IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Civil Miscellaneous Appeal No. 1557 of 2017

The Bajaj Alliance General Insurance Company Limited
No.25/26, Ground Floor
Prince Towers
College Road, Nungambakkam
Chennai - 600 006 .. Appellant/4th Respondent

Versus

1. S. Chandrasekaran ..1st Respondent/Petitioner
2. S. Anandha Bathmanaban
3. The United India Insurance Co., Ltd.,
   13-A, Nethaji Road
   Manjakuppam, Cuddalore
4. Mohammed M. Mullanavar .. Respondents 2 to 4/ Respondents 1 to 3

Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree datd 31.03.2015 passed in MCOP No. 1921 of 2010 on the file of the Motor Accident Claims Tribunal (II Additional Subordinate Judge) Cuddalore

For Appellant : Mr. Srinviasan Ramalingam
For Respondent : Mr. A.N. Viswanatha Rao for R1
Mr. J. Chandran for R3

JUDGMENT

(Judgment of the Court was delivered by R. Subbiah, J)

The appellant/Insurance Company, which is arrayed as fourth respondent in MCOP No. 1921 of 2010, has filed the Civil Miscellaneous Appeal questioning their liability as well as the quantum of compensation awarded by the Tribunal.

2. The first respondent in the appeal has filed MCOP No. 1921 of 2010 before the Tribunal seeking compensation of Rs.50,00,000/- for the injuries sustained by him in the motor accident that took place on 06.09.2009. According to the

claimant/first respondent, on 06.09.2009 at about 11.00 p.m. while he was driving the Lorry bearing Registration No. TN 33 AV 1279 belonged to the second respondent and insured with the third respondent, at PP Road, near Kursapura, at a very slow speed, the vehicle driven by him hit the lorry bearing Registration No. KA 22 A 5698, owned by the fourth respondent and insured with the appellant, as it was parked on the middle of the road without any rear park light or indicator. In the impact, the claimant/first respondent sustained grievous injuries and multiple fracture all over his body and both his legs were crushed. Immediately, the claimant/first respondent was admitted in Government Hospital, Sikgavi for treatment, from where he was transferred to MIOT Hospital Chennai and thereafter to Valli Vilas Hospital, Cuddalore for better treatment. According to the claimant/ first respondent, the accident occurred due to the negligent act of parking the lorry bearing Registration No. KA 22 A 5698, owned by the fourth respondent and insured with the appellant on the middle of the road without any caution board or sign.

3. Before the Tribunal, the third respondent/insurance company as well as the appellant/insurance company have filed their respective counter affidavit and disowned their liability to pay compensation amount. In the counter affidavits filed before the Tribunal, the appellant as well as the third respondent in this appeal have disputed the earning capacity of the claimant/first respondent, his age as also the nature of injuries sustained by him. In the counter affidavit of the insurance company/third respondent in this appeal, it was pointed out that the accident had occurred due to the negligent act of parking of the lorry bearing Registration No. KA 22 A 5698 on the middle of the road without sufficient caution sign or rear light indicator. Therefore, the Insurance Company/third respondent in this appeal contended that the compensation amount has to be paid only by the insurance company/appellant and the owner of the lorry bearing Registration No. KA 22 A 5698. In the counter affidavit of the appellant before the Tribunal, it was pointed out that the claimant/first respondent herein is guilty of rash and reckless driving of the lorry that he had dashed the vehicle which was stationary.

4. Before the Tribunal, the claimant/first respondent herein examined himself as PW1 and Dr. Venugopal was examined as PW2. Exs. P1 to P22 were marked on the side of the claimant/first respondent herein. On the side of the respondents in the claim petition, one Mr. Sumesh was examined on behalf of the appellant insurance company. Exs. R1 to R8 were marked on behalf of the respondents in the claim pettion before the Tribunal. The Tribunal, on analysing the oral and documentary evidence, concluded that the accident had occurred mainly due to the act of the driver of the lorry insured with

the appellant who has parked the vehicle on the middle of the road without any caution sign or rear parking lights or any other indicator, indicating the parking of the vehicle. It was also concluded that the claimant/first respondent could not notice the parking of the vehicle in the road, where there was poor lighting, due to which the accident has occurred. Therefore, the Tribunal has fixed the liability to pay the compensation amount at 80% on the appellant insurance company and 20% on the third respondent insurance company.

