In the High Court of Judicature at Madras

Dated 01.09.2017

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The Honourable Mr.Justice R.SUBBIAH
AND
The Honourable Mr.Justice P.VELMURUGAN

C.M.A.No.2680 of 2017
and
C.M.P.No.14909 of 2017

Reliance General Insurance Company Ltd.,
having its Branch Office at 1st Floor,
Gee Jay Arcade, 141/1, T.V.Swamy Road,
West R.s.Puram,
Coimbatore-641 002. .. Appellant/3rd Respondent

..vs..

1.G.Jagatheeshwar
2.M.Ramkumar
3.M.Silambarasan .. Respondents/Petitioner/
Respondents 1 & 2

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 17.09.2016, made in M.C.O.P.No.81 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge), Erode.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.R.Nalliayappan (For R1)

JUDGMENT

R. SUBBIAH, J.,

This appeal has been filed by the Insurance Company challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Special Subordinate Judge), Erode, in and by award dated 17.09.2016 in M.C.O.P.No.81 of 2013.

2.The 1st respondent herein is the claimant before the Tribunal. The 2nd respondent is the driver, who had driven the offending vehicle at the time of the accident and the 3rd respondent is the owner of the vehicle. The case of the claimant before the Tribunal is that on 11.02.2011 at about 11.30 am, while he was riding his motorcycle bearing Reg.No.TN.37 AX 5541 from Velanthavalam towards Memonpara, in a slow speed on the extreme left side of the road, another motorcycle bearing Reg.No.TN 37 BE 3331 driven by the 2nd respondent, owned by the 3rd respondent herein and insured with the appellant herein/Insurance Company, came from opposite direction in a rash and negligent manner, and made an attempt to overtake another vehicle, and in that process, the said motorcycle came to the wrong side of the road and dashed against the motorcycle of the 1st respondent/claimant and thus, caused the accident. In the said accident, the claimant sustained grievous injuries all over his body and he was immediately taken to the Coimbatore Medical College Hospital, Coimbatore, where he took treatment from 11.2.2011 to 28.4.2011. Thereafter, he was admitted at Kumaran Hospital, Coimbatore, wherein he took treatment from 28.04.2011 to 8.5.2011. The claimant underwent treatment as inpatient for one month. At the time of accident, the claimant was working as a Sale Executive at Kavitha Alloyss Company, Coimbatore and earning monthly salary of Rs.10,000/-. Due to multiple bone fractures in both legs, the claimant is not in a position to walk, sit, squat and ride two wheeler. He is bed-ridden and could not move about from the bed and an attender is always attached with the claimant, who is supporting the claimant for performing his day-to-day activities. Hence, the claimant made a claim for a sum of Rs.10,00,000/-.

3.Resisting the claim of the made by the claimant, the Insurance Company filed a counter contending that the accident is the result of the rash and negligent riding of the claimant and the Insurance Company is not liable to pay any compensation to the claimant.

4.In order to prove his claim before the Tribunal, on the side of the claimant, he examined himself as P.W.1, besides examining three doctors as P.W.2 to P.W.4 and one Dhanasekar as P.W.5 and marked Ex.P.1 to Ex.P.22. On the side of the Insurance Company, neither the oral nor documentary evidence was adduced.

5.The Tribunal, after analysing the entire evidence, has come to the conclusion that the accident is the result of the rash and negligent act of the 2nd respondent herein. So far as the quantum of compensation is concerned, the Tribunal has fixed 48% disability and by applying multiplier 17, based on the age of the victim/claimant at the time of accident who was 26 years, the Tribunal has awarded a sum of Rs.6,61,000/- towards loss of earing power. That part, the Tribunal has awarded a sum of

Rs.54,000/- for loss of income, a sum of Rs.20,000/- for transport expenses, a sum of Rs.30,000/- for extranourishment, a sum of Rs.500/- towards damages for clothes and articles, a sum of Rs.3,20,000/- for medical expenses, a sum of Rs.2,00,000/- for pain and sufferings and another sum of Rs.96,000/- for disability. Thus, the Tribunal has passed an award for a total sum of Rs.13,81,700/- as compensation to the claimant.

6.Now, the present appeal has been filed by the Insurance Company contending that 48% disability fixed by the Tribunal is extremely on the higher side; therefore,the amount awarded by the Tribunal under the head of Loss of Earning Power needs proper modification.

