

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.No.4327 of 2019

and

C.M.P.No.24540 of 2019

National Insurance Company Limited,
Karthikeyan Complex,
403-B, Mettur Road,
Bhavani-638 301.

.. Appellant

Vs.

1. P.Rammohan
2. K.Ramraj
3. S.Sadasivam

.. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 02.01.2018 in M.C.O.P.No.167 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Court), Coimbatore.

For appellant : Mr.N.Vijayaraghavan

For respondents: Mr.C.Deivasigamani for R-1

Respondents 2 and 3 - set ex-parte before the Tribunal

JUDGMENT

(The Judgment of the Court was delivered by R.Subbiah, J)

This appeal has been filed by the Insurance Company as against the award, dated 02.01.2018 made in M.C.O.P.No.167 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Court), Coimbatore.

2. The case of the first respondent/claimant before the Tribunal is that on 19.09.2005 at about 6.30 a.m., while the claimant was riding his car bearing Registration No.TN-38-W-8014 from Hospet to Kudlgi, a lorry bearing Registration No.KA-01-AA-1359, driven by the second respondent herein, came in the opposite direction in a rash and negligent manner and dashed against the claimant's car, due to which, the claimant sustained head injuries and has become unconscious. Later, he was taken in an ambulance and admitted in G.V.Hospital, Hospet, by one Tippu Sulthan and thereafter, he took treatment in a Government Hospital, Hospet, NIMHANS National Institute of Mental Health and Sciences, Manipal Hospital, Bangalore and then he was admitted in Sri Ramakrishna Hospital, Sarojini Naidu Road, Coimbatore and he was treated as an in-patient from 19.09.2005 to 07.06.2006. The claimant had

spent about Rs.11 lakhs towards his medical treatment. He was aged about 30 years at the time of accident. He was working as Junior Manager in National Mineral Development Corporation Limited, and was earning Rs.17,805/- p.m. Due to the accident, he had lost chance of getting promotion and had become disabled person. Hence, the first respondent/claimant has filed the claim petition before the Tribunal, claiming compensation of Rs.36 lakhs.

3. The case of the claimant was resisted by the appellant/Insurance Company by filing counter affidavit, denying the negligence on the part of the driver of the lorry having been insured with the appellant/Insurance Company.

4. In order to prove the claim, the claimant examined himself as P.W.1 and Exs.P-1 to P-4 were marked. On the side of the Insurance Company, R.W.1 was examined and Ex.R-1 was marked. Even though the claimant had restricted his claim to Rs.36 lakhs from Rs.38,60,000/-, the Tribunal, on a consideration of the oral and documentary evidence, awarded a sum of Rs.86,30,863/- with interest at 7.5% p.a. from the date of claim petition till the date of realisation, along with proportionate costs. The break-up details of the compensation awarded by the Tribunal, are as follows:

<i>Head under which the amount is awarded</i>	<i>Amount (in Rs)</i>
Future loss of earning capacity (Rs.1,97,400 x 100% x 17)	33,55,800
Medical bills	17,50,063
Attendant charges	10,00,000
Future medical expenses	5,00,000
Loss of amenities	10,00,000
Pain and suffering	10,00,000
Transportation to hospital	10,000
Extra nourishment	10,000
Damages to clothes	5,000
Total	86,30,863

5. The main submission of the learned counsel for the appellant/Insurance Company is that except P.W.1/claimant himself, absolutely, no one was examined on the side of the claimant, and the documents, namely Ex.P-1 certified xerox copy of the FIR, Ex.P-2 certified xerox copy of the mahazar, Ex.P-3 medical bills and Ex.P-4 certified xerox copy of the pay slip, were marked. The employer of the claimant was not examined to prove the income of the claimant. No Doctor was examined to speak about the disability suffered by the claimant. In spite of the same, the Tribunal, by fixing the disability of the

claimant at 100%, had awarded the amount of Rs.33,55,800/- (1,97,400 x 17), towards the future loss of earning capacity, i.e. by adopting the multiplier 17, based on his annual income at Rs.1,97,400/- (Rs.16,450 x 12). That apart, the Tribunal, without assigning any reasons, has awarded exorbitant and fanciful amount of compensation, which had ultimately resulted in passing an unreasonable award of compensation, totally at Rs.86,30,863/-. In this regard, the learned counsel for the appellant/Insurance Company invited the attention of this Court to the amounts awarded by the Tribunal under various heads.