5. As regards the quantum of compensation, the Tribunal has taken a sum of Rs.11,600/- as monthly income of the claimant/first respondent to which 50% amount of Rs.5,800/- was added towards future prospectus. Thus, the Tribunal arrived at a sum of Rs.17,400/- as monthly income and adopted the mutliplier '14' to arrive at a compensation of Rs.23,38,560/- towards loss of earning capacity. The Tribunal has also awarded compensation under various other heads, which are as follows:-

Loss of earning capacity	Rs.23,38,560.00
Transport to hospital	Rs. 50,000.00
Special Diet	Rs. 5,000.00
Loss of income (Rs.11,600 X 3 months)	Rs. 34,800.00
Pain and suffering	Rs. 50,000.00
Attendant charge	Rs. 5,000.00
Medical expenses	Rs. 4,69,000.00
Loss of amenities for whole body	Rs. 54,000.00
Future medical expenses	Rs. 25,000.00
	Rs.30,31,360.00

6. The learned counsel appearing for the appellant would contend that the lorry insured with the appellant/insurance company was parked on the left extreme side of the road with front and rear indicators switched on. Therefore, there is no inaction on the part of the driver of the lorry insured with the appellant in negligently parking the vehicle on the middle of the road or it cannot be said that it was the reason for the accident. When the vehicle insured with the appellant was stationary, it is the claimant/first respondent who could have exercised caution in driving the vehicle. Even as per the first information report, Ex.P1, filed before the Tribunal, it was clearly stated that because of the rash and negligent driving of the vehicle by the claimant/first respondent herein, the accident has occurred, therefore, no liability could be fastened on the appellant/insurance company. As regards the quantum of compensation, it is stated that the Tribunal has awarded the compensation amount without giving any deduction to the earnings of the claimant/first respondent towards his personal expenses. The amount awarded under various other heads by the Tribunal are also excessive and they are not in consonance with the nature of

the injuries sustained by the claimant/first respondent. Therefore, the learned counsel appearing for the appellant prayed for modification of the award passed by the Tribunal.

7. The learned counsel for the first respondent as well as the third respondent would only justify the passing of the award passed by the Tribunal and prayed for dismissal of the appeal.

8. We have heard the counsel on either side and perused the materials on record. In order to fix the liability to pay the compensation amount, the Tribunal placed reliance on the evidence of PW1/claimant who deposed that on the fateful day, he was driving the vehicle slowly and carefully. However, due to poor lighting, where the vehicle insured with the appellant was parked on the middle of the road, the vehicle driven by him dashed the stationary lorry and it resulted in the accident. Even though it was claimed by the insurance company/appellant before the Tribunal that the lorry bearing Registration No. KA 22 5698 was parked on the extreme left side of the road, the appellant/Insurance company has not chosen to examine the driver or any other person to substantiate the same. In the absence of any witness to contravert the deposition of PW1/claimant, we are of the view that the Tribunal is justified in fixing the liability on the appellant as well as the third respondent/insurance company. Therefore, we are of the view that the Tribunal is wholly justified in fixing 80% liability on the appellant and 20% on the third respondent for the accident.