7.Per contra, the learned counsel for the claimant made his submissions supporting the award passed by the Tribunal.

8.Keeping the submissions made on either side, We have carefully gone through the materials available on record.

9.From a perusal of the materials available on record, We find that in order to support the disability suffered by the claimant, on his side, three Doctors were examined as P.W.2 to P.W.4. Dr.P.Senthil Kumar-P.W.3 assessed the disability suffered by the claimant at 48.4% and issued the disability certificate, which was marked as Ex.P.17. X-rays were marked as Ex.P.18 & Ex.P.19. Further, the Doctor who treated the claimant at Kumaran Hospital was examined as P.W.2 and the Doctor who treated the claimant at CMC Hospital at Coimbatore has been examined as P.W.4. From the evidence of the doctors, the Trial Court has rendered a finding that due to the side effects of injuries both leg knee joint movements were restricted to 80 degree instead of 150 degree and that the right leg movements of the claimant are restricted, therefore, he could not move one place to another place without the help of the other person.

10.Assailing the said findings of the Tribunal, the learned counsel appearing for the Insurance Company submitted that there is no evidence to show that on account of the injuries sustained by him, the claimant is not in a position to continue his job, who was working as Sale Executive. Moreover, considering the fracture injuries sustained by the victim, 48% disability fixed by the Tribunal appears to be on the higher side; therefore, it needs a proper modification.

11.We are of the opinion that as contended by the learned counsel appearing for the Insurance Company, the fracture injuries sustained by the claimant cannot be said to be permanent injuries. Under such circumstances, considering the nature of injuries sustained by the victim/claimant, We are of the opinion that 48% disability fixed by the Tribunal appears to be on the higher side. Hence, by fixing 30% disability, the calculation has to be made to arrive at a just and proper compensation. The petitioner's monthly income was fixed as Rs.4,500/- and if 50% amount is added towards future prospects, then the total comes to Rs.6,750/- If the disability is fixed at 30% and 17 multiplier is applied, the compensation amount under the head of Loss of Earning Power works out to Rs.4,13,100/- (6750 X 12 X 17 X 30/100 =4,13,100/-). Hence, a sum of Rs.6,61,000/- awarded by the Tribunal under the head of Loss of Earning Power is hereby modified and reduced to Rs.4,13,100/-. That part, a sum of Rs.2,00,000/- awarded by the Tribunal under the head of Pain & Sufferings appears to be on the higher side. Hence, the same is hereby reduced to Rs.1,00,000/-.

12.Further, We find that considering the nature of the injuries sustained by the claimant, he would find it difficult to do his day-to-day activities as he was doing before the accident. Hence, he is entitled to compensation for loss of amenities; but, the Tribunal has not awarded any amount for loss of amenities. Hence, a sum of Rs.1,00,000/- is hereby awarded to the claimant under the head of Loss of Amenities. Except the above modification, the award passed by the Tribunal remains unaltered. Consequently, the total compensation amount of Rs.13,81,700/- awarded by the Tribunal is hereby modified and reduced to Rs.11,33,600/-. The breakup details of the modified/reduced compensation amount are as follows_

1.Loss of Income	= Rs.	54,000.00
2.Transport Expenses	= Rs.	20,000.00
3.Extra nourishment	= Rs.	30,000.00
4.Damages for clothes and articles	= Rs.	500.00
5.Medical Expenses	= Rs.	3,20,000.00
6.Pain and sufferings	= Rs.	1,00,000.00
7.Disability	= Rs.	96,000.00
8.Loss of Earning Power	= Rs.	4,13,100.00
9.Loss of amenities	= Rs.	1,00,000.00
Total	= Rs.11,33,600/-	

13.In fine, the appeal is partly allowed and the compensation amount of Rs.13,81,700/- (Rupees thirteen lakhs eighty one thousand and seven hundred only) awarded by the Tribunal is hereby modified and reduced to Rs.11,33,600/- (Rupees eleven lakhs thirty three thousand and six hundred only). The appellant/Insurance Company is directed to deposit the entire modified compensation amount, after deducting the amount if any already deposited, with proportionate interest as awarded by the Tribunal, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the same by making necessary application before the Tribunal.

Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
(Special Subordinate Judge),
Erode.

2.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.S.ArunKumar, Advocate, S.R.No.63325
+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.63146

C.M.A.No.2680 of 2017
and
C.M.P.No.14909 of 2017

SKV(CO)
GN(07/11/2017)