IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.06.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1076 of 2018

M/s.Reliance General Insurance Co. Ltd.,
Rai's Towers, 2nd Floor,
Plot No.2054, 2nd Avenue,
Anna Nagar, Chennai-600 040.
... Appellant /2nd Respondent

..vs..

1.M.Krishnan
2.U.Abubhakkar ... Respondents/Petitioner&1st Respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal Order dated 11.04.2017 made in MCOP.No.5599 of 2014 on the file of the Motor Accident Claims Tribunal/III Judge, Court of Small Causes, Chennai.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.P.Ravichandran - R1

JUDGMENT

Being aggrieved over the findings of the Tribunal, dated 11.04.2017 made in MCOP.No.5599 of 2014 on the file of the Motor Accident Claims Tribunal/III Judge, Court of Small Causes, Chennai, the second respondent-Insurance Company filed this present appeal seeking to set aside the award passed by the Tribunal.

2. For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioner is that on 16.05.2014 at about 07.30 hours, as the petitioner who was going in his Motor Cycle bearing Registration No.TN-03-J-9335 towards Chennai,

while coming near Padalam Coot Road, Madhuranthagam Taluk, the first respondent lorry bearing Registration No.TN-01-X-3569 insured with the second respondent Insurance company came at high speed in a rash and negligent manner from east to west and dashed against the two wheeler in which the petitioner was going, causing him grievous injuries. The accident occurred due to the negligence of the first respondent lorry driver only. The petitioner was aged about 32 years and by working as driver was earning a sum of Rs.15,000/- per month. As he suffered multiple fracture, the petitioner is not in a position to carry on his avocation as he used to. Thus, the petitioner sought for a sum of Rs.10,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the second respondent Insurance company by filing counter contends that the accident does not occur in the manner alleged by the petitioner. The claim of the petitioner about the age, avocation and income is not correct. The amount claimed by the petitioner is exorbitant. Hence, the second respondent Insurance Company sought for dismissal of the claim petition.

5. Before the Tribunal, the injured petitioner examined himself as P.W.1 and produced documents Ex.P1 to Ex.P16 to prove his claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6. The Tribunal, on the basis of materials available on record, found the negligence of the first respondent lorry driver alone caused the accident, passed an award for a sum of Rs.9,16,600/- as compensation to the petitioner. Aggrieved over the said finding of the Tribunal, the Second respondent-Insurance Company has come forward with this present appeal.

7. Heard the learned counsel appearing for the second respondent-Insurance Company and the learned counsel appearing for the petitioner/claimants and perused the materials available on record.

8. The learned counsel appearing for the appellant-Insurance Company contends that the Tribunal wrongly assessed the loss of earning capacity and passed an Award for a sum of Rs.4,60,800/- which is exorbitant. The Tribunal erred in accepting the interested testimony of P.W.1 to fix the negligence on the respondents. Since the petitioner has not suffered any functional disability, the Tribunal erred in adopting the multiplier method to assess the loss of income suffered by the petitioner without acceptable evidence. The amount awarded by the Tribunal under different heads is highly excessive. Hence, the second respondent-Insurance Company sought

for setting aside the award passed by the Tribunal by entertaining the appeal.

9. Per contra, the learned counsel appearing for the petitioner /claimant contended that the accident occurred due to the negligence of the first respondent lorry driver and on the basis of available evidence on record, the Tribunal has passed an award granting just and fair compensation to the petitioner. He further contends that the petitioner being a driver suffered partial permanent disability which will prevent him from discharging from his avocation in future and as such the Tribunal is justified in adopting multiplier method to compensate him and there is no valid ground made out by the second respondent-Insurance Company to interfere with the award passed by the Tribunal. Hence, the petitioner/claimant seeks dismissal of the appeal.

10. The injured petitioner, who deposed as P.W.1 clearly stated about the accident which took place on 16.05.2014 at about 07.30 hours near Padalam Coot Road in Madhuranthagam Taluk. The police have registered Ex.P1 First Information Report against the first respondent lorry driver only. It is clear from the evidence of P.W.1 as well as the contents of Ex.P1 First Information Report that the negligence of the first respondent lorry driver alone caused the accident. Further, the respondents has not examined the driver of the offending vehicle or any other person to disprove the version of P.W.1 about the manner in which the accident took place. In such circumstances, the Tribunal has rightly fixed that the negligence on the part of the first respondent lorry driver alone has resulted in the accident.

11. The petitioner stated that he suffered fracture over left leg both bone, right leg digloving injury, fracture mandible, head injury, injury over buttocks, facial injury, injury over both hands and multiple internal and external injuries all over the body in the accident which took place on 16.05.2004. Immediately after the accident, the petitioner was admitted in Government Rajiv Gandhi Hospital, Chennai on 16.05.2004 and was discharged on 07.07.2014 after getting treatment for the fracture in his right leg. The same is evidenced by Ex.P2 Discharge Summary. It is also clear that the surgery was done on 16.05.2004. Thereafter, the petitioner was taking treatment as out patient in the same hospital as evidenced by Ex.P3 case records. Subsequently, the petitioner was admitted as in patient in Nethaji Health Centre on 18.02.2016 and after treatment who was discharged on 21.02.2016 as evidenced by Ex.P4 Discharge Summary. The petitioner took treatment for the fracture in his right leg. Since the petitioner was in need of further treatment, he again admitted himself in Stanley Medical College Hospital on 19.03.2016 and

