IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2016

C O R A M

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH,J.,

AND

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU,J.,

C.M.A.No.158 of 2015
and
M.P.No.1 of 2015
and
Cross Objection No.25 of 2016

The Oriental Insurance Co.Ltd.,
Branch Office, 3-L, Sidha Veerappa
Chetty Street, Dharmapuri Town
Dharmapuri District.

..Appellant/2nd Respondent
in CMA No.158 of 2015
and 1st respondent in
Cross Objection No.25 of 2016

-Vs-

1. Prakash @ Prakasham
..1st Respondent/Claimant in CMA.No.158/15 &
Cross Objector in Cross Objection No.25 of 2016

2. Y.Krishnamoorthi
..2nd Respondent/1st Respondent in CMA. No.158 of 2015
2nd Respondent in Cross Objection No.25 of 2016

Civil Miscellaneous Appeal filed under Section 173 of M.V.ACT, 1988 and Cross Objection against the decree and judgment dated 30.10.2013 passed by the learned Additional District Judge [Motor Accidents Claims Tribunal] Dharmapuri in MCOP No.209 of 2012.



For Appellant in CMA No.158 of 2015 and 1st respondent in Cross Objection No.25 of 2016 ... Mr.S.Manohar

For Respondent 1 in CMA No.158 of 2015 and Cross Objector in Cross Obj.No.25 of 2016 ...Mr.S.Sathia Seelan

For Respondent 2 in CMA No.158 of 2015 and Cross Obj.No.25 of 2016 ...No Appearance

COMMON JUDGMENT

(Judgment of the Court was delivered by Huluvadi G.Ramesh, J.,)

C.M.A.No.158 of 2015 has been filed by the Insurance company aggrieved by the judgment and decree dated 30.10.2013 passed by the learned Additional District Judge, [Motor Accidents Claims Tribunal] Dharmapuri in MCOP No.209 of 2012 and Cross Objection No.25 of 2016 has been filed by the injured claimant against the very same judgment seeking enhancement of the compensation awarded. Both the appeal and the Cross Objection are taken up together and disposed of by this common judgment.

2. The brief facts of the case is as follows:

(i) This is a case of injury.

(ii) On 01.09.2011 at about 12.40 hrs, when the injured/claimant was riding his motor cycle bearing Registration No.TN-29 AH-2368 on the Dharmapuri-Papparapatti Main Road, the driver of the auto bearing Regn.No.TN-29 AH 2368, insured with the appellant-Insurance company, came in a rash and negligent manner hit against the motor cycle, due to which, the claimant fell down and suffered multiple injuries all over his body, viz., Brachial Plexus Injury on the right hand, compound fracture and dislocation of right leg ankle, right leg shaft of femur broken into several pieces and degloving injury on the right forearm and due to the same, there was a functional disability of 80% to the whole body.

(iii) He went before the Motor Accident Claims Tribunal claiming compensation in a sum of Rs.20,00,000/-under various heads. To sustain his claim, the claimant examined himself as P.W1 along with P.Ws.2 and 3 and marked Exs.P1 to P26. On the side of the appellant-Insurance Company, R.Ws.1 and 2 were examined and Exs.R1 to R5 were marked. The Tribunal after considering the oral and documentary evidence adduced awarded compensation in a sum of Rs.22,08,648/- over and above the amount of Rs.20,00,000/- claimed by the injured claimant under the following heads:

| Heads | Compensation awarded |
|---|---|
| Future loss of income | Rs.17,68,108/- |
| Transport Expenses | Rs. 5,000/- |
| Pain and suffering | Rs. 10,000/- |
| Food and Nutrition | Rs. 5,000/- |
| Medical Expenses | Rs. 4,25,540/- |
| Total | Rs.22,13,648/-** |

** Calculation error [as per the judgment Rs.22,08,648/- has been awarded as compensation].

(iv) The said compensation awarded is under challenge before this Court, with the appellant-Insurance Company seeking reduction and by the injured claimant, seeking enhancement for a sum of Rs.34,00,000/- in the cross objection.

