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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 16.02.2016

CORAM

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

C.M.A. NO. 36 OF 2014

AND

M.P. NO. 1 OF 2015

M/s.United India Insurance Co. Ltd.
Regional Office
Opp : Park Gate
Dr. Nanjappa Road
Coimbatore 641 018.

... Appellant/3rd Respondent

- Vs -

1. S.Muruges
2. Manikandan @ Aruchamy
3. C.Narayanasamy Naicker

... Respondents/Petitioners/
1st and 2nd Respondents

(RR-2 & 3 set exparte before Tribunal)

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 29.04.2013, passed by the Motor Accident Claims Tribunal (Spl. Sub Court), Coimbatore, made in MCOP No.1197 of 2012.

For Appellant : Ms. T.Ravichandran

For Respondents : Mr. M.Kalyanasundaram,
Senior Counsel for
Mr. R.Vasudevan for R-1
RR-2 & 3 - Exparte

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Heard the learned counsel appearing for the appellant and the learned senior counsel appearing for the first respondents/claimants.



2. The appellant/insurer of the vehicle has filed the appeal challenging the award dated 29.04.2013, passed by the Motor Accident Claims Tribunal (Spl. Sub Court), Coimbatore, made in MCOP No.1197 of 2012.

3. The case of the first respondent/claimant could be briefly stated as under :-

On 20.11.2010 at about 07.15 p.m., when the first respondent/claimant Murugesh, along with one Palanichamy, was riding his two wheeler bearing Regn. No.TN-38-AH-3469 on the Thudiyalur - Pannimadai Main Road, near Rithis Bottle Shop, the Swaraj Tractor driven by the second respondent herein, bearing Regn. No.TN-37-AM-1036, driven in a rash and negligent manner, dashed the two wheeler driven by the claimant due to which the claimant and Palanichamy fell down and suffered grievous injuries.

4. The claimant, on the date of accident, was working as driver in the State Express Transport Corporation and earning a monthly salary of Rs.15,732/=. The claimant, therefore filed a claim petition claiming a sum of Rs.20,00,000/= as compensation with interest at 12% p.a.

5. In support of the claim, the claimant examined himself as P.W.1. besides one Thamburaj as P.W.2 and Dr.Madhu Periyasamy as P.W.3 and Exs.P-1 to P-28 were marked, the details of which are as follows:-

Ex.P-1	-	Certified xerox copy of FIR
Ex.P-2	-	Xerox copy of Discharge Summary 1
Ex.P-3	-	Xerox copy of Discharge Summary 2
Ex.P-4	-	X-ray
Ex.P-5	-	Xerox copy of Medical Certificate issued by Ganga Hospital
Ex.P-6	-	Xerox copy of MRI Cervical Spine Scan Report
Ex.P-7	-	Xerox Copy of Ct Right Wrist Scan Report
Ex.P-8	-	Xerox copy of CT Brain with Facial cuts scan report
Ex.P-9	-	Xerox copy of CT - Cervical Spine Scan Report
Ex.P-10	-	Xerox copy of Ration Card



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Ex.P-11	-	Xerox copy of Election Card
Ex.P-12	-	Xerox Copy of PAN Card of petitioner
Ex.P-13	-	Xerox copy of driving licence of the petitioner
Ex.P-14	-	Xerox copy of identity card of the petitioner
Ex.P-15	-	Xerox copy of letter of enhancement of authorisation amount
Ex.P-16	-	Xerox copy of pay slip of the petitioner for the month of December, 2007.
Ex.P-17	-	Xerox copy of notice issued by the petitioner & one another by Corporation Bank, Coimbatore.
Ex.P-18	-	Xerox copy of identity card of M.Vinitha issued by Presentation Convent Girls Higher Sec. School
Ex.P-19	-	Xerox copy of identity card of K.Jenitha
Ex.P-20	-	Receipt issued in favour of Jenitha by KG College of Arts & Science
Ex.P-21	-	Medical Bills
Ex.P-22		Authorisation letter given by the State Express Transport Corporation, Tamil Nadu, Ltd.
Ex.P-23		Xerox copy of M.M.Thamburaj identity card
Ex.P-24		Salary Certificate of the petitioner
Ex.P-25		Loss of income to the petitioner
Ex.P-26		Disability certificate to the petitioner
Ex.P-27		Discharge Summary 3
Ex.P-28		Future Medical Expense to the petitioner

6. On the side of the respondents, neither any witness was examined, nor any document was marked.

7. The Tribunal based on the oral evidence of P.Ws.1 & 2 and also taking note of the corroborating evidence in the form of the evidence of P.W.3, the doctor, with regard to the disability of the claimant, and further there being no evidence adduced on behalf of the respondents to refute the testimony as to the rash and negligent driving of the tractor, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the tractor and, therefore, the



liability was fixed on the driver of the tractor, viz., the second respondent herein and the appellant herein, viz., the insurer of the vehicle, was directed to compensate the claimant. Accordingly, the Tribunal awarded compensation under the following heads :-

Compensation for partial permanent disability (15372 x 12 x 15 x 80%)	-	Rs. 11,06,784/=
Transport to Hospital	-	Rs. 5,000/=
Extra Nourishment	-	Rs. 5,000/=
Pain & Sufferings	-	Rs. 10,000/=
Medical Bills	-	Rs. 1,07,105/=
Future Medical Expenses	-	Rs. 75,000/=
Total Compensation	-	Rs. 13,08,889/=

8. In all the Tribunal awarded a compensation of Rs.13,08,889/= with interest at the rate of 7.5% from the date of claim petition till date of payment/deposit. Aggrieved by the said award, the insurer of the vehicle is before this Court by filing this appeal.

