

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.11.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.169 of 2016 &
C.M.P.No.1 of 2016

The Divisional Manager,
M/s.New India Assurance Co. Ltd.,
C.S.I.Building, 2nd Floor,
No.1, Officer's Line,
Vellore-1.

.. Appellant

Versus

1.Kamaraj
2.Muralidharan

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 01.04.2014 made in M.C.O.P.No.92 of 2013 on the file of the Motor Accidents Claims Tribunal, (Principal Subordinate Judge) at Thiruvannamalai District.

For Appellant : Mr.J.Chandran
For Respondents: Mr.F.Terry Chella Raja for R1
No appearance for R2

J U D G M E N T

The Divisional Manager of New India Assurance Company Limited/appellant herein, questioning the correctness of the impugned award dated 01.04.2014 in M.C.O.P.No.92 of 2013, passed by the learned Motor Accident Claims Tribunal cum Principal Subordinate Judge, Thiruvannamalai awarding a sum of Rs.6,85,500/- as against the claim of Rs.10 lakhs made by the injured/claimant, has filed this appeal.

2.Mr.Chandran, learned counsel for the appellant, assailed the impugned order on four grounds. Firstly, with regard to negligence, the Tribunal ought to have concluded the negligence on the part of three men travelling on a single motor cycle. Secondly, with regard to quantum of compensation, he would submit that when there was one injury sustained by the injured/claimant on his right leg, the Tribunal has wrongly

applied the multiplier method. Thirdly, while adopting multiplier method, it ought to have awarded compensation in terms of Section 163 A of M.V.Act, since the very same meaning of permanent disability has occurred under Workmen Compensation Act. But the Tribunal has not resorted to the said provision. Fourthly, he would further submit that there is no finding recorded by the Tribunal that the injured had suffered 10 c.m. reduction on his right leg. The Tribunal has to find out what is the real length of both legs. Unless the length both the legs of the injured is ascertained, it is not easy for the Tribunal to come to the conclusion that there is a reduction of 10 cm. of his right leg. Again referring to the deposition by the injured/first respondent, he brought to the notice of this Court that the learned Tribunal has miserably failed to mention the actual length of both legs. Therefore, the finding of the Tribunal that there was reduction of 10 cm. in the right leg of the injured, for the purpose of arriving the quantum of compensation is liable to be interfered with. Lastly, he would submit that when the claimant has clearly admitted in his claim petition that he is aged about 32 years at the time of accident, by wrongly referring to the Accident Register, wherein the age of the injured has been mentioned as 30 years, the Tribunal has fixed the age of the injured as 30 years and higher multiplier has been adopted. In this process, the quantum of compensation also appears to be an exorbitant one. Therefore, he pleaded that for all these reasons, the impugned order is liable to be interfered.

3.Learned counsel for the injured/first respondent would submit that the contention made by the learned counsel for the appellant that the negligence must have been caused by them while travelling in the motor cycle is only inappropriate, for the reason that the Tribunal, after considering these issues and after referring the FIR marked as Ex.P1, taking further support Ex.P2-MVI report saying that the driver of the offending vehicle bearing Registration No.TN-24-E-7267 is only responsible for causing the accident, as he did not possess the driving license at the time of accident, has come to the conclusion as to the negligence. Hence, it is not open to the appellant / Insurance Company to say that the Tribunal has not taken sufficient time. Again, referring to the finding recorded by the Tribunal with regard to negligence, he has submitted that the contention made by the Insurance Company before the Tribunal that three people were travelling on a single motor vehicle, has been repelled by giving a finding that the driver of the offending vehicle bearing Registration No.TN-24-E-7267 was found not possessing a valid license. Therefore, the finding recorded on the negligence is required to be accepted. Coming to quantum of compensation, he would submit that the injured/first respondent, who was a pillion rider, having made a claim that he

has sustained multiple grievance injuries in his right leg, as a result, he underwent surgery at Government General Hospital, Chennai and as per Ex.P4-discharge summary dated 22.11.2012, the length of his right leg has been reduced by 10 c.m. and consequently he became physically unfit to stand in the open court because the injured also after coming to the Court Hall, was not able to stand up for a long time, therefore, the Tribunal after seeing the injured at the time of both chief and cross examination that the reduction of his right leg has been properly found out by the Tribunal, has come to the conclusion that the submissions made by the appellant/Insurance Company cannot be accepted by this Court, he pleaded.

