

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.No.628 of 2012

United India Insurance Co. Ltd.

280, Ooty Main Road

Mettupalayam

Coimbatore 641 301.

.... Appellant/ 2nd Respondent

VS.

1.G.Kandhan

2.S.Karthik

R2 exparte in lower court

... Respondents/ Petitioner/

1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 29.04.2011 made in MCOP No.401 of 2010 on the file of the Motor Accident Claims Tribunal [Subordinate Judge] at Dharmapuri.

For Petitioner : Ms.R.Sreevidhya

For Respondents : Mr.S.Sathiaselvan [for R1]
R2 - Ex parte

JUDGMENT

The appeal has been preferred by the Insurance Company against fastening the liability on the owner of the vehicle insured with the appellant/Insurance Company and award of Rs.9,45,708/- awarded to the first respondent/claimant who sustained injuries in the accident occurred on 15.05.2010.

2. Heard Ms.Sreevidhya, learned counsel appearing for the appellant and Mr.S.Sathiaselvan, learned counsel appearing for the first respondent/claimant.

3. Though the learned counsel for the appellant would argue that there was negligence on the part of the first respondent/claimant who drove the Transport Corporation bus and because of his negligence only, the accident occurred, a perusal of the records would disclose that P.W.1/claimant categorically stated

that the lorry insured with the appellant Insurance Corporation was stopped in the middle of the road without any indication and turned left, resulting in hitting of the Transport Corporation bus which was coming behind the lorry and the Tribunal, categorically came to the conclusion that the driver of the lorry was responsible for the accident. To come to the said conclusion, the Tribunal relied upon Ex.P1 - FIR, which was filed against the driver of the lorry. Moreover, there is no rebuttal evidence available repudiating P.W.1's evidence. Therefore, the Tribunal rightly came to the conclusion that the accident occurred because of the rash and negligent driving of the lorry insured with the appellant Insurance Corporation. Hence, the same cannot be interfered with.

4. The learned counsel appearing for the appellant would submit that the first respondent/claimant was already given alternative employment under the provisions of the Persons with Disabilities [Equal opportunities, Protection of Rights and Full Participation] Act, 1995 and he is presently working as a helper in Tamil Nadu Transport Corporation and therefore, the compensation has to be set aside. However, Mr.Sathiaseelan, learned counsel appearing for the first respondent/claimant would submit that the compensation awarded by the Tribunal is only with regard to disability sustained by the claimant and any benefit given to the claimant under the Special Act is in addition only and therefore, there cannot be any prohibition for this Court to award compensation to the claimant.

5. As rightly pointed out by Mr.Sathiaseelan, a Division Bench of this Court in A.Subramani vs. The Management of Tamil Nadu State Transport Corporation Ltd. and another reported in 2007(5) CTC 386 held in paragraph no.9 as follows:

"9. In any event, Section 72 of the Disabilities Act specifically provides that the provisions of the said Act are to be considered in addition to any other law or order and not in derogation of any law or order. The main object of the Workmen's Compensation Act is to compensate the workman for his injury. Merely because the workman has received the compensation for his injury under the Workmen's Compensation Act, it is not permissible for the employer to deny the benefits of Section 47 of the Disabilities Act, which contains a directive that the employer shall not dispense with or reduce in rank an employee who acquires disability during the service. The benefit envisaged under Section 47 of the Disabilities Act must be considered in addition to the benefits contemplated under the Workmen's

Compensation Act. Therefore, the learned single Judge was clearly in error in directing the appellant/workman to refund the compensation received by him under the Workmen's Compensation Act."

6. Similarly, this Court in Managing Director, Tamil Nadu Transport Corporation [Salem] Ltd. vs. A.Kannan, reported in 2014 (1) TN MAC 808 held that notwithstanding the compensation awarded under the Workmen's Compensation Act, the employee is entitled to benefits under the Disabilities Act, which means that he is entitled to benefits under both Acts.

7. Therefore, from the above it is clear that if any disability is sustained by the claimant, he is entitled to the benefits not only under Workmen's Compensation Act/Motor Vehicles Act, he is also entitled to benefits under the Disabilities Act, as the benefit under the Disabilities Act is in addition to the other benefits available under various acts. Therefore, the contention of the learned counsel for the appellant that the claimant was already provided with alternative employment because of the disability sustained and therefore, no amount can be given under the provisions of Motor Vehicles Act, is not sustainable.

8. The claimant sustained injuries leading to amputation of right leg above knee and therefore, the disability of working as driver is ruled out. Though he has been given alternative employment, the perks and other benefits attendant to the promotional post cannot be reached by the claimant. Based on P.W.2/Doctor's evidence and also the Disability Certificate, which categorically states that the right leg of the claimant was amputated above knee and he got Monteggia fracture in right elbow and undergone surgery, the Tribunal rightly determined the disability at 75%. The said determination cannot be found fault with.

9. The claimant was aged 41 years at the time of accident and earning about Rs.7,000/- per month. Therefore, the appropriate multiplier to be applied is 14 and not 15 as applied by the Tribunal. The loss of income is calculated as follows:

$$7000 \times 12 \times 14 \times 75/100 : \text{Rs.8,82,000/-}$$

10. The claimant sustained injury and his right leg was amputated by way of surgery and therefore, the pain and mental agony he would have undergone would be more and the amount of Rs.30,000/- awarded for pain and suffering is too low and the same is enhanced to Rs.50,000/-. Rs.10,000/- awarded towards extra nourishment is

too low and the same is enhanced to Rs.25,000/-. Rs.5,000/- towards transportation is also very negligible as he has to visit the hospital many times and therefore, the same is enhanced to Rs.25,000/-. No amount was awarded towards artificial limb and a sum of Rs.50,000/- is awarded towards loss of amenities as well as artificial limb.

11. In the result, the compensation awarded by the Tribunal, to the tune of Rs.9,45,708/- is enhanced to Rs.10,32,000/- and the same is rounded to Rs.10,30,000/-. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered. The Civil Miscellaneous Appeal is disposed of accordingly. No costs.

12. Though the Insurance Company has preferred appeal against the Award of Rs.9,45,708/-, this Court being the appellate Court, by re-appreciating the evidence and invoking Order 41 Rule 33 of C.P.C., suo motu enhanced the amount to Rs.10,30,000/- in an endeavour to award just and reasonable compensation.

The appellant is directed to deposit the entire amount with interest and costs, after deducting the amount already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent/claimant is permitted to withdraw the amount.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

gms

To

1. Motor Accident Claims Tribunal [Subordinate Judge]
Dharmapuri.

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

1 cc to Mr.S. Sathiaselvan, Advocate, Sr. 15750

C.M.A.No.628 of 2012

TEJ (CO)
kk 17/4