9. The only point raised by the learned counsel appearing for the appellant is that in the case of partial permanent disability, the loss of income has been calculated by the Tribunal using multiplier method, which is not permissible in law, in view of the decision of the Division Bench of this Court in United India Insurance Co. Ltd., - Vs - Veluchamy & Anr. (2005 ACJ 1483) and, therefore, the amount awarded under the said head is to be interfered with. Per contra, learned senior counsel appearing for the claimant submits that on many of the heads, the amounts awarded by the Tribunal is very meagre considering the nature of injuries suffered by the claimant and the percentage of disability. Hence, it is submitted that no interference is called for with the award passed by the Tribunal.

10. This Court has given its careful consideration to the above contentions advanced by either parties and also perused the decision relied on by the learned counsel for the respondent/claimant. Admittedly, the first respondent/claimant is employed with the State Express Transport Corporation and after the accident, the claimant has been given alternate employment. However, in spite of above fact, the Tribunal has adopted the multiplier method, which is not permissible.



11. The decision of a Division Bench of this Court in the case of United India Insurance Co. Ltd., - Vs - Veluchamy & Anr. (2005 ACJ 1483) lays down the principles that should govern in a case of claim for compensation in injury case. For better clarity, the relevant portion is extracted hereunder :-

"11. The following principles emerge from the above discussion:

(a) In all cases of injury or permanent disablement 'multiplier method' cannot be mechanically applied to ascertain the future loss of income or earning power. (Emphasis supplied)

(b) It depends upon various factors such as nature and extent of disablement, avocation of the injured and whether it would affect his employment or earning power, etc. and if so, to what extent?

(c) (1) If there is categorical evidence that because of injury and consequential disability, the injured and consequential disability, the injured lost his employment or avocation completely and has to be idle for the rest of his life, in that event loss of income or earnings may be ascertained by applying the 'multiplier method' as provided under the Second Schedule to Motor Vehicles Act, 1988.

(2) Even so there is no need to adopt the same period as that of fatal cases as provided under the Schedule. If there is no amputation and if there is evidence to show that there is likelihood of reduction or improvement in future years, lesser period may be adopted for ascertainment of loss of income.

(d) Mainly it depends upon the avocation or profession or nature of employment being attended by the injured at the time of accident."

12. In the present case, the plea for loss of income as referred to in the judgment extracted above though pleaded, was not proved and there is no finding of the Tribunal that consequent to the disability, the first respondent/claimant is totally incapacitated and will be idle for the rest of his life and thereby his income is affected completely. Further, it is an admitted fact that the first respondent/claimant has been provided with alternate employment by his employer. In such view of the matter, the Tribunal ought not have applied the multiplier method, and instead should have given a particular



amount for each percentage of disability suffered by the claimant. In the above circumstances, this Court is of the considered view that the amount awarded by the Tribunal under the head of compensation for partial permanent disability cannot be sustained. Instead, this Court awards a compensation of Rs.3,000/= per percentage of disability and, accordingly, in all, awards a sum of Rs.2,40,000/= towards permanent partial disability.

13. Further, it is seen that the amounts awarded by the Tribunal under the other heads are very meagre. Considering the cost of living index in the present day scenario, the amounts awarded by the Tribunal for extra nourishment, pain and suffering and transportation requires enhancement. Further, it is admitted that the claimant was hospitalised, but no amount has been awarded towards attender charges. In the above circumstances, this Court is of the considered opinion that the amount awarded by the Tribunal under the various other heads requires modification and, accordingly, the award of the Tribunal is modified as hereunder :-

Compensation for partial permanent disability (80% disability X Rs.3000/=)	-	Rs. 2,40,000/=
Transport to Hospital	-	Rs. 20,000/=
Extra Nourishment	-	Rs. 20,000/=
Pain & Suffering	-	Rs. 1,00,000/=
Medical Bills	-	Rs. 1,07,105/=
Future Medical Expenses	-	Rs. 95,000/=
Attender Charges	-	Rs. 20,000/=
Total Compensation Payable	-	Rs. 6,02,105/=

14. Accordingly, this Civil Miscellaneous Appeal is partly allowed modifying the award passed by the Tribunal as shown above. It is brought to the notice of this Court that the appellant has deposited the entire award amount together with interest and costs to the credit of MCOP No.1197/2012. This Court vide order dated 21.12.2015 directed the claimant to withdraw a sum of Rs.5,00,000/- with proportionate interest and costs from the amount deposited by the appellant, while granting interim stay and the balance amount was directed to be kept in deposit. In the above circumstances, the claimant is allowed to withdraw the balance award amount of Rs.1,02,105/= together with proportionate interest and cost and the balance amount lying in deposit shall be withdrawn by the appellant/insurer.



Consequently, connected miscellaneous petition is closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

GLN

To

- 1.The Subordinate Judge,
Special Sub Court
Motor Accident Claims Tribunal,
Coimbatore.
- 2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.9992
+1cc to Mr.R.Vasudevan, Advocate, S.R.No.9894

C.M.A. NO. 36 of 2014

GJ(CO)
CA(15/03/2016)