IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 24.08.2015

CORAM :

THE HON'BLE MR. JUSTICE R. SUDHAKAR

Civil Miscellaneous Appeal
No. 3332 of 2013

The Oriental Insurance Company Ltd.,
Divisonal Office - 6
No: 364/2 10th "B" Main Road
Srinivasa Mansion
Jayanagar, III Block
Bangalore – 560 011
Karnataka State ... Appellant

-vs-

1. Thiru. Raja
S/o. Perumal
Kallavi Village & Post
Uthangarai Taluk
Krishnagiri District.

2. Thiru. Colonel M. Ramachandran
Flat No: 101, Navy Nest Ashwini Layout
3rd Cross, Ellpura
Bangalore – 47
Karnataka State. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 14.06.2013 passed in M.C.O.P. No. 301 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Sub Judge), Krishnagiri District.

For appellant : Mr.J. Chandran
For 1st respondent : Mr. M. Selvam

J U D G E M E N T

The Oriental Insurance Company Ltd. is the appellant in the above appeal which is filed challenging the award and decree dated 14.06.2013 passed in M.C.O.P. No. 301 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Sub Judge), Krishnagiri District.

2. It is a case of injury. The accident in this case happened on 13.02.2009. According to the injured claimant, on 13.02.2009, he and one Palani were proceeding from Pidamaneri to Don Bosco College by the two wheeler TVS Champ bearing registration No: TN-29A-6470 as pillion and rider respectively. At about 13.15 hours when they were proceeding near the place of occurance a LMV Motor Car bearing Registration No: KA-05-5838 which was proceeding on the said road from South to North direction, in a rash and negligent manner, dashed against the occupants of the two wheeler. Due to the accident, the claimant sustained grievous injuries and was admitted in Government Dharmapuri Medical College Hopistal, Dharmapuri and subsequently, he had taken treatment at Sri Gokulam Hospital, Salem, as inpatient from 13.02.2009 to 24.02.2009. During this period surgeries were done by the Doctors and implants were fixed. According to the claimant, he had been taking periodical checkups and had spent more than a sum of Rs.1,00,000/- towards medical expenses. According to the claimant, the accident had occurred due to the rash and negligent driving of the car by its driver and therefore, restricting his claim to a sum of Rs.10,00,000/- as compensation from the 2nd respondent, being the owner of the offending vehicle and the appellant, being the insurer of the said vehicle, he has approached the Tribunal.

3. In support of the claim, the claimant had examined himself as P.W.1 and marked Exs.P-1 to P-7, the details of which are as follows:-

Ex.P-1 is the copy of FIR
Ex.P-2 is the wound certificate
Ex.P-3 is the discharge summary
Ex.P-4 is the insurance policy
Ex.P-5 series are the medical bills
Ex.P-6 is the x-ray
Ex.P-7 is the disability certificate

Neither any witness was examined nor any document was marked on the side of the respondents.

4. Before the Tribunal, the appellant insurance company disputed the negligent aspect as also its liability to pay the compensation as both the driver of the car and the rider of the TVS Champ had no valid and effective driving licence.

5. After discussing the oral and documentary evidence on record, the Tribunal, fixed the monthly income of the injured at Rs.6,000/- and worked out the loss of earning capacity to a sum of Rs.4,32,000/- [Rs.6,000/- x 12 x 15 x 40/100 = Rs.4,32,000/-]. The Partial loss of income is worked out to a

sum of Rs. 36,000/- (6 x Rs.6,000/-). The Tribunal has further granted a sum of Rs. 25,000/- towards future medical expenses; Rs.15,000/- for extra nourishment; Rs.10,000/- for transportation and Rs.25,000/- towards pain and

suffering. Thereafter, the Tribunal has also granted a sum of Rs.63,486/- towards medical expenses. In all, the Tribunal granted the following amounts as compensation with 6% interest from the date of petition till the date of payment, as follows:-

Sl. No.	Head	Amount granted by the Tribunal
1	Towards loss of earning capacity	Rs.4,32,000/-
2	Towards pain and sufferings	Rs. 25,000/-
3	Towards nutrition and transport expenses	Rs. 25,000/-
4	Towards partial loss of income	Rs. 36,000/-
5	Towards future medical expenses	Rs. 25,000/-
6	Towards medical expenses	Rs. 63,486/-
	Total	Rs.6,06,486/-

6. In appeal, the appellant contends that the amount awarded is highly exorbitant and that the Tribunal ought to have held that the accident had occurred solely due to the rash and negligent act of the claimant.

