BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.08.2024

DELIVERED ON : 25.10.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGOVAN

C.M.A.(MD).Nos.486 of 2014 and 914 of 2021
and M.P.(MD).No.1 of 2014

C.M.A.(MD).No.486 of 2014:

National Insurance Company Limited,
Through its Divisional Manager,
6, West Masi Street,
Madurai Town,
Madurai District. ... Appellant/2nd Respondent

Vs.

1.R.Sathiyamoorthy ... 1st Respondent/Petitioner

2.M.Jeyam ... 2nd Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the order of the Claims Tribunal in M.C.O.P.No.68 of 2011, dated 10.12.2013 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Sivagangai.

For Appellant : Mr.J.S.Murali

For Respondents : Mr.A.Shajahan for R1
R2 – Dispensed with

C.M.A.(MD).No.914 of 2021

Sathyamoorthy ... Appellant/Petitioner

Vs.

1.M.Jeyam

2.National Insurance Company Limited,
Through its Divisional Manager,
6, West Masi Street,
Madurai Town,
Madurai District. ... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the order of the Claims Tribunal in M.C.O.P.No.68 of 2011, dated 10.12.2013 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Sivagangai, by enhance the award amount.

For Appellant : Mr.A.Shajahan

For Respondents : No Appearance for R1
Mr.J.S.Murali for R2

COMMON JUDGMENT

These appeals have been directed against the order of the Claims Tribunal in M.C.O.P.No.68 of 2011, dated 10.12.2013 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Sivagangai.

2.The facts in brief:

On 25.05.2010, in the night at about 10.50 p.m., the claimant as a driver driving the vehicle bearing registration No.TN 19 G 0038, belongs to the Marine Police Station on the Rameshwaram Road from East west direction. At the time the vehicle came from the opposite direction, bearing registration No.TN W 3658 namely a tanker lorry was driven by its driver in rash and negligent manner, dashed against the claimant's vehicle. As a result of which, he sustained injuries on the spinal chord region. He was taken to the Government Hospital, Rameshwaram, wherein, he was given first aid. Later shifted to Apollo Hospital, Madurai, wherein, he was admitted as in patient from 25.05.2010 to 15.06.2010 and thereafter, in Hannah Joseph Hospital from 26.06.2010 to 08.09.2010. Because of the spinal chord injury, the hands and legs became affected and functionless. Memory loss and loss of speaking capacity also occurred. Now he is bed-ridden. The body parts below the neck region became functionless. Now more or less he is in a vegetative state. Because of the accidental injuries, he was unable to continue the work. Now he is suffering income loss and on disability leave without salary. Claiming compensation amount of Rs.40,00,000/-, he filed the claim application.

3.That was resisted by the Insurance Company by filing a counter stating that the accident took place because of the rash and negligent driving on the part of the claimant. Apart from that, other customary denials were also made.

4.At the conclusion of the enquiry process, the Tribunal recorded a finding with regard to the first aspect of negligence that the accident occurred due to the rash and negligent driving on the part of the first respondent's vehicle driver and fastened the liability upon the insurance company to pay the compensation on behalf of the insurer.

5.Regarding the compensation, he recorded a finding that the claimant is on medical leave without salary. He become totally disabled, functionless and more or less in vegetative state. Considering the total incapacity, it assessed the disability as 100%. His age was 31 at the time of occurrence. His monthly salary was fixed at Rs.12,545/- as borne out by Ex.P27. Multiplier 16 was taken and total loss of income was assessed as Rs.24,80,640/-. To that the medical expenses as borne out by records it assessed as tabulated below.

1.	Loss of Income	- Rs.24,08,640.00
2.	Medical Charges	- Rs.11,40,729.07
3.	Pain and Sufferings	- Rs. 1,00,000.00
4.	Future Medical Expenses	- Rs. 3,00,000.00
Total		- Rs.39,49,369.07.

Totally Rs.39,49,500/- was awarded.

6.Against which, both the claimant as well as the insurance company are before this Court by filing separate appeals.

7.Heard both sides.

8.The Insurance Company would contend that contributory negligence ought to have fixed by the tribunal. The petitioner was a Grade - I Police Constable by job. So the multiplier method adopted by the Tribunal is not proper. Apart from that it is also submitted that the assessing disability 100% is not supported by any evidence. The Doctor who examined on the side of the claimant are only stock witness. The future medical expenses has been fixed without any proper materials.

9.Per contra the learned counsel for the claimant would submit that because of the spinal chord injuries there is complete loss of functioning of the body parts below the neck. So assessing the disability at 100% is perfectly proper. As mentioned above, now he is bed-ridden and almost requires a helper and he completely lost his income namely the monthly salary, because of the disability. The Tribunal has not taken into account the requirement of helper, nursing charges. Awarded amount of Rs. 1,00,000/- for pain and sufferings is very low. So according to him, the claim is on the lower side. It must be enhanced as prayed for in the petition.

10.Regarding the first aspect of the negligence, I find that absolutely no ground is made out by the Insurance Company. So the driver of the offending vehicle admitted the guilt and paid the fine amount before the learned Judicial Magistrate, Rameshwaram. The judgment extract is marked as Ex.P5 on the side of the claimant. Against that admission of guilt, no other evidence was let in by the Insurance Company. Moreover, the manner in which, the occurrence said to have taken place also indicates the rash and negligence driving on the part of the first respondent's vehicle's driver. They were proceeded in opposite directions. From the very nature of the occurrence itself does indicate the rash and negligent driving on the part of the first respondent's vehicle's driver. So the finding of the negligence on the part of the first respondent vehicle's driver by the tribunal requires no interference at all. So that portion is confirmed.

