IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2016

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.527 of 2015
and
M.P.Nos.1 and 2 of 2015

The Oriental Insurance Company Limited
Oriental House, II Floor
No.216, Prakasam Salai
Broadway
Chennai 600 001. ..Appellant/2nd Respondent

vs

1. K.Parthiban
2. M.Badrinath ..Respondents/Petitioner/
1st Respondent

Civil Miscellaneous Appeal against the judgment and award dated 16.10.2014 passed by the learned V Judge, Court of Small Causes [Motor Accident Claims Tribunal], Chennai in MCOP No.3488 of 2012.

For Appellant ... Mr.S.Manohar

For Respondents ... Mr.N.M.Muthurajan - for R1
R2- No appearance

J U D G M E N T

(Judgment of the Court was delivered by
HULUVADI G.RAMESH,J.,)

The Insurance Company is before this Court, challenging the award dated 16.10.2014 passed by the learned V Judge, Court of Small Causes [Motor Accident Claims Tribunal], Chennai in MCOP No.3488 of 2012.

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

(i) This is a case of injury.

(ii) On 02.04.2007 at about 9.15 hrs., when the injured claimant was riding his motor cycle bearing Regn.No.TN-21-H-7869 in GWT Road opposite to Nokia Company, Sriperumbudur, the car coming in the opposite direction, which was insured with the appellant-Insurance Company came in a rash and negligent manner and hit against the motor cycle, due to which, the claimant suffered grievous injuries and also suffered permanent disability.

(iii) The injured claimant went before the Motor Accident Claims Tribunal claiming compensation in a sum of Rs.16,00,000/-. To sustain his claim, he examined himself as P.W.1 along with P.Ws.2 and 3 and marked Exs.P1 to P17. On the side of the appellant one Mr.Sampath was examined as RW1 and Exs.R1 to R3 were marked. The Tribunal after considering the oral and documentary evidence adduced awarded compensation in a sum of Rs.15,40,000/- as follows:

Heads	Compensation awarded
Loss of Income Rs.10,000 x 6	Rs. 60,000/-
Transportation and Damage to clothes	Rs. 10,000/-
Extra Nourishment	Rs. 50,000/-
Medical Expenses	Rs. 1,00,000/-
Attender charges	Rs. 10,000/-
Pain and suffering	Rs. 1,00,000/-
Disability of 40% at the rate of Rs.2,000/- per percentage	Rs. 80,000/-
Loss of Amenities	Rs. 50,000/-
Loss of earning capacity Rs.10,000 x 12 x 18 x 50%	Rs. 10,80,000/-
Total	Rs. 15,40,000/-

Being aggrieved by the same, the Insurance Company is before this Court challenging both the negligence and the quantum of compensation awarded.

3. The learned counsel representing the appellant-Insurance Company submits that the very complaint/FIR was registered only by the driver of the car and not by the injured. Further it is clearly stated in the FIR that the accident had occurred only due to the negligence of the injured since he failed to signal before turning to the right hand side as he was going ahead of the Car. It is further submitted that the claimant fell down after hitting the left front side of the car and since the accident was due to his negligence, he is not entitled to any compensation. It is his further contention that if not the driver of the car applied sudden brake, the claimant would have been run over by the said car. Accordingly, he prays for setting aside the judgment passed by the Tribunal.

4. Per contra, the learned counsel for the claimant submits that non filing of the FIR by the injured claimant is not fatal to the case as he was taken to the hospital immediately after the incident. Therefore, in his absence, the driver of the car has given a false complaint as if the claimant was the cause for the accident. Accordingly, he seeks enhancement of the compensation.

5. Heard both sides.

6. It appears in the case on hand, the Tribunal by stating that the version in the First Information Report is totally contradictory to the version given by the claimant/injured, has held that non-examination of the complainant based on which the FIR came to be registered is fatal to the case of the Insurance Company. It has also been held that filure of the claimant to get the First Information Report registered is not fatal to the claim petition. In this connection, the Tribunal relied on the judgment of this court reported in 2013(1) TNMAC 191 [Divisional Manager, New India Assurance Company Limited vs. K.Mayandi] and 2013(1) TNMAC 454 [Anbazhagan and others vs. Shankar]. Further the Tribunal found that no charge sheet has been filed as against the injured claimant based upon the complaint filed by the driver of the car. Hence, the Tribunal has held that no evidence has been adduced by the Insurance Company rebutting the evidence adduced by PW1/the injured claimant and that the witness examined by the Insurance Company was also not an eye witness. The Tribunal has also stated that in the cross

examination, the witness examined on the side of the Insurance Company himself has stated that the claimant need not go towards right hand side as he is going towards Sriperumbudur. Further for the damages caused to the car, no report from the Motor Vehicles Inspector has also been filed on the side of the Insurance Company. Therefore, the Tribunal has held that the accident had occurred only due to the rash and negligent driving by the first respondent.

