IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2016

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

CIVIL MISCELLANEOUS APPEAL No.80 of 2015

The Manager-Claims,
M/s.Cholamandalam MS General Insurance
Company Ltd., registered Office,
2nd Floor, Dare House,
No.2, N.S.C. Bose Road,
Chennai 600 001. ... Appellant/2nd Respondent

vs.

1. Prakash ...1st Respondent/Petitioner
2. M.Sivagami ...2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 10.04.2014 made in M.C.O.P.No.333 of 2013 on the file of the Motor Accidents Claims Tribunal Subordinate Court, Hosur.

For Appellant : Mr.N.Vijayaraghavan

For 1st Respondent : Mr.Mukund R.Pandiyan

J U D G M E N T

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

Heard the learned counsel for the appellant/Insurance Company and the learned counsel appearing for the 1st respondent/claimant.

2. Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal, (Subordinate Judge), Hosur, vide judgment dated 10.04.2014 in M.C.O.P.No.333 of 2013, the Insurance Company has come up with the present appeal.

3. In an accident which occurred on 21.11.2012, the claimant Prakash sustained multiple injuries and fractures. On the said date, about 10.15 p.m., when the claimant was riding his Hero Honda Splendor bearing Registration No.TN-70-A-5686 from his house towards Dharmapuri on the left side of

Rayakottai-Dharmapuri road, near Echampatti Bus stop, the driver of a Mini Van bearing Registration No.TN-29-AK-8026, belonging to the 2nd respondent herein, drove the same in a rash and negligent manner and dashed against the motor cycle, thereby resulting in the accident. According to the claimant, he was aged 32 years at the time of accident. He was owning a Tempo and driving the same for hire purpose and earning a sum of Rs.20,000/- per month. Alleging that the accident had occurred only due to the rash and reckless driving of the driver of the Mini Van, the claimant filed a claim petition seeking a sum of Rs.50,00,000/- as compensation from the owner and insurer of the Mini Van.

4. The appellant/Insurance Company resisted the claim petition before the Tribunal mainly questioning the liability of the accident and also contending that the compensation claimed by the claimant is very excessive.

5. Before the Tribunal, in support of the claim, the claimant, viz. M.Prakash was examined as P.W.1; one Dr.G.V.Gandhi was examined as P.W.2 and Exs.P1 to P12 were marked, the details of which are as follows:

Ex.P-1	FIR copy
Ex.P-2	Discharge Summary
Ex.P-3	Discharge Summary
Ex.P-4	Discharge Summary
Ex.P-5	Medical Bills
Ex.P-6	R.C. Book of Mini Van
Ex.P-7	Insurance Policy
Ex.P-8	D.L. of the Van Driver
Ex.P-9	Medical Bills
Ex.P-10	X-ray
Ex.P-11	X-ray receipt
Ex.P-12	Wound Certificate

On the side of the appellant/Insurance Company, no witness was examined and no document was marked.

6. The Tribunal, taking note of the oral evidence of P.W.1 and Ex.P1-F.I.R., came to the conclusion that the accident took place due to the rash and negligent driving of the driver of the Mini Van bearing Registration No.TN-29-AK-8026 and awarded a sum of Rs.42,59,100/- as compensation to the claimant with interest at 7.5% per annum from the date of filing of the

claim petition till the date of realization, under the following heads:

Permanent Disability	Rs.18,43,200.00
50% Future Prospects	Rs.,21,600.00
Pain and Suffering	Rs.,00,000.00
Medical Bills	Rs.8,54,300.00
Future Medical Expenses	Rs.2,00,000.00
Attender Charges	Rs. 30,000.00
Transportation	Rs. 50,000.00
Nutrition and Healthy Food	Rs. 30,000.00
Loss of social enjoyment	Rs. 30,000.00
Total compensation	Rs.42,59,100.00

Challenging the said award that it is exorbitant, the Insurance Company has come up with the present appeal.

7. Learned counsel for the appellant/Insurance Company would strenuously contend that when there is no reliable evidence to prove the avocation of the claimant, the Tribunal ought not have fixed his monthly income at Rs.12,000/-. Also, it is his contention that the nature of injuries of the claimant and disability were grossly exaggerated for the purpose of claiming compensation.

8. While so, the learned counsel appearing for the 1st respondent/claimant would submit that the award of the Tribunal is just and reasonable in view of the injuries sustained by the claimant.

