IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2016

CORAM:

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

Civil Miscellaneous Appeal No.219 of 2016

M/s.Reliance General Insurance Company Ltd.,
Plot No.2054, 2nd Avenue,
Rai Towers, Anna Nagar,
Chennai 600 040. ... Appelant/2nd Respondent

vs.

1. M.Thambidurai
2. V.Suresh ... Respondents/Petitioner & 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 23.04.2015 passed in M.C.O.P.No.1764 of 2013, on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant : Mr.N.Vijayaraghavan

For 1st Respondent : Mr.B.S.Padmanabhan

J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

Challenging the judgment and decree dated 23.04.2015 passed by the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai in M.C.O.P.No.1764 of 2013, the Insurance Company has come up with this appeal.

2. This is a case of injury. On 19.02.2013, about 23.00 hours, when the claimant - Thambidurai was riding his motor cycle bearing Registration No.TN 22 BV 2513 on Vandalur Bridge, a Van bearing Registration No.TN 19 C 8700 belonging to the 2nd respondent herein came in a rash and negligent manner from the opposite direction and dashed against the motor cycle, due to which the claimant fell down and sustained injuries. Alleging that the accident occurred only due to the rash and negligent

driving of the driver of the Van, the claimant filed a claim petition before the Tribunal seeking a sum of Rs.20,00,000/- as compensation for the injuries sustained by him.

3. Before the Tribunal, on the side of the claimants, one Mr.Kaliappan was examined as P.W.1; Dr.Thiyagarajan, was examined as P.W.2 and Exs.P1 to P14 were marked. On the side of the Insurance Company, one Mr.N.Veeraraghavan was examined as R.W.1; one Mr.K.Manikandan was examined as R.W.2 and Exs.R1 to R4 were marked. Details of the Exhibits would run thus:

Ex.P1	F.I.R.
Ex.P2	Discharge Summary of Government General Hospital
Ex.P3	Discharge Summary of SRMC Hospital
Ex.P4	Discharge Summary of SRMC Hospital
Ex.P5	Discharge Summary of SRMC Hospital
Ex.P6	Discharge Summary of SRMC Hospital
Ex.P7	Medical Bills
Ex.P8	Driving Licence
Ex.P9	X-rays
Ex.P10	Photos with CD
Ex.P11	Transportation Bills
Ex.P12	Private Doctor's Certificate
Ex.P13	Disability Certificate
Ex.P14	X-ray
Ex.R1	Authorisation Letter
Ex.R2	DL Extract
Ex.R3	Policy Copy
Ex.R4	Notice to owner and Driver by 2nd respondent

4. On consideration of the available oral and documentary evidence, the Tribunal, held that the accident had occurred due to the rash and negligent driving of the driver of the offending vehicle, i.e. Van and in view of the settled law that third party should not be made to suffer for the violation of policy conditions, it held that the Insurance Company is liable to pay compensation to the claimant and recover the same from the owner of the Van awarded a sum of Rs.27,62,000/- as compensation to the claimant. Details of the award are as follows:

S.No.	Heads	Compensation awarded by the Tribunal
1	Loss of Income (Rs.13,000/- x 12 x 100% x 15)	Rs. 23,40,000/-
2	Transportation	Rs. 50,000/-
3	Nourishment	Rs. 50,000/-
4	Medical Bills	Rs. 97,000/-
5	Future Medical Bills	Rs. 50,000/-
6	Pain and Suffering	Rs. 1,00,000/-
7	Loss of amenities	Rs. 50,000/-
8	Attender Charges	Rs. 25,000/-
	Total	Rs. 27,62,000/-

5. Learned counsel for the appellant/Insurance Company would vehemently contend that when the claim made by the claimant is only for Rs.20 lakhs, the Tribunal has awarded a sum of Rs.27,62,000/- as compensation, which is highly exorbitant. Also, he contended that the Tribunal erred in fixing the percentage of disability of the claimant at 100%, when P.W.2 - Doctor has assessed the same only at 65%.

6. While so, according to the learned counsel appearing for the 1st respondent/claimant, the compensation awarded by the Tribunal is just and reasonable and prayed for dismissal of the appeal.

7. Heard the learned counsel on either side, gave careful consideration to their submissions and perused the material documents available on record.

8. The claimant in this case is the injured himself. According to the claimant, prior to the accident, he was working as a Driver in Fast Track Call Taxi and was earning a sum of Rs.17,000/- per month. As could be seen from the records, he was aged 36 years at the time of accident. Since no contra evidence is adduced on the side of the Insurance Company to disprove the avocation of the claimant, the Tribunal fixed his monthly income at Rs.10,000/- and added 30% of the same towards his future prospects, while computing compensation towards loss of income. Taking note of the avocation of the claimant and the escalating prices, this Court is not inclined to interfere with the monthly income of the claimant fixed by the Tribunal as also the percentage of future prospects. Further, the multiplier of

'15' adopted by the Tribunal to the age of the claimant is correct in view of the ratio laid down by the Apex Court in the case of Sarla Verma (Smt) and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121).

