

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.03.2017

Coram

The Hon'ble Mr.Justice Nooty Ramamohana Rao
and
The Hon'ble Mr.Justice S.M.Subramaniam

C.M.A.No.794 of 2014
and
M.P.No.1 of 2014

M/s.ICICI Lombard General Insurance
Company Ltd.,
Arihant Plaza, 1st Floor,
No.84/85, Walltax Road,
Chennai - 600 003. ..Appellants/2nd Respondents

Vs.

1. S.Satish @ Satish Kumar ..Respondents/Petitioner & 1st Respondent
2. A.Akbar Basha
(R-2 set as ex parte in Lower Court)

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 12.03.2013, in M.C.O.P.No.2466 of 2010, on the file of the Motor Accident Claims Tribunal, (VI Judge, Court of Small Causes) Chennai.

For Appellant : M/s.R.Sree Vidhya
For Respondent-1 : Mr.M.S.Swamikkannu

JUDGMENT

Judgement of the Court was delivered by S.M.Subramaniam, J.,)

This Civil Miscellaneous Appeal has been preferred by the Insurance Company against the judgment and decree, dated 12.03.2013, made in M.C.O.P.No.2466 of 2010, on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai, (for short, 'the Tribunal').

2 On 3rd July, 2010 at about 9.45 hours, when the claimant was riding a motor-cycle, bearing Regn. No.TN-02-AH-4460, from south to north direction in GNT Road, an Innova Car, bearing Regn No.TN-09-AK-1793, which came in the opposite direction, near Panjetttti Junction, dashed against the motorcycle, and caused the accident, on account of which, the claimant sustained grievous injuries, which are in the nature of i) multiple compound and comminuted fracture in right leg thigh bone, ii) multiple fracture in left hand wrist, iii)

major degloving injury and dislocation of bone in right leg knee, iv) severe punctured wound in right side chest near throat, v) blood clotting in chest and abdomen, and vi) multiple internal and external injuries all over the body.

3. Regarding the said accident, an FIR was also registered against the driver of the car, in Crime No.360 of 2010, on the file of Kavarapettai Police Station, Thiruvallur District, for offences under Sections 279 and 338 of the Indian Penal Code (marked as Ex.P.1), and the Criminal Court, vide judgment, dated 19.01.2012, made in S.T.C.No.974 of 2011, convicted the driver of the car and sentenced him to pay a fine of Rs.1,500/- (marked as Ex.P.31).

4. The claimant filed the Claim Petition, claiming a total compensation of Rs.16,00,000/- under various heads.

5. The first respondent remained ex parte before the Tribunal.

6. The second respondent resisted the claim by filing a counter statement, denying the manner, in which, the accident occurred as well as the quantum of compensation claimed.

7. The Tribunal, based on the averments set out in the Claim Petition as well as Counter, framed the following three points for consideration:-

i) Whether the petitioner sustained injuries due to the rash and negligent driving of the driver of the first respondent's vehicle?

ii) Whether the respondents are liable to pay the compensation?
and

iii) Whether the petitioner is entitled to the compensation, if so, what is the just compensation?

8. Before the Tribunal, the claimant examined himself as P.W.1 and one Doctor Amarnath as P.W.2 and marked 32 documents to buttress his claim, viz., Ex.P.1 Copy of F.I.R.; Ex.P.2, Driving License of the petitioner; Exs.P.3 & P.4- Copies of 10 and 12 standards mark sheets respectively; Exs.P.5 & P.6 B.Com & M.B.A. degree certificates; Exs.P.7&Ex.P.8, Discharge summaries issued by M.N.Orthopaedic Hospital, Chennai; Ex.P.9, Appointment Order; Ex.P.10 Annual Increment Letter; Ex.P.11, Promotion letter; Ex.P.12, Settlement Order ; Ex.P.13, Releaving Order; Ex.P.14, Re-appointment order ; Exs.P.15 to Ex.P.19; Ex.P.20, HDFC Bank Statement, prior to resignation Ex.P.21; HDFC Bank Statement, after re-appointment, Exs.P.22 to P.24, Salary slips; Ex.P.25 OP Chits; Ex.P.26, Name change gazette notification with paper publication; Ex.P.27, Photos; Ex.P.28, C.D.; Ex.P.29, Disability Certificate; Ex.P.30, X-ray; Ex.P.31 copy of criminal court judgement, and Ex.P.32 copy of charge sheet. On the side of the second

respondent/insurer, neither any witness was examined, nor any document was marked.