6. The learned counsel for the appellant/Insurance Company further submitted that the Presiding Officer of the Tribunal is in the habit of awarding such huge amounts of compensation under various heads, without any rhyme or reason. In this regard, the learned counsel for the appellant/Insurance Company has invited the attention of this Court to the order passed by a Division Bench of this Court in C.M.A.No.1957 of 2018, dated 06.01.2020, wherein adverse remarks were passed against the very same Judicial Officer who had passed the award in the present case. The relevant paragraph of the said order of this Court reads as follows:

"19. Before parting with this order, it would not be out of place to take judicial notice of the Presiding Officer, viz.,

Mr.R.Venkatasubramanian, Special Sub Judge, Coimbatore, in awarding such huge compensation, without any rhyme or reason under the heads like i) Loss of consortium at Rs.10,00,000/-, ii) Loss of Love and Affection at Rs.15,00,000/-, iii) Loss of Dependency a sum of Rs.1,82,52,000/- without any income proof. In fact, he has crossed the limits, which all High Courts in India and Supreme Court would normally used to award. In fact, we are really shocked by fixation of huge compensation without any application of settled proposition of law by the Honourable Apex Court and, we never come across any motor accident cases, where, the Presiding Officer awarding such huge compensation magnanimously. In the present, the deceased was a Doctor, and aged 46 years and not a young person. Therefore, it really makes us to think not that the Presiding Officer moved by some mercy, had benevolently awarded such compensation, rather, it has affected the credibility bestowed on him.

20. Therefore, we direct the Registrar General, High Court, Madras to keep this order along with Annual Credit Report (ACR) of the Presiding Officer, by name Mr.R.Venkatasubramanian, then Special Sub Judge, Coimbatore."

7. By relying upon the abovesaid judgment of this Court, the learned counsel for the appellant/Insurance Company submitted that in the absence of any documentary evidence and especially the medical evidence, the amount awarded by the Tribunal is on the higher side and thus, he prayed for setting aside the award of the Tribunal and remit the matter back to the Tribunal for fresh enquiry.

8. The learned counsel for the first respondent/claimant also agreed for remitting the matter back to the Tribunal.

9. We find some force in the submissions made by the learned counsel for the appellant/Insurance Company. The amount awarded by the Tribunal under the head "future loss of earning capacity", shocks the conscience of this Court.

10. Hence, we set aside the impugned order passed by the Tribunal and remit the matter back to the Tribunal for fresh enquiry. The Tribunal is directed to take up the matter and record the evidence afresh, by affording an opportunity of hearing to both parties to adduce oral and documentary evidence and thereafter, the Tribunal shall pass fresh award, preferably within a period of six months from the date of receipt of a copy of this judgment.

11. With the above directions, while setting aside the impugned order passed by the Tribunal, we allow this appeal. No costs. Consequently, C.M.P. is closed.

(R.P.S.J)

(R.P.A.J)

11.03.2020

Index: Yes/no

Speaking Order: Yes/no
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3. The Section Officer, V.R. Section, High Court, Madras.



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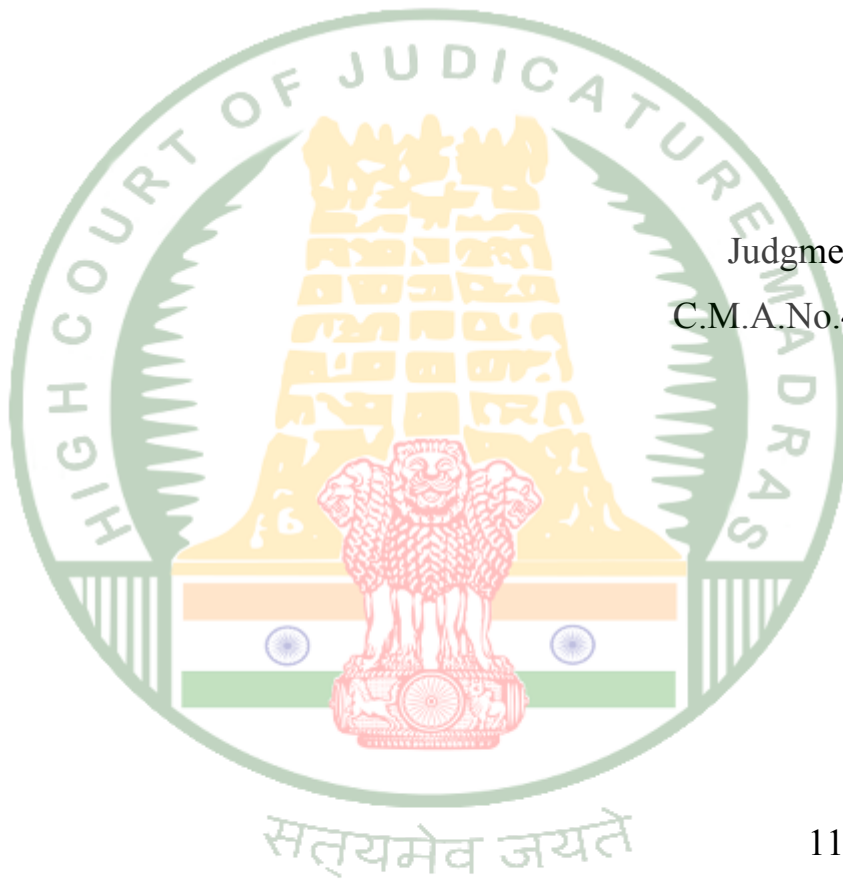
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