IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 24.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A.No.2967 of 2014

United India Insurance Co. Ltd.,
No.134, Greams Road,
Chennai - 6. .. Appellant/2nd Respondent

Vs

1.M.Suresh
2.Mohan .. Respondents /Claimant & Ist Respondent

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 20.12.2013, made in MCOP.No.1421 of 2011, on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant : Mr.M.J.Vijayaraaghavan

For R1 : Mr.V.Velu
For R2 : Exparte

JUDGMENT

Aggrieved by the award dated dated 20.12.2013, made in MCOP.No.1421 of 2011, on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai, the appellant Insurance Company has filed the present appeal questioning only quantum of compensation awarded by the Tribunal.

2. On 01.11.2010 at about 7.00 hrs., while the claimant was travelling in a auto bearing Registration No.TN-21-P-1283, near Paalar River Bridge of ECR Road, the driver of the said auto driven the same in a rash and negligent manner and capsized the said auto under Paalar River Bridge, as a result, he sustained multiple injuries all over his body. Immediately after the accident, he was admitted in the Chengalpattu Medical College (CMC) Hospital and even now, he is said to have been taking treatment. A case was also registered against the driver of the said auto in Cr.No.456 of 2010 on the file of the E5 Koovathur Police Station, Kancheepuram District. Subsequently, the claimant has filed the claim petition claiming a sum of Rs.6,00,000/- as compensation.

3. After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the auto and awarded a sum of Rs.5,94,000/- with interest at 7.5% per annum. Aggrieved by that award, the appellant Insurance Company has filed the present appeal questioning only the quantum of compensation.

4. At the outset, learned counsel appearing for the appellant Insurance Company has fairly submitted that he is not questioning the liability nor the negligence, however, he is questioning only the quantum of compensation awarded by the Tribunal. It is contended that though the Tribunal has awarded a sum of Rs.2,88,000/- towards loss of earning capacity by adopting multiplier method, it has again wrongly awarded a sum of Rs.90,000/- towards disability, which would amount to double compensation. He further submitted that when there was no proof produced by the claimant to substantiate the monthly income, the Tribunal has wrongly fixed exorbitant amount of Rs.6000/- per month, instead of Rs.4500/-. The claimant had sustained only the fracture of right femur bone, therefore, the same would not affect his avocation since he did not even surrender his driving license and thus, the entire compensation awarded under the heads of loss of earning capacity by applying multiplier method is liable to be quashed. He has also further questioned the compensation of Rs.35,000/- towards loss of amenities as unwarranted, since the Tribunal had already awarded a sum of Rs.50000/- towards pain and suffering. Thus, he pleaded, in the absence of any proof and also considering the nature of injury, the total compensation of Rs.5,94,000/- awarded by the Tribunal needs to be modified.

5. Per contra, learned counsel appearing for the first respondent/claimant submitted that the Tribunal has considered all the materials available on record and has rightly awarded a just and reasonable compensation, therefore, he pleaded, the award passed by the Tribunal may be confirmed.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. The only prime contention of the learned counsel for the Insurance Company that the Tribunal ought not to have awarded a sum of Rs.2,88,000/- towards loss of earning capacity by adopting multiplier method, as it has already awarded a sum of Rs.90,000/- towards disability. In a similar circumstances, Hon'ble Division Bench of this Court in the case of United India Insurance Co. Ltd., Vs. Veluchamy and another [2005 (1) TNMAC 87 (DB)], by holding that the money cannot renew a physical frame that has been battered and shattered in the claimant's family, awarded the compensation under the heads of loss of earning

capacity by applying multiplier method and then towards disability. For better appreciation, relevant portions of the said judgment are extracted below:

> "8. Money cannot renew a physical frame that has been battered and shattered. All the Judges and Courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. In personal injury cases the Courts should not award merely token damages but they should grant substantial amount which could be regarded as adequate compensation. The general principle which should govern the assessment of damages in personal injury cases is that the Court should award to injured person such a sum of money as will put him in the same position as he would have been in if he had not sustained the injuries. But, it is manifest that no award of money can possibly compensate an injured man and renew a shattered human frame. It is well settled principle that in granting compensation for personal injury, the injured has to be compensated, (1) for pain and suffering; (2) for loss of amenities; (3) shortened expectation of life, if any; (4) loss of earnings or loss of earning capacity or in some cases for both; and (5) medical treatment and other special damages.
>
> 9. In an accident, if a man is disabled for the work, which he was doing before the accident, that he has no talents, skill, experience or training for anything else and he is unable to find any work, manual or clerical, such a man for all practical purposes has lost all earning capacity he possessed before and he is required to be compensated on the basis of total loss. An injured person is compensated for the loss which he incurs as a result of physical injury and not for physical injury itself. In other words, compensation is given only for what is lost due to accident in terms of an equivalent in money insofar as the nature of money admits for the loss sustained. In an accident, if a person loses a limb or eye or sustains an injury, the Court while computing damages for the loss of organs or physical injury, does not value a limb or eye in isolation, but only values totality of the harm which the loss has

> entailed: the loss of amenities of life and infliction of pain and suffering; the loss of the good things of life, joys of life and the positive infliction of pain and distress."

