S.No.	Head	Amount
1	Permanent Disability	Rs.2,70,000.00
2	Pain and Sufferings	Rs.50,000.00
3	Medical Expenses	Rs.1,52,000.00
4	Extra Nourishment	Rs.10,000.00
5	Travelling Expenses	Rs.10,000.00
6	Loss of income	Rs.18,36,000.00
	Total	Rs.23,28,000.00

Aggrieved with the quantum of compensation, the Insurance Company is on appeal.



CMA NO.3596 OF 2014

Arguments

WEB COPY

7.This Court has heard Mr.M.B.Raghavan, learned counsel for the Insurance Company. He has submitted that the Tribunal has not appreciated the evidence and facts properly. The Tribunal erred in simultaneously awarding compensation under the head of permanent disability as well as under the head of loss of income. He further submitted that, disability certificate does not reflect correct disability. Petitioner has not produced any document to show his monthly income. In these circumstances, the notional income of Rs.10,000/- taken by the Tribunal is erroneous. Accordingly, he prayed to allow the appeal.

8.1.This Civil Miscellaneous Appeal was disposed of by a Division Bench of this Court on March 14th, 2018 by reducing the amount awarded by the Tribunal from **Rs.23,28,000/- to Rs.17,50,000/-**.

8.2.However, a Civil Miscellaneous Petition came to be filed on December 13th, 2022 seeking re-hearing of the appeal, as the petitioner passed away on October 20th, 2017 pending the appeal and the same was



CMA NO.3596 OF 2014

allowed on February 2nd, 2023. Notably, the petitioner did not appear before this Court at all. The Civil Miscellaneous Petitions filed to condone the delay and to bring on record the legal representatives of the petitioner / deceased were also ordered on February 2nd, 2023. Accordingly, the legal representatives (dependants) of the petitioner / deceased were brought on record as respondents 3 to 5 herein.

9.1.Though M/s.RRN Legal Advocates and Legal Consultants filed vakalat for respondent No.(1) and Advocate Mr.R.Ramkumar and Mr.R.Veeramani filed vakalat for respondents 3 to 5 herein, when the matter was called on July 7th, 2023 and subsequently on March 15th, 2024, there was no representation on behalf of them on both the hearing dates. Therefore, on the latter date, the matter was directed to be listed on March 22nd, 2024 under the caption 'for orders'. Even on March 22nd, 2024, there was no representation on behalf of the first respondent - R.Ramkumar and respondent Nos.3 to 5 herein.

9.2.Since the first respondent - R.Ramkumar and respondents 3 to 5 herein failed to appear before this Court despite sufficient



CMA NO.3596 OF 2014

opportunities given, this Court heard the arguments advanced by the learned counsel for the Insurance Company and reserved the matter for judgment.

10.The point that arises for consideration in this Civil Miscellaneous Appeal is whether there exist any reason to interfere with the quantum of compensation awarded by the Tribunal in favour of the petitioner.

Discussion and Decision to the point

11.The respondents 3 and 4 herein are the parents of the petitioner and respondent No.(5) is the minor son of the petitioner / deceased. According to the evidence of petitioner – Ganesan (P.W.1) his wife left the matrimonial home and obtained divorce. Respondents 3 to 5 herein filed impleading petition stating that respondents 3 to 5 alone are the legal representatives of the petitioner – Ganesan. Hence, this Court holds that respondents 3 to 5 herein are the legal representatives of the petitioner / deceased Ganesan.



CMA NO.3596 OF 2014

12.The accident took place on November 9th, 2008 and the petitioner passed away on October 20th, 2017, after a time gap of 8 years and 11 months. Though the respondent no.(3) herein, in his affidavit filed in support of the delay condonation petition for re-hearing the appeal, has stated that the petitioner was undergoing treatment since the accident till his demise, respondents 3 to 5 herein have not produced any document to substantiate the same. However, in view of the Disability Certificate (Ex-P.8) and evidence of P.W.2 – Doctor, this Court is of the view that there is a nexus between the accident and consequent injuries suffered by the deceased / petitioner and his death.

13.P.W.2 - Dr.D.Sivaradje has issued a 93% disability certificate and deposed based on records that due to the fracture on spinal cord and compression of D9 to D12, the petitioner is unable to move his lower limbs. Thus, the petitioner is unable to sit, stand or move. P.W.2 examined the petitioner Ganesan on June 20th, 2013 and issued Disability Certificate (Ex-P.8). Disability Certificate reads as follows:



CMA NO.3596 OF 2014

“DISABILITY CERTIFICATE

Patient's Name : GANESAN
Age & Sex : 35 (THIRTY FIVE) / MALE
Father's / Husband's Name : Pavadaisamy alias Pavadai
Address : 24, North Street,
Koonimedukuppam,
Tindivanam Taluk, Villupuram
Dist.
Occupation : Unemployed since the RTA in
November 2008
Purpose : Submission in Honourable
Court

Details on Injury &

Nature of Disability : *Alleged h/o RTA on 9th November 2008. Today on clinical examination, after perusal of recent X-rays, wound certificate, GH, Pondy [No.0301, dt. 09/11/09], Discharge Summary, PIMS, Pondy [PIMS No.534227, DOA 20/11/08, DOD 08/12/08] [In this summary, it is mentioned as “patient was previously admitted in PIMS on 09/11/08 with the same complaints”]. The Recent Xray of Dorsa Lumbar Spine (AP & Lateral) dated 20.06.13 Aruna Lab enclosed with Radiologist's report, following finding are noted:*