3. Learned counsel representing the injured claimant submits that at the time of the accident, he was working as a Lecturer in a Private college and was earning a sum of Rs.12,500/- per month and due to the accident, he could not go to work; further due to his 80% permanent disability, his marital life did not fructify. It is his further contention that the Tribunal has erred in awarding future prospects at 30% instead of 50% as per the dictum laid down by the Hon'ble Apex Court in the judgment reported in (2012) 6 SCC 421 [Santosh Devi vs. National Insurance Company Limited and others] and also under the other heads. Accordingly, he prays for enhancement of the compensation.

4. Per contra, the learned counsel representing the Insurance Company submits that the Auto in question was insured with them and the policy is valid upto 31.10.2011. He also submits that they have also proved the same by examining RW1, the Assistant working in the RTO Office, Dharmapuri and also the fact that the driver of the Auto was not holding a valid driving licence as on the date of the accident. Therefore, the Insurance company is not liable to pay the compensation. He further submits that though the Tribunal in its judgment has held that liberty is given to the Insurance company to pay and

recover the compensation awarded, however the same has not been incorporated in the decree. Accordingly, he would pray for incorporating the same in the judgment.

5. We have heard the learned counsel appearing for the respective parties and also perused the award passed by the Tribunal.

6. The factum of the accident is not in dispute. Therefore, we are not inclined to go in to the aspect of the negligence as both the parties have challenged only the quantum of compensation awarded.

7. The injured claimant has filed the amendment petition to amend Sl.No.21 (a) in the Claim Petition in MCOP No.209 of 2012 on the file of the learned Motor Accident Claims Tribunal [Additional District Judge], Dharmapuri wherein initially he claimed compensation in a sum of Rs.47,25,000/- but, restricted the same to Rs.20,00,000/-. However, by way of amendment the claimant seeks enhancement to Rs.34,00,000/- in this cross objection. The said petition is allowed.

8. The grievance of the Insurance company is that though as per the evidence adduced by the Doctor the permanent disability suffered by the claimant was 70%, the Tribunal fixed the same at 80% and there is also no evidence to the effect that the claimant cannot continue his avocation. As such, the Tribunal attributing the disability to the whole body of the injured due to which his functionality is hindered cannot be sustained. If the claimant himself decides not to attend his work on his own volition, the Tribunal cannot award compensation for the same. Even with regard to the multiplier adopted, it is erroneous and only 30% has to be awarded future prospects and not 50% as awarded by the Tribunal.

9. On the contrary, the grievance of the injured claimant is that he initially took treatment for more than two weeks as an inpatient and thereafter he was once again admitted in an hospital at Coimbatore for conducting surgery to his right shoulder, which has been totally paralysed due to the accident. It is also his further contention that he has spent more than Rs.7 lakhs for his treatment.

10. On a perusal of the award passed by the Tribunal, it is seen that the income of the injured claimant has been taken at Rs.12,500/- per month as per the documents produced and adding 30% towards future prospects the award of Rs.17,68,108/- cannot be said to be exorbitant considering the facts and circumstances of the case. We are also of the view that what has been awarded towards medical expenses appears to be justified.

11. Inasmuch as the claimant has undergone treatment for quite a number of days as in-patient and has also underwent surgery, we are of the view that a sum of Rs.1,00,000/- over and above the amount awarded by the Tribunal could be awarded towards the medical expenses; as far as loss of amenities is concerned no amount has been awarded. This Court feels, a sum of Rs.1,00,000/- could be awarded on the said head. Similarly the amount awarded under the head "food and nutrition" is also on the lower side. The claimant was under treatment for a period of six months and has also underwent surgery. Therefore, considering the same, this Court feels that an additional sum of Rs.75,000/- could be awarded under the head "food and nourishment". Further no amount has been awarded towards "Attender Charges". This Court feels that if a sum of Rs.1,00,000/- is awarded that would meet the ends of justice.