7. Though the learned counsel appearing for the appellant disputes the negligent aspect, the appellant insurance company had not chosen to examine any witness before the Tribunal to prove such a contention nor had it marked any document to support its contention. In an accident of this nature, in which, two vehicles, namely, a TVS Champ and a LMV Motor Car, were involved, it is strange to note that the appellant had not taken any effort to bring the driver of the LMV Motor Car into the box and had not marked even a piece of paper on its side. Such being the position, this Court is of the considered view that the conclusion arrived at by the Tribunal, which is based on the evidence, both oral and documentary, put forth by the claimant, cannot be said to be unjust and unreasonable.

8. Claimant claimed that he was earning a sum of Rs.10,000/- per month at the time of accident by doing work relating with erection of Pandal, Electrical decoration, sound systems, formation of Platforms for festivals, family functions, political party meetings, conferences and allied works in the name of Mannan Suppliers. In the absence of proof for earning

the sum of Rs.10,000/- per month, the Tribunal fixed the monthly income of the injured claimant at Rs.6000/-.

9. A perusal of the materials placed on record reveals that the injured claimant had examined Dr. Devandran as P.W.2 to speak

about the permanent disability suffered by the injured. The Doctor had spoken about the various fractures and assessed the disability at 50%. The Tribunal considering the wound certificate Ex.P-2, discharge summary Ex.P-3 and the disability certificate Ex.P-7, has taken the disability at 40%.

10. The Tribunal by relying various decisions of this Court and the Apex Court adopted multiplier method to calculate the loss of earning capacity.

11. The Division Bench of this Court in United India Insurance Co. Ltd., - vs. - Veluchamy and another reported in 2005 ACJ 1483 sets out the parameters as to when the multiplier method can be adopted in the case of injury. In Paragraph 11 of the decision reads thus:-

> "11. The following principles emerge from the above discussion:
>
> (a) In all cases of injury or permanent disablement 'multiplier method' cannot be mechanically applied to ascertain the future loss of income or earning power.
>
> (b) It depends upon various factors such as nature and extent of disablement, avocation of the injured and whether it would affect his employment or earning power, etc. and if so, to what extent?
>
> (c) (1) If there is categorical evidence that because of injury and consequential disability, the injured lost his employment or avocation completely and has to be idle for the rest of his life, in that event loss of income or earnings may be ascertained by applying the 'multiplier method' as provided under the Second Schedule to Motor Vehicles Act, 1988.
>
> (2) Even so there is no need to adopt the same period as that of fatal cases as provided under the Schedule. If there is no amputation and if there is evidence to show

that there is likelihood of reduction or improvement in future years, lesser period may be adopted for ascertainment of loss of income.

(d) Mainly it depends upon the avocation or profession or nature of employment being attended by the injured at the time of accident."

12. In the present case, based on the evidence of doctor, nature of injuries and the nature of occupation, it is clear that claimant's earning capacity to work as electrical decorator for festivals, family functions and allied functions and also for forming pandal is affected due to the injury. Therefore, there will be loss of earning capacity to the injured claimant. Accordingly, the Tribunal rightly adopted multiplier method in calculating the loss of earning capacity.

13. Based on the wound certificate Ex.P-2, the Tribunal fixed the age of the claimant at 39 years. Considering the age of the injured claimant, the Tribunal applying the principles laid down in Sarla Verma - vs. - Delhi Transport Corporation reported in 2009(2) TNMAC 1 (SC), adopted the multiplier “15”.

14. The compensation granted towards pain and suffering, extra nutrition, transport expenses, partial loss of income, future medical expenses and medical expenses are just and reasonable. No amount was granted towards attender charges.

15. Considering all the aforesaid factors, I am of the view that the award passed by the Tribunal is just compensation and does not require any reduction or modification and accordingly, it is confirmed. There is no dispute with regard to interest granted by the Tribunal at 6% and the same is confirmed.

16. Finding no merits, this Civil Miscellaneous Appeal is dismissed. There shall be no orders as to the costs. As per order dated 29.1.2014 passed in M.P.No.1 of 2013, appellant was directed to deposit the entire award amount. Hence, the claimant is permitted to withdraw the entire award amount along with interest and costs. Consequently, Miscellaneous Petition No.1 of 2013 is closed.

gp

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

The Motor Accidents Claims Tribunal
The Special Subordinate Judge
Krishnagiri District.

+ 1 cc to M/s.M.Selvam, Advocate SR 45101

+ 1 cc to Mr.J.Chandran, Advocated SR 45652

ppa(co)
prk21/12

C.M.A. No: 3332 of 2013