9. The Tribunal, on evaluation of both the oral and documentary evidence, answered the afore mentioned three points by holding that the i) accident occurred on account of rash and negligent driving of the driver of the first respondent's vehicle, ii) at the time of the accident, the vehicle was insured with the second respondent/Insurance Company, therefore, as insurer of the first respondent's vehicle, the second respondent is liable to pay the compensation, and iii) claimant is entitled to the compensation, and awarded compensation under different heads, the details of which has been furnished herein below in a tabulated column:-

Sl.No.	Heads	Award
1	Loss of income for five months	Rs.97,355/-
2	Transportation	Rs.5,000/-
3	Extra-nourishment	Rs.5,000/-
4	Medical Expenses	Rs.20,689/-
5	Attender Charges	Rs.5,000/-
6	Loss of Amenities	Rs.40,000/-
7.	Pain and Suffering	Rs.75,000/-
8	Loss of Future earning power	Rs.10,51,434/-
Total		= Rs.12,99,478/-

10. Questioning the quantum of compensation, the Insurance Company has filed the present Civil Miscellaneous Appeal, contending that the compensation fixed by the learned Tribunal is high and excessive.

11. M/s.R.Sree Vidhya, the learned counsel appearing for the appellant/Insurance Company would submit that the compensation awarded by the Tribunal under the heads, 'Loss of Future Earning Power' and 'Pain and Suffering' are high and excessive. Firstly, she submitted the Tribunal, on the basis of the Disability Certificate/Exs.P.29 issued by the Doctor Amarnath/PW.2, Exs.P.7 and P.8, the Discharge summaries, Exs.P.27 and P.28, Scan report with C.D., and Ex.P.30, X-ray, wrongly came to the conclusion that, due to the accident, the claimant has sustained grievous injuries, as an aftermath, he has lost his ability to work, when the fact remains that he rejoined the same Company, (where, he was working prior to the accident) and worked for some time. Secondly, she submitted that the Tribunal also failed to note down the difference between the permanent disability and partial disability, and wrongly adopted the multiplier as '18', and determined the compensation towards 'Loss of Future Earning Power', Thirdly, she contended that the compensation awarded under the head

'Pain and Suffering' is also on the higher side and the same requires reduction.

12. Per contra, learned counsel for the first respondent/claimant would submit that due to the accident, he was admitted in M.N.Orthopaedic Hospital on 03.07.2010 and underwent treatment for 12 days, and in support of the same, Ex.P.7, the Discharge Summary issued by the said Hospital was marked, and Ex.P.8 the Discharge Summary issued by the same Hospital would show that the claimant was again admitted on 09.12.2010, and undergone treatment for 8 days, and the documents, viz., Ex.P.25/OP chits for continuous treatment, and Exs.P.27 and 28, viz., the scan report with C.D, would per se prove the gravity of injuries sustained by the claimant. Further, P.W.2, the Doctor, who assessed the disability at 30% has deposed evidence that due to the injuries sustained by the claimant, he cannot continue his avocation with the same degree of ability and capacity as he performed before the fateful accident, and the Tribunal taking into account, his age, avocation, disability, rightly adopted the multiplier as '18' and awarded compensation of Rs.10,51,434/-, under the head Loss of future earning power, and Rs.75,000, towards Pain and Suffering, which are just and reasonable.

13. Heard the learned counsel for the appellant/Insurance Company and the learned counsel for the first respondent/claimant, and perused the materials placed before us.

14. The appellant/Insurance Company has not disputed the factum regarding the liability fastened on them. Therefore, the issue, which falls for consideration in this Appeal is as to whether the quantum of compensation fixed by the Tribunal under the heads i) Loss of Future Earning Power and ii) Pain and Suffering are high and excessive, as contended by the appellant/Insurance Company?