In the above said case, the Insurance Company therein questioned the compensation awarded under the heads of loss of earning capacity and disability in a injury case. The Hon'ble Division Bench of this Court, by holding that silver rod and screw were inserted by way of surgery and as such, the same would undoubtedly affect the earning capacity of the claimant, awarded compensation under both the heads.

8. In the case on hand, it is an admitted fact that the claimant was admitted in the CMC Hospital, Chengalpattu on 01.11.2010 and discharged on 28.01.2011 i.e. for about 89 days, as could be seen from the discharge summary, marked as Ex.P2. From Ex.P3-another discharge summary, it is seen that he was again readmitted in the same hospital and took treatment between 31.01.2011 and 28.02.2011 i.e. for about 29 days and on 15.02.2011, he underwent surgery. It is further seen from Ex.P3 that he underwent reunion of right femur, for which, ORIF with plating and bone grafting were done. Dr.N.Saichandran, who was examined as P.W.2 before the Tribunal, deposed that the claimant had sustained fracture of lower III of right femur, for which, plate and screws were fixed and due to the same, he was having pain and swelling in the right thigh. He had also issued the disability certificate, marked as Ex.P7, assessing the disability at 55%. However, in view variation from one doctor to another, the Tribunal has fixed the disability at 45%, which, in my view, need not be interfered with. Thereafter, it has taken into account 25% disability for computing loss of earning capacity, since he can continue his avocation with some restrictions as the screw and plate were inserted only on his right thigh.

9. It is claimed in the claim petition that he is a carpenter, however, before the Tribunal, the claimant deposed that due to the accident, he is not able to work as a driver and he further deposed that he was earning Rs.10000/- per month. Except the driving license, the claimant has not produced any document before the Tribunal to substantiate his monthly income, therefore, fixation of Rs.6000/- as the monthly notional income of the claimant by the Tribunal cannot be questioned and hence, the same is hereby confirmed.

10. Thus, in view of the aforesaid admitted facts, I do not find any error in awarding a sum of Rs.2,88,000/- towards loss of earning capacity by applying multiplier '16' as he was only 35 years old at the time of accident and further in awarding a sum of Rs.90000/- (45 x 2000) towards disability by taking into account 45% of disability assessed by the doctor and

also fixing Rs.2000/- per percentage of disability.

11. Apart from the above, taking note of the injuries suffered by the claimant and that 120 days of treatment as inpatient in the CMC Hospital, Chengalpattu, the Tribunal has rightly awarded a sum of Rs.48000/- towards loss of income, for, due to the said injuries, he would have definitely taken rest for about eight months, hence, the same is hereby confirmed.

12. The Tribunal has also further awarded a sum of Rs.50,000/- towards transportation, extra nourishment and damages to clothes, Rs.8,000/- towards medical expenses, Rs.25,000/- towards attender charges, Rs.50,000/- towards pain and suffering and Rs.35,000/- towards loss of amenities, which are, in my view, just and reasonable compensation, for, admittedly, as stated above, the claimant has taken 120 days of treatment as inpatient, which is indeed more pitiable, besides, the feeling of hurt, helplessness and enjoyment of his life, not only to him, but also to his entire family, cannot be compensated by mere awarding of the above said sums. Thus, this Court is not able to find any error in awarding a just and reasonable compensation by the Tribunal.

13. In fine, for the reasons stated above, the Civil Miscellaneous Appeal fails and the same is dismissed. Consequently, the appellant Insurance Company is directed to deposit the entire compensation amount of Rs.5,94,000/- with interest at 7.5% per annum as awarded by the Tribunal, less the amount already deposited if any, to the credit of MCOP.No.1421 of 2011, on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the entire amount along with the accrued interest therein by moving appropriate application before the Tribunal. No Costs. Consequently, connected miscellaneous petitions are closed.

-Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

rkm

To

1.The Motor Accidents Claims Tribunal,
VI Small Causes Court, Chennai,

2.The Section Officer
VR Section High Court Madras

+1 cc to Mr.M.J.Vijayaraghavan Advocate sr 69348
+1 cc to Mr.V.Velu Advocate sr 68830

C.M.A.No.2967 of 2014

sr(co)
aa04/01/2017