

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.1225 of 2017

and

CMP.No.6211 of 2017

Shriram General Insurance Co. Ltd.,

No.66, Thirumalai Pillai Street,

T.Nagar, Chennai - 600 017

...Appellant/2nd Respondent

vs.

1. K.Selvaraj

...1st respondent/claimant

2. M.Pandiyan

...2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order in MCOP No.6391 of 2013 dated 18.01.2016 on the file of Motor Accidents Claims Tribunal, [II Court of Small Causes], Chennai.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents: Mr.Varatha Kamaraj (for R1)

J U D G M E N T

[Order of the Court was made by S.MANIKUMAR, J.]

In the accident, which occurred on 16.07.2013, 1st respondent aged about 52 years and stated to be a wood cutter, sustained a fracture of neck of right femur, compound fracture of femur shaft, fracture of left leg and other injuries. A case in Crime No.631 of 2013, has been registered against the driver of the van bearing Registration No.TN21AE8901, insured with Shriram General Insurance Company Limited, Chennai, the appellant herein. The 1st Respondent/injured filed MCOP No.6391 of 2013 on the file of Motor Accidents Claims Tribunal, [II Court of Small Causes], Chennai, claiming compensation of Rs.20 Lakhs, for the injuries, extent of disablement, medical expenses, loss of earning and under other heads.

2. M/s.Shriram General Insurance Company Limited, appellant herein disputed the negligence attributed to the driver of van bearing Registration No.TN21AE8901. According to the company, it was the motorcyclist/1st respondent, who was negligent in causing the accident. Without prejudice to the above, they disputed the age, avocation, income and the quantum of compensation claimed under various heads.

3. Before the tribunal, 1st respondent/injured, examined himself as PW1 and reiterated the manner of accident. PW2 is the Doctor, who clinically examined the 1st respondent/injured and issued Ex.P11, disability certificate. Ex.P1, FIR, Ex.P2, Discharge summary issued by People's Nursing Home, Ex.P3, Medical Certificate, Ex.P4, Prescriptions for the medical treatment, Ex.P5, Medical Bills, Ex.P6, certificate for future treatment, Ex.P7, Salary certificate issued by the employer, Ex.P8, Bills for the transport of the petitioner to various hospital, Ex.P9, Disability Certificate issued by the Medical Board, Ex.P10, X-rays taken, Ex.P11, Disability certificate issued by PW2 and Ex.P12, X-Ray films, have been marked.

4. RW1, legal officer official of Shriram General Insurance Company Limited, appellant herein has been examined. Ex.R1, Insurance Police, Ex.R2, legal notice with AD Card and returned cover and Ex.R3, Authorisation letter, have been marked on the side of appellant-insurance company.

5. On evaluation of pleadings and evidence, the tribunal held that the driver of van bearing Regn.No.TN21AE8901 and insured with Shriram General Insurance Company Limited, the appellant herein was negligent in causing the accident and consequently, fastened liability.

6. On the quantum of compensation, after considering the medical records, oral testimony of the 1st respondent/injured and PW2, Doctor, the tribunal has noticed that the 1st respondent/injured has sustained multiple fractures of his right femur (thigh) at the neck, and compound fracture of shaft, fracture of left leg, apart from head injuries. He was admitted in Kancheepuram Government Hospital and later on taken to Stanley Medical College Hospital for further treatment. The 1st respondent/injured had taken treatment in People's Nursing Home at Aminjikarai and underwent surgery, where plates and screws were fitted to unite the fractured bones. The tribunal has also taken note of Ex.P5, Medical bills to the tune of Rs.1,88,657/- Medical Board, Government Chengalpet Medical College Hospital, has assessed the extent of disablement as 60%. Accordingly, Medical Board has also declared the 1st respondent/injured as a differently abled person. However, having regard to the testimony of PW2, Doctor, the tribunal has fixed the extent of disability as 70% partial and permanent.

7. Accepting the avocation of the 1st respondent as wood cutter, engaged in Balaji Saw Mill and based on Ex.P7 salary certificate, the tribunal fixed his monthly income as Rs.12,000/-.