9. As regards the quantum of compensation, even though the claimant claimed that he was 35 years old at the time of accident, the Tribunal, on perusal of Exs. P6 to P9 and P12, discharge summary issued by the hospitals, concluded that the claimant was 45 years old at the time of accident. As regards the earnings of the claimant, the Tribunal has taken the notional income of the claimant at Rs.5,000/- per month and added Rs.300/- per day towards batta for 22 days at Rs.6,600/- to arrive at a sum of Rs11,600/- as monthly income. Further, the Tribunal has determined the future prospectus at 50% of the income and added Rs.5,800/- to arrive at a total loss of earning at Rs.17,400/- per month. Thus, for determining the loss of earning capacity, the Tribunal as taken Rs.17,400/- per month salary of the claimant/first respondent. By appllying multiplier '14' and fixing the disability at 80%, the Tribunal awarded loss of earning capacity at (Rs.17,400/- X 12 = Rs.2,08,800X80/100/14) Rs.23,38,560/-. We find that the determination of the amount towards loss of earning capacity arrived at by the Tribunal by taking into account 80% of the disability is on the higher side. The Tribunal has taken the percentage of disability at 80% as assessed by the Doctor. Having regard to the nature of injuries sustained by the claimant/first respondent, the period of hospitalisation and the

evidence of Doctor, PW2, who has deposed that due to the injuries, the claimant/first respondent may confront difficulty in discharging his routine work, we are of the view that fixing the disability at 55% for the purpose of calculating the loss of earning capacity of the claimant/first respondent will meet the ends of justice. Therefore, the compensation awarded by the Tribunal is re-calculated and a sum of Rs.16,07,760/- (Rs.17,400 X 12 = Rs.2,08,800 X 55/100X14) is awarded towards loss of earning capacity for the claimant.

10. As regards the other amount awarded as compensation, even though the claimant has not sought for enhancement of the compensation amount, we find that the Tribunal could have awarded atleast a sum of Rs.1,00,000/- towards compensation under the head loss of amenities instead of awarding Rs.54,000/-. Further, having regard to the nature of injuries sustained by the claimant, the period of his treatment and the need to undergo treatment in future, we are of the view that the Tribunal could have awarded a sum of Rs.1,00,000/- towards future medical expenses. In all other respects, the award passed by the Tribunal, in our opinion, is fair and reasonable. Therefore, we re-calculate the award passed by the Tribunal as follows:-

Loss of earning capacity	Rs.16,07,760.00
Transport to hospital	Rs. 50,000.00
Special Diet	Rs. 5,000.00
Loss of income (Rs.11,600 X 3 months)	Rs. 34,800.00
Pain and suffering	Rs. 50,000.00
Attendant charge	Rs. 5,000.00
Medical expenses	Rs. 4,69,000.00
Loss of amenities for whole body	Rs. 1,00,000.00
Future medical expenses	Rs. 1,00,000.00
	Rs.24,21,560.00

11. In the result, C.M.A. No. 1557 of 2017 is partly allowed by modifying the quantum of compensation awarded by the Tribunal from Rs.30,31,360/- to Rs.24,21,560/- in favour of the first respondent out of which 80% has to be paid by the appellant and the remaining 20% to be paid by the third respondent herein. No costs. We direct the appellant as well as the third respondent/insurance company to deposit the amount, as determined in this appeal, if not already deposited, with interest as awarded by the Tribunal, within a period of eight weeks from the date of receipt of a copy of this Judgment to the credit of MCOP No. 1921 of 2010 on the file of the Motor Accident Claims Tribunal (II Additional Subordinate Judge)

Cuddalore. On such deposit, the claimant/first respondent is permitted to withdraw the amount with interest. Consequently, connected CMP No. 8209 of 2017 is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To
1.The II Additional Subordinate Judge,
The Motor Accident Claims Tribunal
Cuddalore

2.The Section Officer
VR Section High Court,
Madras

+2 ccs to Mr.A.N.Viswanatha Rao Advocate sr 52087
+1 cc to Mr.J.Chandran Advocate sr 51709
+1 cc to Mr.Srinivasan Ramalingam Advocate sr 51592

CMA No. 1557 of 2017

kjI(co)
aa10/08/2017