11.Regarding the compensation as mentioned in the preamble portion, now the compensation amount is challenged by both sides. Insurance Company says that it is higher; No loss of income is established. The medical bills were also not properly proved by examining the officials from the concerned hospital.

12.Ex.X1 was produced from the Department of the claimant. On the date of occurrence, he was stated to be Grade - I Police Constable. It appears that on the date of occurrence, he was driving the vehicle as driver of the Department Vehicle. But he is Grade I Police Constable. As per the service conditions, he is eligible for annual increments at the rate of 3% and Grade Pay. Date of appointment is noted as 01.12.2003 as Grade - II Police Constable. As per the service records, he is eligible for promotion as Special Sub Inspector after completion of 25 years of total service. Now, he is on leave without any pay. As per G.O.Ms.130, Finance and Pension, dated 08.08.2004, he is not eligible for pension. His Last Pay Drawn Certificate was enclosed along with the file and his Last pay drawn was Rs.12,600/- as on December 2010. After that now he is without pay. Because of the accidental injuries, he exhausted all the leave benefits. So the contention on the part of the Insurance Company that still he is getting pay, is not correct on record. After December 2010, he was not paid any pay, because of his disability. Neither he was paid any salary nor his services are terminated. Since the last month pay is borne out by records, it must be taken as correct. Moreover, Ex.X1 is official document produced from the proper custody. So no exception can be taken to the contents of the documents. It has been properly established by the claimant.

13.Regarding the disability, apart from the evidence of PW2, Ex.X1 itself does indicate that because of his total disability, he has not joined the service. As noted above, now he is on loss of pay. So this is sufficient enough to hold that the claimant is in a vegetative state.

14.A strong exception was taken to the evidence of PW2 the Doctor, who assessed the disability that he is a stock witness. But, as mentioned above, the official records itself is sufficient enough to record a finding of total disability. So it was rightly recorded so by the tribunal. On that aspect also it requires no interference.

15.Regarding the Medical bills as mentioned above, strong exception has been taken by the Insurance Company that the documents produced by the claimant were not established by examining concerned official from the concerned hospital. But all those medical bills are printed documents. There is no necessity for the claimant to create those medical bills for the sake of claim. So I find absolutely no reason to discard the medical bills produced by the claimant. Proper calculation has been made by the Tribunal, which comes at Rs.11,40,729/-. So that amount also requires no interference.

16.Regarding the pain and sufferings, the Tribunal assessed the same at Rs.1,00,000/-. Considering the vegetative state of the claimant, it must be raised to Rs.2,00,000/-, which will be reasonable.

17.The Tribunal fixed the Future medical expenses as Rs. 3,00,000/-. No doubt that no independent evidence is available to show the future medical expenses. But, however, considering the age of the petitioner and the present physical status, it must be reasonably fixed at Rs.5,00,000/-, taking into consideration of the medical bills already produced.

18.Regarding the attendant charges, it can only reasonably fixed on the basis of the assumption. So it may be fixed at Rs.50,000/-.

19.Considering the vegetative state of the claimant, nursing charges for the past and future must be fixed at Rs.1,00,000/-, which is reasonable.

20.For extra nourishment charges, for the past and future, it can be reasonably fixed as Rs.25,000/-. Since he was taken to various hospitals, the transportation charges must be fixed as Rs.25,000/-.

21.Now coming to the loss of income, the Tribunal has committed a mistake in not taking into account the future prospects. As per the Judgment of the Honourable Supreme Court in the case of *National Insurance Company Limited vs. Pranay Sethi and others* reported in *(2017) 16 SCC 680*, since the claimant was a permanent Government Employee and considering the age, 50% future prospects must be added, since there is no chance for improvement in health condition. (Rs.12,600 + 6,300 = 18,900). Considering the age of the petitioner, multiplier 16 is taken. (Rs.18,900 x 16 x 12 = Rs.36,28,800/-). In this way, the award passed by the tribunal is enhanced as tabulated below.

Sl. No.	***Nature of Head***	***Award (Rs.)***
1.	*Loss of Income*	*36,28,800/-*
2.	*Pain and sufferings*	*2,00,000/-*

3.	*Past Medical Charges according to the Medical Bills*	*11,40,729/-*
4.	*Future Medical Charges*	*5,00,000/-*
5.	*Attendant Charges*	*50,000/-*
6.	*Nursing Charges*	*1,00,000/-*
7.	*Extra Nourishment*	*25,000/-*
8.	*Transportation Charges*	*25,000/-*
	Total	***56,69,529/-***

22.Appeal filed by the Insurance Company in C.M.A.(MD).No. 486 of 2014 is **dismissed.** Appeal filed by the claimant in C.M.A.(MD).No.914 of 2021 is **allowed** with costs.

(i)The quantum of compensation awarded by the Tribunal is enhanced to **Rs.56,69,529**/- (Rupees Fifty Six Lakhs Sixty Nine Thousand Five Hundred and Twenty Nine only), which shall carry interest at the rate of 7.5% per annum.

(ii) The insurance company is directed to deposit the entire compensation of **Rs.56,69,529**/- (Rupees Fifty Six Lakhs Sixty Nine Thousand Five Hundred and Twenty Nine only) (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs to before the tribunal, within a period of two months from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the claimant is permitted to withdraw the entire award amount of **Rs.56,69,529**/- after following the due process of law, less any amount already received by him. The claimant shall pay the deficit court in this regard as per law.

(iv) Consequently, connected miscellaneous petition stands closed.

25.10.2024

Index : Yes / No
Internet : Yes / No
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To

1.The Chief Judicial Magistrate, Motor Accidents Claim Tribunal, Sivagangai.

2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.

G.ILANGOVAN,J.

TM

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25.10.2024