15. On perusal of the documents placed on record, we are unable to accept the contention of the learned counsel for the appellant/Insurance Company for the following reasons:-

i) The Tribunal has considered that age of the claimant (P.W.1) at the time of the accident, who is 24 years old, which is not rebutted by the appellant/Insurance Company. Further, he is working as Financial Associate in M/s.Tata Consultancy Pvt Ltd., and earning Rs.2,10,000/- p.a, during the relevant point of time, when the accident occurred. To substantiate the claim regarding the income, he filed Ex.P.9, Appointment Letter, wherein, his annual income was shown as Rs.2,02,000/- and since the accident took place during the month of July, 2010, the Tribunal, has relied on Exs.P.22, the salary slip pertaining to the month of July, 2010, fixed the monthly income of the claimant at Rs.19,471/- and based on the deposition of P.W.2/Doctor, which is to the effect that, due

to the injuries sustained by the claimant, he cannot continue his avocation with the same degree of ability and capacity as he performed before the fateful accident, rightly adopted the multiplier as '18' and fixed the compensation toward the head 'Loss of Future Earning Power', and the same is not excessive.

ii) Though it is the contention of the learned counsel for the appellant that the claimant himself has marked Ex.P.14, re-appointment letter, which shows that he joined duty in the same Company, (where, he was working prior to the accident) and that he has ability to work, the Tribunal, while answering Point No.iii), has taken note of the submission made on behalf of the claimant in the sub para 1 of Para No.11, wherein, it is stated that the claimant was forced to resign the job due to his inability consequent to the injuries. Therefore, it cannot be stated that the claimant's ability to work has not suffered any impairment. In fact, it did. But, he still possess ability to work. Hence, he could secure employment again. But, the fact remains that his ability got diminished by 30%. Hence, his full potential to earn much better, in future, is what is impaired. That factor needs to be compensated. Hence, we are satisfied that the Tribunal did not go wrong in awarding compensation, which it did.

iii) The other contention of the learned counsel for the appellant/Insurance Company that the compensation awarded under the head "Pain and Suffering" is excessive also is not tenable, for the reason that the claimant as marked Ex.P.7, the discharge summary issued by M.N.Orthopaedic Hospital, Chennai, which would show that the first respondent/claimant has sustained fracture of shaft of right femur, for which, ORIF with plate and screws of right femur was done on 08.07.2010, and Ex.P.8, viz., the Discharge Summary issued by the same Hospital would show that the claimant was again admitted as out patient on 09.12.2010, and due to the fracture sustained on the right femur, plate and screws removal and inter medullary and interlocking nailing of right femur and bone grafting was done on 10.12.2010, and Ex.P.25, is the OP Chits for continuous Treatment, and Exs.27 and 28, the scan report with C.D. would show that the gravity of the injuries sustained by him and his marital prospects is also affected to certain extents, and the Tribunal on proper appreciation of all these documents, awarded compensation of Rs.75,000/- towards Pain and Suffering and we do not find the same as excessive or exorbitant. Issue No.ii is answered accordingly.

16. Therefore, we do not have hesitation to hold that the compensation awarded by the Tribunal under the heads 'Loss of Future Earning Power' and 'Pain and Suffering' are just and reasonable, and it perfectly fits within the principles laid down by the Apex Court on just compensation.

17. At the risk of repetition, we are inclined to say that the compensation awarded by the Tribunal under the heads 'Loss of Future Earning Power' and 'Pain and Suffering' is either too high, unjust, or unreasonable, thereby, calling for our interference. As such, the impugned award stands confirmed.

18. In the result, the Civil Miscellaneous Appeal stands dismissed. As the appellant/Insurance Company has already deposited the entire award amount, in compliance of the conditional stay order, dated 10.03.2014, granted by the Bench, in M.P.No.1 of 2014, and also permitted the first respondent/claimant to withdraw a sum of Rs.6,00,000/-, as could be seen from the order passed in M.P.No.2 of 2014, dated 17.04.2014, the first respondent/claimant is permitted to withdraw the balance amount along with interest accrued thereon, by filing necessary cheque petition. There shall be no order, as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

The VI Judge, Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.

+1 cc to M/s.R.Sreevidhya,advocate,sr.15876

+1 cc to M/s.M.Swamikannu,advocate,sr.15469.

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C.M.A.No.794 of 2014

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