4. Coming to further contention made by the learned counsel for the Insurance Company that the doctor who was examined as PW2 has miserably failed to assist the Tribunal by certifying Konio Meter method has to be rejected, for the reason that it is a belated one.

5.As a matter of fact, the learned Tribunal having considered the case of the injured, with regard to negligence on the basis of Ex.P1-FIR and also MVI Report marked as Ex.P2, held that the offending vehicle has caused the accident, as the driver of the vehicle was not possessing the valid license. Therefore, this Court is not able to agree with the contention of the learned counsel for the appellant/Insurance Company to say that three men travelling on a two wheeler had caused the accident, without there being any finding or evidence to show that the driver of the two wheeler was at fault.

6. Coming to the quantum of compensation, the evidence of doctor examined as PW2 shows that the injured was examined along with X-ray Report under Ex.P6 and medical records and he has deposed that the injured had sustained multiple injuries on his right knee for which, he has also undergone a surgery on 29.10.2012 for which, he has taken treatment for 24 days till 22.11.2012. More over, in the operation, the injured right leg was reduced by 10 cm. and therefore, the doctor assessed the permanent disability at 70%. In this context, if we refer to Section 163 A of the M.V.Act, no doubt, the submissions made by the Insurance Company that to accept the permanent disability, the meaning of the accident under Workmen's Compensation Act to be applied. But in the present case when the injured had sustained grievous injury in his right leg in the accident and after surgery, when he was able to show before the Tribunal that he is not able to walk or stand up for a long time in view of reduction of 10 cm. of his right leg, it is nothing but permanent disability. Further, the claimant himself has mentioned his age as 32 years. But the Tribunal, relying on the Accident Register wherein the age of the claimant was stated as

30 years, ought not to have accepted the same. Therefore, this Court is inclined to apply the age of the injured as per the claim petition, viz., 32 years. Therefore, taking the age of the injured as '32' years, this Court is inclined to apply the correct multiplier '16' and the loss of income hereby works out to Rs.4,500 x 12 x 16 x 70/100 = 6,04,800/-. Except this modification, all other compensations awarded by the Tribunal under various heads shall remain unaltered. The modified compensation reads as under:

Sl.No.	Heads	Modified award
1.	Loss of income	Rs.6,04,800/-
2.	Pain and suffering	Rs. 25,000/-
3.	Medical Expenses	Rs. 7,900/-
4	Transportation and Extra nourishment	Rs. 10,000/-
	Total	Rs. 6,47,700/-

7. It was brought to the notice of this Court that the Tribunal has directed the appellant/Insurance Company to deposit the award amount and then to recover the said amount from the owner of the vehicle/second respondent herein. In view of the above re-determination of compensation, the appellant/Insurance Company is directed to deposit the modified compensation within a period of four weeks, less the amount already deposited from the date of receipt of a copy of this order and on such deposit, the first respondent/claimant is permitted to withdraw the entire award amount and the appellant/Insurance Company is permitted to withdraw the balance amount with accrued interest, if any, by moving appropriate applications before the Tribunal.

8. With the above modification, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected C.M.P. is closed.

Sd/-

Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Thiruvannamalai District.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s. J. Chandra, Advocate, S.R.No.67962
+1cc to M/s. M. Malar, Advocate, S.R.No.67840

GM1 (CO)
Eu 15.2.17

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C.M.P.No.1 of 2016



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