after the treatment was discharged on 25.03.2016 as evidenced by Ex.P5 Discharge Summary. It is clear from the same that the petitioner under went another surgery on 21.03.2016. As the petitioner was need of further treatment, he readmitted himself in Stanley Medical College Hospital on 30.06.2016 and was discharged on 06.07.2016 as per Ex.P6 Discharge Summary. The petitioner further stated that he continuously took treatment as out patient and to prove the same, he has produced Ex.P8 O.P. Chits. The petitioner further stated that his right leg both bone is fractured and after surgery plate has been fixed to rectify the same. In proof of the same, the petitioner has produced Ex.P9 series X-rays. Thus, the petitioner claims that he suffered grievous injuries and Grade-III both bone fracture in his right leg. The petitioner states that he being a driver will not be in a position to carry on his driving work due to the injuries suffered by him. The petitioner to prove his permanent physical disability produced Ex.P16 disability certificate issued by the Regional Medical Board, Government Stanley Hospital, Chennai. It is evidenced from the same, that the disability suffered by the petitioner is 50%. However, the petitioner failed to examine any Doctors who gave treatment to him or any member of the Regional Medical Board which issued Ex.P16 DisabilityCertificate. However, it is clear from the documents produced by the petitioner as Ex.P2 to Ex.P6 and Ex.P16 Disability Certificate as well as Ex.P9 X-rays and Ex.P10 Photos that the petitioner has suffered multiple injuries including fracture in his right leg as stated above. It is also evident from the available materials on record that the petitioner suffered partial permanent disability. In the absence of any contrary evidence, the Tribunal has rightly accepted Ex.P16 disability certificate issued by Regional Medical Board, Chennai and fixed the disability at 50%. In such circumstances, it will be appropriate to fix the permanent disability suffered by the petitioner at 50% and considering the same, it will be appropriate to compensate him at the rate of Rs.3000/- per percentage. Thus, the disability compensation is calculated as 50% x Rs.3,000/- = Rs.1,50,000/-.

12. The Tribunal considering the fact that the petitioner was a driver by profession fixed his monthly income at Rs.12,000/-. The same is not disputed by the second respondent Insurance company. Taking into account the fact that the petitioner suffered 50% disability, the Tribunal quantified the same, it will comes 25% disability for whole body and held that the petitioner would have suffered 20% of loss of income. Contesting the same, the learned counsel appearing for the second respondent/Insurance Company contended that the same is on the higher side and it has be reduced. Considering the nature of injuries suffered by the petitioner and other attendant circumstances, it will be appropriate to calculate

the loss of earning capacity as 15% instead of 20% calculated by the Tribunal. As the petitioner was aged 32 years as evidenced by Ex.P12 Driving licence, in which the date of birth is given, the multiplier to be applied is 16. As such the loss of earning capacity is calculated as follows:-

Rs.12,000/- x 15% = Rs.1800/- x 12 = Rs.21,600 x 16 = Rs.3,45,600/-.

13. Considering the nature of injuries suffered by him, he would not have attend to his normal work at least for six months. In such circumstances, the loss of income during treatment period is calculated as Rs.12,000/- x 6 = Rs.72,000/-. Considering the nature of injuries and period of treatment undergone by the petitioner, it will be appropriate to award Rs.24,000/- towards attender charges. The Tribunal has awarded a sum of Rs.10,000/- under the head of Damages for mental and physical shock and a sum of Rs.25,000/- is awarded under the head of disfigurement and the same were disputed by the respondent. Considering the fact that the petitioner is compensated for disability and also for loss of earning capacity, this Court is of the considered view that the amount awarded under the head of disfigurement as well as mental and physical shock is unsustainable. Further, there is no acceptable medical evidence to establish such disfigurement. Hence, the sum of Rs.25,000/- awarded by the Tribunal towards Disfigurement and sum of Rs.10,000/- towards Damages for mental and physical shock is set aside.

14. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of income	52,000.00	72,000.00
2.	Attender Charges	10,000.00	24,000.00
3.	Transportation	20,000.00	20,000.00
4.	Extra nourishment	25,000.00	25,000.00
5.	Damage to cloth	1,000.00	1,000.00
6.	Medical Bills	1,12,783.57	1,12,783.57
7.	Pain and Sufferings	50,000.00	50,000.00
8.	Damages for mental shock	10,000.00	-
9.	Permanent Disability	1,50,000.00	1,50,000.00
10.	Loss of earning capacity	4,60,800.00	3,45,600.00
11.	Disfigurement	25,000.00	-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
	Total	9,16,583.57	8,00,383.57

Accordingly, the compensation warded by the Tribunal is modified and the same is reduced to Rs.8,00,383.57 and the same is rounded to Rs.8,00,400/-

15. In the result, this appeal is partly allowed. No costs. The amount of Rs.9,16,600/- awarded by the Tribunal dated 11.04.2017 made in MCOP.No.5599 of 2014 on the file of the Motor Accident Claims Tribunal/III Judge, Small Causes Court, Chennai, is reduced to Rs.8,00,400/-. The appellant Insurance Company is directed to deposit the entire Award amount of Rs.8,00,400/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit of the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

rrg

To

The III Judge, Small Causes Court,
The Motor Accident claims, Tribunal,
Chennai.

+1cc to Mr.S.Arun Kumar, Advocate SR.No.35945
+1cc to Mr.P.Ravichandran, Advocate SR.No.35718

C.M.A.No.1076 of 2018

RJ(CO)
GN(25/06/2018)