7. On an analysis of the evidence on record and the reasoning given by the Tribunal, it is evident that the accident had occurred in a busy road, in front of the Nokia Company where movement of pedestrians would be on the high side. Had the driver of the car in question been more vigilant, he could have avoided the accident. In the above backdrop, we hold that the negligence is only on the part of the driver of the car, which is insured with the appellant-Insurance Company.

8. Coming to the quantum of compensation awarded, the Tribunal has held that the injured/claimant being a Plumber could have easily earned a sum of Rs.350/- per day considering the present day labour charges. Therefore, the Tribunal fixed his monthly income at Rs.10,000/-. Further, the Tribunal in para No.20 of its judgment considering Ex.P16 disability certificate issued by the Doctor has stated that the injured claimant due to the disability suffered could not walk or stand even for a few minutes. Therefore, the Tribunal held that the partial and permanent disability assessed at 40% is just and reasonable. Though the Doctor has stated that the claimant had sustained fracture of both bone in the right leg, right tibia fracture at two levels and fibula fractured at three levels, he has not specifically stated whether the disability is to the whole body or to a particular limb. In the above circumstances, the Tribunal awarding 50% towards loss of future earning capacity is exorbitant. Therefore, this Court is of the view that fixing the loss of future earning capacity of the injured claimant at 25%, in the facts and circumstances of the case, would meet the ends of justice. Accordingly, the compensation awarded under that head in a sum of Rs.10,80,000/- at 50% is reduced to Rs.5,40,000/-. Further, the Tribunal has also awarded compensation towards loss of income during the period under treatment, attender charges, loss of amenities, extra nourishment, medical expenses, transport to hospital, etc., which we do not like to interfere with. For the pain and suffering, suffered by the injured claimant, we would like to enhance the compensation from Rs.1,00,000/- to Rs.1,50,000/- as it is seen from the records that he has undergone surgeries twice to set right his affected bone.

9. Accordingly, the compensation awarded by the Tribunal is modified as follows:

Heads	Compensation awarded by the Tribunal	Compensation now modified by this Court
Loss of Income for 6 months- Rs.10,000 x 6	Rs. 60,000/-	Rs. 60,000/-
Transportation and Damage to clothes	Rs. 10,000/-	Rs. 10,000/-
Extra Nourishment	Rs. 50,000/-	Rs. 50,000/-
Medical Expenses	Rs. 1,00,000/-	Rs. 1,00,000/-
Attender charges	Rs. 10,000/-	Rs. 10,000/-
Pain and suffering	Rs. 1,00,000/-	Rs. 1,50,000/-
Disability of 40% at the rate of Rs.2,000/- per percentage	Rs. 80,000/-	Rs. 80,000/-
Loss of Amenities	Rs. 50,000/-	Rs. 50,000/-
Loss of earning capacity	Rs. 10,80,000/- @ 50%	Rs. 5,40,000/- @ 25%
Total	Rs. 15,40,000/-	Rs. 10,50,000/-

The total compensation amount awarded by the Tribunal at Rs.15,40,000/- is reduced and a sum of Rs.10,50,000/- [Rupees ten lakhs and fifty thousand only] is awarded as compensation, which shall carry interest at 7.5% p.a. from the date of claim petition till the date of deposit.

10. It is submitted that pursuant to the interim order passed by this Court in M.P.No.1 of 2015 dated 19.03.2015, the appellant-Insurance Company has deposited the entire award amount together with proportionate interest and costs.

11. In view of the order passed above, the first respondent/injured claimant is entitled to withdraw the modified amount of Rs.10,50,000/- [Rupees ten lakhs and fifty thousand only] along with proportionate interest and costs on making out appropriate application before the Tribunal. Similarly, the appellant-Insurance company is also entitled to withdraw the balance amount, if any, deposited by them.

12. With the above modification, this Civil Miscellaneous Appeal is allowed in part. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(VI)

//True Copy//

Sub Assistant Registrar

vj2

To

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

Copy To: The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.S. Manohar, Advocate, S.R.No.27062
+1cc to M/s. N.M. Muthurajan, Advocate, S.R.No.26891

AK(CO)
EU(27/06/2016)