

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.12.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2534 of 2015
& M.P.No.1 of 2015

The Divisional Manager,
United India Insurance Co. Ltd.,
No.2/178, Kumaran Complex,
Erode Road, Perundurai,
Erode District. ..Appellant/3rd respondent

Versus

1.Palanisamy ..1st respondent/petitioner
2.Sakthivel ..2nd Respondent/1st Respondent
3.Kandasamy ..3rd Respondent/2nd Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 15.10.2014 made in M.C.O.P.No.938 of 2013 on the file of the Motor Accidents Claims Tribunal [Additional District Court], Namakkal.

For Appellant :Mr.T.Ravichandran

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the United India Insurance Company Limited challenging the quantum of compensation of Rs.5,52,700/- awarded by the Motor Accident Claims Tribunal [Additional District Court], Namakkal, in M.C.O.P.No.938 of 2013 dated 15.10.2014, on the ground that the Tribunal, while considering the claim of the injured, has committed a grave error in awarding compensation for the reason that the claimant has suffered 40% disability. Therefore, awarding a sum of Rs.4,08,000/- towards permanent disability suffered by the claimant is on the higher side, the quantum has to be reduced.

2.Learned counsel for the Insurance Company would submit that for the fracture suffered by the claimant in his right leg bone below knee, the Tribunal cannot mechanically adopt the multiplier, because the present case does not warrant the adoption of multiplier. Adding further, he would submit that

when there is no evidence as to what would be the quantum of depletion in the income from the business, the award of the Tribunal is unsustainable and the same is liable to be interfered with.

3.This Court is not able to see any error in the impugned award fixing the compensation under various heads. The reason is that when the claimant, aged about 21 years, was proceeding in his two wheeler bearing Registration No.TN-28-AF-5159 on 10.06.2013 at about 9.00a.m., on the left side of the road towards Mohanur Lake, the offending vehicle Tata Ace bearing Registration No.TN-47-M-3865, driven by its driver in a rash and negligent manner, lost control and dashed against the claimant as a result, he was thrown out. Immediately, he was admitted in the hospital and was taking treatment for a period of two weeks. The Doctor also, after examining the whole body including multiple injuries sustained by the claimant, has certified that he has suffered 40% permanent disability.

4.The Tribunal, after going through the evidence produced by the claimant, more particularly, the deposition adduced by the Doctor, who was examined as P.W.2, stating that the claimant having been working as Mason had to stand and work all the time and in view of the multiple injuries suffered, would not be in a position to discharge his work as Mason, fixed the disability at 40%. The Tribunal has also rightly adopted the multiplier 17 taking into account the age of the injured. Accordingly, the Tribunal, fixing the notional monthly income as Rs.5,000/- has arrived at a sum of Rs.4,08,000/- as Loss of earning capacity. In this regard, it is relevant to extract the award of compensation under various heads as follows;

i. Loss of earning capacity	-	Rs.4,08,000.00
[5000 x 12 x 17 x 40%]		
ii.Pain & Suffering	-	Rs. 20,000.00
iii.Extra Nourishment	-	Rs. 10,000.00
iv.Transport	-	Rs. 10,000.00
v. Medical Expenses	-	Rs. 49,708.00
vi.Loss of amenities	-	Rs. 40,000.00
vii.Attendant	-	Rs. 15,000.00
		Rs.5,52,708.00

Rounded off to Rs.5,52,700/-

5.A perusal of the above clearly shows that the argument advanced by the learned counsel for the appellant that the Tribunal has committed an error in adopting the multiplier method is wholly unfair and unacceptable. The reason is that when the Doctor, who examined the claimant, has come to the witness box and spoke that 40% disability has been suffered by

the claimant as they said that he being a Mason, in future, will not be in a position to discharge the same duty as before. In my considered opinion, the Tribunal has rightly adopted the multiplier method in this case for arriving at the loss of earning capacity. With regard to pain and suffering, the Tribunal has awarded only a sum of Rs.20,000/-; Rs.10,000/- towards extra nourishment; Rs.10,000/- towards transport. Similarly, for medical expenses, on the basis of bills marked as Ex.P.5, the Tribunal has awarded a sum of Rs.49,700/-; Rs.40,000/-towards loss of amenities and Rs.15,000/- towards attendant charges. Hence, this Court is not able to see any infirmity in the impugned award of the Tribunal. Accordingly, the Civil Miscellaneous Appeal fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

6.Learned counsel for the appellant / Insurance Company fairly submits that the appellant has deposited only a sum of Rs.25,000/-. Therefore, the appellant / Insurance Company is further directed to deposit the entire award amount with proportionate accrued interest and costs, to the credit of M.C.O.P.No.938 of 2013 on the file of the Motor Accidents Claims Tribunal [Additional District Court], Namakkal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is for the claimant to move appropriate application before the Tribunal for withdrawal of the same.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sri
To

1.The Motor Accidents Claims Tribunal
[Additional District Court], Namakkal.

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

Copy to: The Divisional Manager,
United India Insurance Co.Ltd.,
No.2/178, Kumaran Complex, Erode Road, Perundurai,
Erode District.

C.M.A. No.2534 of 2015
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RSK(CO)
Eu 26.4.16