9. Heard the submissions made by the learned counsel on either side and gone through the materials available on record.

10. From the records, it is seen that the injured claimant was aged 32 years at the time of accident. Apart from owning a Tempo, he was driving the same on hire basis. Admittedly, the accident has caused multiple injuries and fractures to the claimant. Taking note of the injuries sustained by the claimant, i.e. right tibia Type III B open fracture, right femur basal neck fracture, chest injury with right neck of femur non-union, P.W.2, Doctor, assessed the permanent disability of the claimant at 80%. Having gone through the material records showing the grievous injuries suffered by the claimant and the treatment undergone by him, we are not inclined to interfere with the percentage of disability assessed by the Doctor and

accordingly, 80% disability assessed by P.W.2-Doctor is confirmed.

11. In the absence of any proof to support the claimant's monthly income, the Tribunal has fixed Rs.12,000/- as his monthly income, which, according to this Court is on the higher side. Taking into account the avocation of the claimant, this Court is inclined to fix a sum of Rs.6,500/- as his monthly income.

12. Thus, while arriving at the compensation towards 'loss of income', 50% of the monthly income of the claimant, i.e. a sum of Rs.3250/- is added towards 'future prospects' to the monthly income of Rs.6,500/- (Rs.6,500/- + Rs.3,250/- = Rs.9,750/-) and applying the multiplier of '16' to the annual income of Rs.1,17,000/- (Rs.9,750/- x 12), a sum of Rs.14,97,600/- (Rs.1,17,000/- x '16' x 80/100) is arrived as revised compensation towards 'loss of income'.

13. Considering the nature of injuries sustained by the claimant, we feel it appropriate to revise the award under 'pain and suffering' and accordingly, a sum of Rs.2,00,000/- is awarded towards the same. Also, a sum of Rs.50,000/- granted towards 'Transportation expenses' is on the higher side. Hence, this Court modifies the same and a sum of Rs.30,000/- is awarded towards 'Transportation charges'.

14. Further, we find that the compensation awarded under other heads, i.e. 'Attender charges', 'Extra nourishment', 'Future Medical Bills' and 'Loss of amenities' are just and reasonable and they are accordingly confirmed. Also, a sum of Rs.8,54,300/- awarded towards 'Medical Bills' is supported by valid proof and hence, the same is confirmed.

15. In fine, the quantum of compensation of a sum of Rs.42,59,100/- awarded by the Tribunal is modified and the 1st respondent/claimant is entitled to a sum of Rs.28,71,900/- as compensation. The interest fixed by the Tribunal at 7.5% per annum is confirmed. Break-up details of the revised award are as under:

Heads	Award of the Tribunal	Revised award of this Court
Permanent Disability	Rs.18,43,200.00	Rs.14,97,600.00
50% Future Prospects	Rs.9,21,600.00	-
Pain and Suffering	Rs.3,00,000.00	Rs. 2,00,000.00

Heads	Award of the Tribunal	Revised award of this Court
Medical Bills	Rs.8,54,300.00	Rs. 8,54,300.00
Future Medical Expenses	Rs.2,00,000.00	Rs. 2,00,000.00
Attender Charges	Rs. 30,000.00	Rs. 30,000.00
Transportation	Rs. 50,000.00	Rs. 30,000.00
Nutrition and Healthy Food	Rs. 30,000.00	Rs. 30,000.00
Loss of social enjoyment	Rs. 30,000.00	Rs. 30,000.00
Total compensation	Rs.42,59,100.00	Rs.28,71,900.00

16. Thus, the 1st respondent/claimant is entitled to a sum of Rs.28,71,900/- (Rupees Twenty Eight Lakhs Seventy One Thousand Nine Hundred only) as compensation with interest at 7.5% per annum from the date of filing the claim petition till the date of realization. The appellant/Insurance Company is directed to deposit the entire award amount, if not already deposited, along with accrued interest to the credit of M.C.O.P.No.333 of 2013 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Hosur, within a period of six (6) weeks from the date of receipt a copy of this judgment. On such deposit being made, the 1st respondent/claimant is permitted to withdraw the amount, as per the award. It is also made clear that the award amount shall be paid to the claimant by the Tribunal 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 Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected M.P.No.1 of 2015 is closed. Consequently connected M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//
Sub Assistant Registrar

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To:

The Motor Accidents Claims Tribunal
Subordinate Judge, Hosur.

+1 cc to Mr.Mukund R.Pandiyan, Advocate, sr.11650
+1 cc to Mr.M.B.Gopalan, Advocate, sr.11248,

C.M.A.No.80 of 2015

ad co
kra 24.03.2016