IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2016

CORAM:

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

CIVIL MISCELLANEOUS APPEAL No.3321 of 2013

The Branch Manager,
The New India Assurance Co. Ltd.,
Thiruvottiyur Branch,
No.251, T.H. Road,
Thiruvottiyur,
Chennai 600 019. ... Appellant/2nd Respondent
(Running Divisional Office at Thiruvannamalai)

vs.

1. Androse
2. S.Kannan ... Respondents/Petitioner/1stRespondent.
(2nd respondent set exparte before Lower Court)

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.01.2013 made in M.C.O.P.No.890 of 2009 on the file of the Motor Accidents Claims Tribunal (Principal Sub Judge) at Tindivanam.

For Appellant : Mr.C.Ramesh Babu

For 1st Respondent : Mr.P.Mani

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. The appellant/Insurance Company has filed this appeal challenging the award dated 30.01.2013 made in M.C.O.P.No.890 of 2009 by the Motor Accidents Claims Tribunal, (Principal Sub Judge), Tindivanam.

3. Brief facts leading to the filing of the claim petition are as under:

On 04.09.2009, about 11.00 a.m., when the claimant was travelling as a Pillion rider in the Motor Cycle bearing Registration No.TN 09 Q-3107 on the extreme left side of the road near ECR Pavattamattu Ayyanar Koil, a Tanker Lorry bearing Registration No.TN 03 6327, driven by its driver in a rash and negligent manner in a high speed dashed against the motor cycle, due to which, the claimant sustained grievous and multiple injuries all over the body and he was permanently disabled. His right leg was amputated and he sustained two fractures in femur and patella. Initially, he took treatment in Government General Hospital, Puducherry and continued his treatment in Private Hospitals also. At the time of accident, the claimant was aged 28 years, and was working as a Mason, earning a sum of Rs.12,000/- per month. Stating that he is the sole breadwinner of the family, he filed a Claim Petition before the Tribunal claiming a sum of Rs.20 lakhs as compensation for the injuries.

4. The Insurance Company resisted the claim petition before the Tribunal on the ground that the alleged vehicle was not insured with them at the time of accident and that the compensation claimed by the claimant is too high.

5. Before the Tribunal, in support of the claim, the claimant, viz. Androse was examined as P.W.1; one Dr.Ponnappan was examined as P.W.2 and Exs.P1 to P8 were marked, the details of which are as follows:

Ex.P-1	Copy of FIR, dated 05.09.2009
Ex.P-2	Copy of Motor Vehicles Inspection Report, dated 07.09.2009
Ex.P-3	Copy of the Accident Register of Puducherry Government Hospital
Ex.P-4	Discharge Summary of Puducherry Indira Gandhi Hospital
Ex.P-5	Identity Card of the Disabled
Ex.P-6	Copy of the judgment in M.C.O.P.No.299/2010
Ex.P7	X-ray
Ex.P8	Disability Certificate issued to the claimant

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

7. The Tribunal, taking note of the oral evidence of P.W.1 and Ex.P1-F.I.R., held that the accident took place due to the rash and negligent driving of the driver of the Tanker Lorry bearing Registration No.TN 03 6327 and awarded a sum of Rs.16,27,200/- 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 deposit, under the following heads

Permanent Disability and Loss of earning capacity (Rs.9000/- x 12 x '18' x 80/100)	Rs. 15,55,200.00
Extra Nourishment	Rs. 10,000.00
Transportation charges	Rs. 10,000.00
Damage to clothes and Articles	Rs. 2,000.00
Loss of amenities	Rs. 30,000.00
Attender charges	Rs. 20,000.00
Total compensation	Rs.16,27,200.00

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

8. Learned counsel for the appellant/Insurance Company would mainly contend that the Tribunal erred in fixing the percentage of disability of the claimant at 80%, as the Doctor who assessed the disability had actually not treated the claimant. It is his further contention that the compensation awarded by the Tribunal under various heads is arbitrary and not in accordance with the provisions of the Motor Vehicles Act.

9. In reply, learned counsel appearing for the 1st respondent/claimant would submit that the Tribunal has awarded just and reasonable compensation taking into account the disability sustained by the claimant and the fact that he is the only breadwinner of his family and hence, sought dismissal of the appeal.