1)Post Traumatic Fracture Subluxation of D11 Vertebra with complete Paraplegia – Status Post Decompression & Posterior Instrumentation and Stabilization with Pedicle Screws #fragment was Retrospulsed & was reduced back from the Cannal about more than 10 days following the Trauma. [2 Rods & 5 Screws in situ D10, D11 & D12 vertebrae] (5%)

2)No sensation below the level of umbilicus (20%)

3)Complete Paralysis of both lower limbs with power 0/5 (60%)

4)Bladder & Bowl Incontinence

[Bilateral plantar reflex upgoing] (5%)

[Patient is completely bed ridden]

5)Severe muscle wasting of both lower limbs (3%)

6)Bed sores present at sacral area with pus discharge, which are chronic since the admission at PIMS (0%)

The above mentioned disabilities are post sequel of the RTA occurred in November 2008 and are of permanent in nature.

Extent of Disability (Permanent) : 93% [NINETY THREE PERCENTAGE]

Sd/

Dr.D.SIVARADJE”



CMA NO.3596 OF 2014

14.P.W.2 Doctor was extensively cross examined by respondent No.(2)/Insurance Company. Despite extensive cross examination, his evidence has not been shaken. This Court has carefully perused the evidence of P.W.2 along with medical records exhibited by petitioner. This Court, does not find any reason to disbelieve the evidence of P.W.2 and Ex-P.8 – Disability Certificate. P.W.2 Doctor has deposed that petitioner suffered 93% permanent disability. However, considering the nature of the injury and the nature of the petitioner's avocation as averred by the petitioner, this Court is of the view that the petitioner had 100% functional disability. He could not have continued his fishing avocation after the accident.

15.It is stated that the petitioner returned home from gulf countries during leave and had been involved in fishing and thereby earned a sum of Rs.40,000/- per month. Photocopy of his passport is marked as Ex-P.47. Ex-P.47 shows that petitioner has travelled abroad once or twice. Petitioner was born on December 25th, 1977. To prove the date of birth, his Transfer Certificate has been marked as Ex-P.45. Based on Ex-P.45, at the time of accident, petitioner's age was 30 years 10



months and 15 days. However, there exist no solid document to prove the petitioner's monthly income. Considering the cumulative facts and circumstances of this case, this Court takes the notional income as Rs.7,500/- + Rs.3,000 (Future prospects) = Rs.10,500/-. Then, annual income becomes is Rs.1,26,000/-. Since the petitioner was involved in fishing avocation, he could not have continued his avocation post the accident and therefore, this Court fixes functional disability at 100% and employs multiplier method to calculate the loss of income. With a 100% functional disability and a multiplier of 17, the loss of income is calculated at Rs.21,42,000/-, which in the opinion of this Court would be a just compensation. The Tribunal awarded a sum of Rs.1,52,000/- towards medical expenses, Rs.10,000/- as Travelling expenses and Rs.10,000/- as extra nourishment. Considering the nature of the injuries, this Court is of the view that the amount awarded in the aforesaid heads are on the lower side. The Tribunal simultaneously awarded on both heads viz., permanent disability and future loss of earning capacity, which is incorrect. However, neither the petitioner nor the respondent Nos.3 to 5 preferred appeal against the award in question. Hence, this Court is not inclined to interfere with the award amount for the aforesaid reasons assigned by this Court.



CMA NO.3596 OF 2014

Apportionment

WEB COPY

16.It is learnt that the appellant / insurance company deposited a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) on September 23rd, 2014 and a sum of Rs.29,12,424/- (Rupees Twenty Nine Lakhs Twelve Thousand Four Hundred and Twenty Four Only) on March 4th, 2015 before the Tribunal. The petitioner Ganesan during his lifetime had withdrawn a sum of Rs.14,12,424/- (Rupees Fourteen Lakhs Twelve Thousand Four Hundred and Twenty Four Only) on April 22nd, 2015. Further, it is learnt that the remaining amount is being kept under Fixed Deposit by the Tribunal.

17.Considering the age of the respondents 3, 4 and 5, this Court is of the view that the remaining award amount shall be apportioned as 1:1:8 ratio *i.e.*, third respondent is entitled to 10%; fourth respondent is entitled to 10% and fifth respondent is entitled to 80% of the remaining award amount as on the date of this judgment with proportionate interest. The third and fourth respondents herein are permitted to withdraw their respective shares as apportioned by this Court along with proportionate



CMA NO.3596 OF 2014

accrued interest. The Tribunal shall deposit the share of the fifth respondent in a Fixed Deposit in any one of the Nationalised Banks, which shall be renewed periodically, till the minor attains majority.

18. In the result, **the Civil Miscellaneous Appeal is dismissed** and the quantum of award passed by the Motor Accidents Claims Tribunal, II Additional District Court, Pondicherry in M.A.C.T.O.P. No.186 of 2011 is confirmed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

[R.S.M., J.] [R.S.V., J.]
15 / 04 / 2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking Order
TK

To

The Motor Accident Claims Tribunal
II Additional District Court
Presiding Officer
Pondicherry.



WEB COPY



CMA NO.3596 OF 2014



WEB COPY



CMA NO.3596 OF 2014

R.SUBRAMANIAN, J.

AND

R.SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
CMA NO.3596 OF 2014

15 / 04 / 2024