12. Insofar as the future prospects is concerned, of course according to the statement of the learned counsel for the claimant he has voluntarily left the job having suffered paralysis. It is further evident that the claimant faces discomfort and difficulty in the movement of the limb and this hampers his mobility and therefore, it was very difficult for him to go to his place of work everyday as, for the said travel he incurs lots of expenditure towards transportation and therefore, he has voluntarily decided not to go to the job. Even as per the UGC scale the basic pay of a lecturer is fixed at Rs.30,000/- to Rs.40,000/-. In such circumstances, fixing his pay at Rs.12,500/- per month is not exorbitant. Therefore, he is entitled to another 10% towards loss of future prospects over and above the percentage fixed by the Tribunal. Accordingly, a sum of Rs.2,00,000/- is awarded. Further an additional sum of Rs.50,000/- is awarded towards future medical expenses of the injured claimant.

13. In the circumstances, we are of the view that awarding a sum of Rs.6,25,000/- [Rupees six lakhs and twenty five thousand only] over and above the amount awarded by the Tribunal will meet the ends of justice, which shall carry interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.



14. Accordingly, the compensation awarded by the Tribunal is modified as here under:

| Heads | Compensation awarded by the Tribunal | Compensation now modified by this Court |
|---|---|---|
| Loss of income and Future Prospects | Rs.17,68,108/- | Rs. 19,68,108/- |

| Heads | Compensation awarded by the Tribunal | Compensation now modified by this Court |
|---|---|---|
| Transport Expenses | Rs. 5,000/- | Rs. 5,000/- |
| Pain and suffering | Rs. 10,000/- | Rs. 10,000/- |
| Food and Nutrition | Rs. 5,000/- | Rs. 80,000/- |
| Medical Expenses | Rs. 4,25,540/- | Rs. 5,25,540/- |
| Attender Charges | -- | Rs. 1,00,000/- |
| Loss of Amenities | -- | Rs. 1,00,000/- |
| Future Medical expenses | -- | Rs. 50,000/- |
| Total | Rs.22,13,648/- | Rs. 28,38,648/- |

15. At this juncture, it is contended by the learned counsel for the Insurance Company that the insurance company has proved beyond reasonable doubt that as on the date of the accident though the auto was having a valid insurance policy, however the auto driver was not holding a valid driving licence. Therefore, it is contended that they are not liable to pay compensation and though it was observed by the Tribunal that the Insurance Company shall pay the claim and recover it from the owner, the same was not incorporated in the decree.

16. Considering the said submission and that since there is no dispute that the vehicle was duly insured but the fact remains that the auto driver was not holding a valid driving licence, the insurance company shall pay the modified compensation awarded by this Court and recover the same from the owner of the vehicle. It is needless to state that consequent upon the order passed by the Tribunal directing the Insurance Company to pay the claim and recover it from the owner of the vehicle, a decree to that effect may be drafted so as to enable the Insurance Company to pay the compensation and liberty is granted to the insurer to recover the same from the owner of the vehicle.

17. It is submitted that as per the interim order passed by this Court in M.P.No.1 of 2015 in CMA No.158 of 2015 dated 29.01.2015, the appellant-Insurance company has deposited 75% of the compensation awarded by the Tribunal together with accrued interest. It is further stated that as per the order dated

24.04.2015 passed by this Court in M.P.No.2 of 2015 in CMA No.158 of 2015, the injured claimant/Cross Objector was permitted to withdraw 50% of the amount deposited with accrued interest as on that date.

18. In such circumstances, the appellant-Insurance Company in C.M.A.No.158 of 2015 is directed to deposit the balance award amount including the enhanced compensation now awarded by this Court along with accrued interest and costs within a period of three months from the date of receipt of a copy of this order to the credit of MCOP No.209 of 2012 on the file of the learned Additional District Judge [Motor Accident Claims Tribunal], Dharmapuri. On such deposit being made, the injured claimant is entitled to withdraw the entire award amount along with accrued interest on making out appropriate application before the Tribunal.

19. In the result, the appeal filed by the Insurance Company in CMA No.158 of 2015 is dismissed with the aforesaid observation and direction and the Cross Objection No.25 of 2016 filed by the injured claimant is allowed in part. No costs. Consequently, the connected miscellaneous petition is closed.

vj2

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Additional District Judge
[Motor Accidents Claims Tribunal], Dharmapuri .

+ 1 cc to Mr.S.Manohar, Advocate Sr 23908
+ 1 cc to Mr.S.Sathia Seelan, Advocate Sr 23723

KR/10/8/16