9. As regards the injuries sustained by the claimant, it is seen that though P.W.2 - Doctor, who examined the claimant, has assessed his permanent disability at 65%, the Tribunal has fixed the same at 100% not only taking note of the injuries sustained by him, but also in view of his avocation as a Driver. The Discharge Summaries marked by the claimant would show that he sustained fracture in right femur, fracture of Calconium, fracture of right hand, head injuries and multiple abrasions all over the body. Initially, he was treated for the said injuries in Government General Hospital, Chennai and later, he underwent treatment and surgeries in Sri Ramachandra Medical Centre, Chennai. In all, the claimant was hospitalised from 20.02.2013 to 11.03.2013; 17.10.2013 to 21.10.2013; 23.10.2013 to 27.12.2013; 27.12.2013 to 27.01.2014 and 07.03.2014 to 21.03.2014.

10. Of course, the avocation of a Driver requires him to be hale and healthy, as he is responsible for the lives of the passengers, who travel in the vehicle. Any physical inability will not allow a Driver to continue his avocation. Though, in the case on hand, the claimant cannot continue his avocation as a Driver any more, he can search for an alternative job, which does not require much physical movement. The disability of the claimant will not take away his entire earning capacity. Therefore, this Court is not inclined to accept the percentage of disability assessed by the Tribunal, but, confirms the percentage of disability assessed by P.W.2-Doctor at 65%.

11. Accordingly, taking the monthly income of the claimant at Rs.10,000/-, adding 30% of the said income towards his future prospects, fixing the percentage of disability at 65% and adopting the multiplier of '15', the revised compensation towards "loss of income" is arrived at a sum of Rs.15,21,000/- (Rs.10,000/- + Rs.3000/- (30% future prospects) x 12 x 65% x '15').

12. As regards compensation awarded under the heads 'Transportation', 'Nourishment', 'Future Medical Bills', 'Pain and Suffering', 'Loss of amenities' and 'Attender charges', this Court finds it just and reasonable and it is accordingly confirmed. As far as compensation towards 'Medical Bills' is concerned, since it is supported by sufficient proof, the same is confirmed.

13. In fine, a sum of Rs.27,62,000/- awarded by the Tribunal as compensation is modified and the 1st respondent/claimant is entitled to a sum of Rs.19,43,000/- (Rupees Nineteen Lakhs Forty Three Thousand only) as revised compensation. Interest awarded by the Tribunal at 7.5% per annum from the date of numbering the petition till the date of deposit along with proportionate costs is confirmed. Break-up details of the revised award are tabulated below:

S.No.	Heads	Compensation awarded by the Tribunal	Revised Compensation awarded by this Court
1	Loss of Income	Rs. 23,40,000/-	Rs. 15,21,000/-
2	Transportation	Rs. 50,000/-	Rs. 50,000/-
3	Nourishment	Rs. 50,000/-	Rs. 50,000/-
4	Medical Bills	Rs. 97,000/-	Rs. 97,000/-
5	Future Medical Bills	Rs. 50,000/-	Rs. 50,000/-
6	Pain and Suffering	Rs. 1,00,000/-	Rs. 1,00,000/-
7	Loss of amenities	Rs. 50,000/-	Rs. 50,000/-
8	Attender Charges	Rs. 25,000/-	Rs. 25,000/-
	Total	Rs. 27,62,000/-	Rs. 19,43,000/-

14. The revised compensation awarded by this Court along with interest and proportionate costs shall be deposited by the appellant/Insurance Company to the credit of M.C.O.P.No.1764 of 2013, less the amount already deposited within a period of six (6) weeks from the date of receipt of a copy of this order. It is also made clear that the amount awarded by this Court shall be paid to the 1st respondent/claimant in the form of a crossed Account Payee Cheque, favouring only the claimant and it should not be issued in favour of any other person/Company. The direction of the Tribunal that the appellant/Insurance Company shall pay compensation to the claimant and recover the same from the 2nd respondent herein, the owner of the offending vehicle is confirmed.

The Civil Miscellaneous Appeal is partly allowed with the above direction and observation. No costs. Consequently, connected C.M.P.No.1831 of 2016 is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To:

The Motor Accidents Claims Tribunal,
V Court of Small Causes, Chennai.

+1cc to M/S.M.B.Gopalan & Associates, Advocate Sr.19199
+1cc to M/S.B.S.Padmanabhan, Advocate sr.18948

C.M.A.No.219 of 2016

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srg 23/05/2016