

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.1017 of 2015
and M.P.Nos.1 to 3 of 2015

Universal Sampo General Insurance Co. Ltd.,
represented by its Manager,
Nagapattinam Taluk,
Town & Musifi

... Appellant/2nd Respondent

vs.

1. M.Bhaskaran

....Respondent/Petitioner

2. M.Elangovan

...Respondent/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 27.03.2013 passed in M.C.O.P.No.123 of 2011 on the file of the Motor Accidents Claims Tribunal (Additional Subordinate Judge), Mayiladuthurai.

For Appellant :Mr.N.Vijayaraghavan

For Respondents:Mr.K.Govi Ganesan - R1

JUDGMENT

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

The Insurance Company is on appeal challenging the award dated 27.03.2013 passed in M.C.O.P.No.123 of 2011 on the file of the Motor Accidents Claims Tribunal (Additional Subordinate Judge), Mayiladuthurai.

2. It is a case of injury. On 11.12.2009, when the injured Baskaran was proceeding from North to South in his cycle to a temple, an Auto bearing Registration No.TN51 Q 8984 belonging to the second respondent herein came in an opposite direction in a rash and negligent manner and hit against the injured Baskaran. As a result, the injured Baskaran fell down from his cycle and

sustained severe head injuries. Immediately, the injured Baskaran was taken to the Government Hospital, from where the injured was referred to Pondicherry Institute of Medical Science, where the injured Baskaran was given treatment as inpatient from 12.12.2009 to 29.12.2009. It is stated that due to the injury, the injured is not able to speak and his right hand movement has also been restricted. The doctor has issued a disability certificate fixing the disability at 70%. It is stated that at the time of accident the injured Baskaran was working in Southern Railway and was earning a sum of Rs.30,323/-. Hence, the injured has made a claim for compensation of Rs.20,00,000/-.

3. In support of the claim, the injured claimant was examined as P.W.1; the doctor, who issued disability certificate to the injured was examined as P.W.2 and one Sankar, was examined as P.W.3, and Ex.P-1 to Ex.P-16 were marked, the details of which are as follows:-

Ex.No.	Date	Details
P1	16.12.2009	Xerox copy of the First Information Report
P2	29.12.2009	True copy of Vehicle Inspection Report
P3	11.12.2009	True copy of Accident Register
P4	11.12.2009	True copy of injury certificate
P5	11.12.2009	True copy of the discharge summary issued by Sirkazhi Government Hospital.
P6	11.12.2009	True copy of the discharge summary issued by Raja Muthaiah Government College and Hospital, Chidambaram
P7	...	True copy of the discharge summary issued by Pondicherry Bims Hospital
P8	..	True copy of the disability certificate issued by Government Insitute of Rehabilitation Medicine Hospital, K.K.Nagar, Chennai
P9	...	Pay slip of the claimant issued by Southern Railway
P10	...	True copy of Registration Certificate
P11	...	True copy of the driving licence
P12	...	True copy of the Policy

Ex.No.	Date	Details
P13	...	Xerox copy of the pensioner's identity card of the claimant
P14	...	Disability certificate
P15	12.12.2009	C.T.Scan report
P16	16.12.2009	Xerox copy of the documents showing that the claimant has taken treatment in Southern Railway Hospital

On behalf of the Insurance Company, One Deivanayagam was examined as R.W.1 and the report issued by the Enquiry Officer of the Insurance Company was marked as Ex.R1.

4. The Tribunal based on the oral evidence of the witnesses, and the F.I.R. came to conclusion that the second respondent herein had driven the vehicle in a rash and negligent manner and was responsible for the accident and consequently liability was fixed on the appellant Insurance Company, since the vehicle was insured with the appellant, to compensate the claimant. On this issue, learned counsel for the appellant has no serious objection with regard to the finding of the Tribunal as no material has been placed to come to a different conclusion from that of the conclusion arrived by the Tribunal.

5. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of income (20,038 x 12 x 11x 75/100)	Rs.19,83,762/-
2	For pain and suffering	Rs. 5,000/-
3	Transport expenses	Rs. 5,000/-
4	For Extra Nutrition	Rs. 5,000/-
	Total	Rs.19,98,762/-

6. The only serious objection raised is with regard to the grant of compensation towards Loss of income, as the injured Baskaran has retired from the service and is receiving pension.

7. Insofar as the quantum of compensation is concerned, the Tribunal considering the pay slips of the injured had fixed the income after deducting the pension amount. It is seen that the doctor, who treated the injured has not issued the disability certificate. Even though the disability certificate was issued by a Government Doctor, taking note of the injuries sustained,

we feel that the percentage of disability assessed is marginally higher and the same be taken as 50%. Accordingly, the award in respect of fixing the percentage of disability is modified at 50%. With regard to the award amount towards pain and suffering, the Tribunal awarded a sum of Rs.5,000/-, which is very meagre. Accordingly, we modify the same to Rs.30,000/-. With the regard to Transport charges, the Tribunal awarded a sum of Rs.5,000/-, which is very low and hence, the same is enhanced to Rs.15,000/-. As far as Nourishment charges is concerned, the Tribunal has awarded a sum of Rs.5,000/-, which we feel that the same be increased. Accordingly, we modify the same to Rs.20,000/-. It is seen that the Tribunal has not awarded any amount towards attender charges. Taking note of the injuries sustained, we feel that the injured has to be assisted by somebody. Accordingly, we award a sum of Rs.15,000/- towards attender charges.

8. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of income	Rs.19,83,762/- (20,038 x 12 x 11x 75/100)	Rs.13,22,508/- (20,038 x 12 x 11x 50/100)
2	For pain and suffering	Rs. 5,000/-	Rs. 30,000/-
3	Transport expenses	Rs. 5,000/-	Rs. 15,000/-
4	For Extra Nutrition	Rs. 5,000/-	Rs. 20,000/-
5	For Attender Charges	---	Rs. 15,000/-
	Total	Rs.19,98,762/-	Rs.14,02,508/-

9. There is no serious objection in respect of the interest granted at 7.5% per annum.

10. Accordingly, the Civil Miscellaneous Appeal is partly allowed as follows:-

- (i) The award of the Tribunal is reduced to Rs.14,02,508/- from Rs.19,98,762/-.

- (ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.
- (iii) Learned counsel appearing for the appellant submits that as per the order passed by this Court dated 03.06.2015, directing the appellant to deposit 50% of the award amount with proportionate accrued interest and costs, the appellant has deposited the same. He seeks further time to deposit the balance amount.
- (iv) The appellant is granted eight weeks time to deposit the balance amount as ordered by this Court.
- (v) On such deposit being made, the claimant is permitted to withdraw the same.
- (vii) Except the above modification, the award of the Tribunal in all other aspects stands confirmed.
- (viii) There will be no order as to costs in this appeal.
- (ix) Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal
(Additional Subordinate Judge),
Mayiladuthurai.

+1cc to Mr.K.GoviGanesan, Advocate, S.R.No.11422
+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.11619

C.M.A.No.1017 of 2015
and M.P.Nos.1 to 3 of 2015

msm(CO)
srg(29/03/2016)