10. We have given careful consideration to the submissions made by the learned counsel on either side and gone through the materials available on record.

11. The Insurance Company has mainly disputed the quantum of compensation awarded by the Tribunal. The aspects disputed by them are (i) percentage of disability fixed by the Tribunal (ii) fixation of monthly income and (iii) the multiplier adopted by them.

12. According to the claimant, he was a bachelor, aged 28 years at the time of accident and was earning a sum of Rs.12,000/- per month by doing Masonry work. Due to the accident, the claimant's right leg has been amputated below knee and there is fracture of right femur and right leg patella. For the said injuries, the Doctor has assessed the claimant's permanent disability at 80%. With such disability, the claimant cannot travel or do household chores like a normal person and one cannot expect him to do masonry work any more. Considering the date of accident and the avocation of the claimant, the Tribunal fixed the monthly income of the injured at Rs.9000/-. Therefore, this Court is not inclined to interfere with the percentage of permanent disability fixed by the Doctor. Also, taking note of the escalating prices in the present situation, this Court confirms the monthly income fixed by the Tribunal.

13. Coming to the question of fixation of multiplier, this Court, relying on the decision of the Supreme Court in Sarla Verma -Vs- Delhi Transport Corporation and another [2009 (6) SCC 121], is of the view that the correct multiplier to be adopted to the age of the injured claimant is '17' and not '18', as fixed by the Tribunal. Thus, fixing the multiplier of '17' to the claimant's monthly income at Rs.9000/-, this Court arrives at a sum of Rs.14,68,800/- (Rs.9000/- p.m. x 12 x '17' x 80/100) as compensation towards permanent disability and loss of earning capacity.

14. Taking note of 80% permanent disability sustained by the claimant, this Court is of the view that the compensation awarded by the Tribunal under other heads, i.e. a sum of Rs.10,000/- towards extra nourishment; Rs.10,000/- towards transportation charges; Rs.30,000/- towards loss of amenities and Rs.20,000/- towards attender charges, requires no interference by this Court and they are accordingly confirmed.

15. Further, we find that no amount is awarded by the Tribunal towards 'pain and suffering' and 'loss of marital prospects'. It is seen that the claimant was a bachelor, aged 28 years at the time of accident. With amputation of one leg and multiple fractures, the chances of finding a marital alliance for the claimant are very less. Hence, this Court feels it appropriate to award a sum of Rs.85,000/- towards 'loss of marital prospects'. Further, the compensation of a sum of Rs.2,000/- awarded under the head 'Damage to clothes and articles' is enhanced to a sum of Rs.3,400/-. Though there is modification of compensation awarded by the Tribunal under different heads, there is no enhancement of the same.

16. In fine, the quantum of compensation of a sum of Rs.16,27,200/- awarded by the Tribunal remains unchanged, but for the above modification. The interest fixed by the Tribunal at 7.5% per annum is confirmed. Break-up details of the revised award are as under:

Heads	Revised Award of this Court
Permanent Disability and Loss of earning capacity	Rs.14,68,800.00
Extra Nourishment	Rs. 10,000.00
Transportation charges	Rs. 10,000.00
Damage to clothes and Articles	Rs. 3,400.00
Loss of amenities	Rs. 30,000.00
Attender charges	Rs. 20,000.00
Loss of marital prospects	Rs. 85,000.00
Total compensation	Rs.16,27,200.00

17. Thus, the 1st respondent/claimant is entitled to a sum of Rs.16,27,200/- (Rupees Sixteen Lakhs Twenty Seven Thousand Two Hundred only) as compensation with interest at 7.5% per annum from the date of filing the claim petition till the date of deposit. 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.890 of 2009 on the file of the Motor Accidents Claims Tribunal (Principal Sub Judge), Tindivanam, 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 dismissed with the above modification. No costs. Consequently, connected M.P.No.1 of 2013 is closed.

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-s/d-
Assistant Registrar(CS-VI)

True Copy

Sub-Assistant Registrar

To:
1. The Principal Sub Judge,
   Motor Accidents Claims Tribunal
   Tindivanam.

2. The Section Officer,
   V.R.Section, High Court,
   Madras.

+ 1 cc to Mr.P.Mani, Advocate, SR 11418

+ 1 cc to Mr.C.Ramesh Babu, Advocate, SR 11159

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