IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2073 of 2013 and
M.P.No.1 of 2013

The Branch Manager,
ICICI Lombard General
Insurance Company Limited,
256/258-B, First Floor,
Sathy Road, Erode.

... 3rd Respondent/Appellant

Vs

1.Prakash ...Petitioner/Ist Respondent
2.Ansar Ali
3.Sait ...Respondents 1 and 2/Respondents 2 & 3

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31.05.2012 made in M.C.O.P.No.106 of 2011 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate), Erode.

For Appellant : Mrs.R.Sree Vidhya

For 1st Respondent : Mr.I.C.Vasudevan for R1

For R2 & R3 : Set Exparte

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal under the impugned Award dated 31.05.2012 in M.C.O.P.No.106 of 2011 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate), Erode.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i) The 1st Respondent sustained injuries on 11.08.2009 as a result of an accident caused by a Mini Door Auto (Pickup Van) bearing Registration No.TN-59-V-8481 owned by the 2nd and 3rd Respondents and insured with the Appellant. The 1st Respondent preferred a claim before the Motor Accidents Claims Tribunal in M.C.O.P.No.106 of 2011 seeking a compensation of Rs.3,00,000/-.

(ii) The Motor Accidents Claims Tribunal, by its Award dated 31.05.2012 in M.C.O.P.No.106 of 2011, directed the Appellant to pay the 1st Respondent a sum of Rs.2,82,900/- together with interest at the rate of 9% per annum from the date of the claim till the date of realisation.

3.Aggrieved by the quantum of compensation awarded by the Tribunal dated 31.05.2012 in M.C.O.P.No.106 of 2011, the instant appeal has been filed by the Insurance Company.

4.Heard Mrs.R.Sree Vidhya, Learned Counsel for the Appellant and Mr.I.C.Vasudevan, Learned Counsel for the 1st Respondent. The Respondents 2 and 3 have remained exparte before the Tribunal as well as this Court.

5.According to the Learned Counsel for the Appellant, the Tribunal has erroneously applied the multiplier method in assessing the compensation payable to the 1st Respondent. According to her, the 1st Respondent sustained only rib bone fracture and the Doctor has assessed the disability only at 20%. But the Tribunal under the impugned Award has applied the multiplier method instead of awarding a lump sum compensation to the 1st Respondent. According to her, the 1st Respondent has not suffered any loss of future earnings as a result of the injuries sustained by him.

6.Per Contra, the Learned Counsel for the 1st Respondent would submit that the injuries sustained by the 1st respondent are grievous in nature. He further submitted that as a Course Trainer aged about 24 years, the 1st Respondent would have certainly suffered loss of future earnings as a result of the accident. Therefore, according to him, the Tribunal has rightly applied the multiplier method in assessing the compensation payable to the 1st Respondent under the impugned Award.

7.This Court, after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective Counsels, observes the following:

(a) The Appellant has not questioned its liability, but has only questioned the quantum of compensation awarded by the Tribunal to the 1st Respondent under the impugned Award.

(b) The 1st Respondent has produced the Permanent Disability Certificate which is marked as Ex.A.12 before the Tribunal which discloses that as a result of the accident, 20% permanent disability was suffered by the 1st Respondent. The 1st Respondent has also not let in any evidence before the Tribunal to establish that as a result of the injuries sustained by him, he has suffered loss of future earnings. Admittedly, the 1st Respondent has suffered only 20% permanent disability as per Ex.A.12 and therefore, in the considered view of this Court, the Tribunal ought to have awarded lump sum compensation instead of applying the multiplier method.

(c)The accident happened on 11.08.2009. Considering the age and year of the accident, this Court is of the considered view that a sum of Rs.2,000/- per percentage of the disability is the adequate compensation payable to the 1st Respondent for the injuries sustained by him as a result of the accident caused by the insured vehicle, since the 1st Respondent has suffered only 20% permanent disability as per Ex.A.12. The disability compensation payable to the 1st Respondent is assessed by this Court at Rs.40,000/- calculated at the rate of Rs.2000/- per percentage of the disability. Therefore, the quantum of compensation awarded by the Tribunal under the impugned Award is reduced from Rs.2,82,900/- to Rs.1,27,500/- by this Court under the following heads and the details of the same are as under:

Heads	Award passed by this Court
Permanent Disability (20 x 2000)	Rs. 40,000/-
Transportation	Rs. 10,000/-
Extra Nourishment	Rs. 10,000/-
Loss of earning during the course of treatment for 15 days	Rs. 15,000/-
Loss of amenities	Rs. 20,000/-
Pain and suffering	Rs. 20,000/-
Attendant charges	Rs. 5,000/-
Medical Bills	Rs. 7,500/-
Total	Rs. 1,27,500/-

and the Appellant is directed to pay interest at the rate of 7.5% per annum instead of 9% per annum awarded by the Tribunal. The learned Counsel for the Appellant submits that 50% of the total compensation of Rs.2,82,900/- awarded by the Tribunal, has already been deposited before the Tribunal. In case of any excess amount available to the credit of M.C.O.P.No.106 of 2011, the same shall be refunded to the Appellant and in case there is any shortfall, the same will have to be replenished by the Appellant to the credit of M.C.O.P.No.106 of 2011. On such deposit being made, the 1st Respondent is permitted to withdraw the modified Award amount lying to the credit of M.C.O.P.No.106 of 2011 together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation, by filing an appropriate Application before the Tribunal.

8.The Civil Miscellaneous Appeal is partly allowed, with the aforesaid observations. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Sgl/arb

To

The Chief Judicial Magistrate,
The Motor Accidents Claims Tribunal,
Erode.

+1cc to Mr.I.C.Vasudevan, Advocate Sr.68447

C.M.A.No.2073 of 2013

vba[co]
srg 28/12/2018