8. Placing reliance on R.D.Hattangadi V. Pest Control (India) Private Limited, reported in Cholan Roadways Corporation Ltd., Kumbakonnam vs. Ahmed Thambi and others reported in 2006 (4) CTC 433, Elango V. Natarajan and another, reported in 2013 (1) TNMAC 812, Divisional Controller, KSRTC v. Mahadeva Shetty and another reported in (2003) 7 SCC 197 and Cholan Roadways Corporation Ltd., Kumbakonnam vs. Ahmed Thambi and others reported in 2006 (4) CTC 433 and Ex.P11, Disability certificate issued by PW2, Doctor, tribunal quantified the compensation as Rs.17,76,800/- and rounded off the same to Rs.17,77,000/- as hereunder.

Transportation, nourishing food and miscellaneous expenses	: Rs. 50,000/-
Medical Expenses	: Rs. 2,00,000/-
Attender Charges	: Rs. 10,000/-
Disability	: Rs. 2,10,000/-
Loss of earning during the period of treatment	: Rs. 48,000/-
Damages for pain and suffering and trauma	: Rs. 1,00,000/-
Loss of earning capacity	: Rs.11,08,800/-
Loss of amenities	: Rs. 50,000/-
Total	: Rs.17,76,800/-
the same is rounded to	: Rs.17,77,000/-

9. Though, Mr.D.Dhakshnamoorthy, learned counsel for Shriram General Insurance company Limited, appellant herein contended that the methodology followed in arriving at the compensation is erroneous, this Court is not inclined to accept the said contention, for the reason that having regard to the gravity and situs of the injuries, more particularly, treatment underwent in various hospitals for correction, which did not give the desired result and ultimately, the 1st respondent/injured has been found to have suffered permanent disablement, even by the Medical Board, Government Chengalpet Medical College Hospital, which has issued Ex.P9, disability certificate to the extent that the 1st respondent/injured suffered 60% disablement. Vis-a-vis, Ex.P11, the disability certificate issued by PW2 and Ex.P9, disability certificate issued by the Medical Board, this Court deems it fit to give preference to the certificate issued by the Medical Board, which has considered the medical records and the effect of injuries sustained by the 1st respondent/injured in both the legs. Thus, reducing the extent of disablement as 60%, we now compute the quantum of compensation awarded under the disability compensation and loss of earning capacity.

10. Accident has occurred on 16.07.2013. Disability compensation at 60% works out to Rs.1,80,000/- (Rs.3,000/- per percentage of disability). Loss of earning capacity works out to Rs.9,50,400/- (Rs.12,000/- x 11 x 60%). Quantum of compensation awarded under other heads, is sustained. After reworking, compensation due and payable to the 1st respondent/injured is Rs.15,88,400/- as hereunder.

Transportation, nourishing food and miscellaneous expenses	: Rs. 50,000/-
Medical Expenses	: Rs. 2,00,000/-
Attender Charges	: Rs. 10,000/-
Disability	: Rs. 1,80,000/-
Loss of earning during the period of treatment	: Rs. 48,000/-
Damages for pain and suffering and trauma	: Rs. 1,00,000/-
Loss of earning capacity	: Rs. 9,50,400/-
Loss of amenities	: Rs. 50,000/-
Total	: Rs.15,88,400/-

12. Compensation awarded by the tribunal is Rs.17,77,000/-. In the light of the above, there shall be a reduction in the award to the tune of Rs.1,88,600/-. Civil Miscellaneous Appeal is allowed in part. No costs. Consequently, the connected Miscellaneous Petition is closed.

13. Shriram General Insurance Company Limited, appellant herein is directed to deposit the compensation now determined by this Court with proportionate interest and costs, less the statutory deposit, to the credit of MCOP No.6391 of 2013 on the file of Motor Accidents Claims Tribunal, [II Court of Small Causes], Chennai, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is open to the 1st respondent/injured to seek for withdrawal by making necessary applications.

-s/d-

Assistant Registrar(CSIV)

True Copy

Sub-Assistant Registrar

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To

The Motor Accident Claims Tribunal,
[II Court of Small Causes], Chennai.

copy to

The Section Officer
VR Section
High Court Madras

+1 cc to Mr.S.Dhakshnamoorthy Advocate sr 21193

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and CMP.No.6211 of 2017

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