

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA Nos.159 and 160 of 2018,
C.M.P.Nos.2010 and 2011 of 2018

M/s.Reliance General Insurance Company Limited
No.6, Haddows Road,
Reliance House, 6th Floor,
Nungambakkam,
Chennai - 600 034.

... Appellant in both Appeals/
2nd Respondent

-vs-

1.K.John Jacob Anandkumar

... 1st Respondent in
CMA No.159/2018/Petitioner

2.W.Ireney Shierly

...1st respondent in
CMA No.160/2018/Petitioner

3.Amar Pal Singh

...2nd respondent in
both Appeals/1st Respondent

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 17.07.2017 made in M.C.O.P.Nos.805 and 806 of 2014 respectively on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.M.B.Raghavan (in both appeals)

For Respondents: Mr.T.G.Ravichandran for R1
(in both appeals)

R2 : Not ready in notice

C O M M O N J U D G M E N T

[Judgment of the Court was delivered by
R.SUBRAMANIAN,J.]

The Insurance Company, which suffered two Awards in MCOP Nos.805 and 806 of 2014 directing payment of a sum of

Rs.11,07,600/- for the injuries caused to one K.John Jacob Anandkumar and a sum of Rs.17,39,500/- for the injuries caused to one W.Ireny Shierly in a motor accident that occurred on 23.09.2013 is the appellant in these appeals.

2. According to the claimants, the accident occurred due to the rash and negligent driving of the driver of the lorry bearing Registration No.HR-37-B-5284 owned by the first respondent in the Original Petitions and insured with the appellant Insurance Company. The Tribunal taking into consideration the First Information Report as well as the evidence on record concluded that the accident occurred due to the rash and negligent driving of the driver of the lorry.

3. Mr.M.B.Raghavan, learned counsel appearing for the Insurance Company would fairly submit that he is not questioning the finding of the Tribunal on the ground of negligence. As regards the quantum is concerned, Mr.M.B.Raghavan, learned counsel would submit that the quantum awarded on the ground of future loss of earning capacity at Rs.5,41,440/- in O.P.No.805 of 2014 and Rs.7,77,600/- in O.P.No.806 of 2014 is on the higher side. According to him, there is no basis or evidence to show that the claimants have lost their earning power because of the injuries sustained in the accident.

4. Pointing out the nature of the injuries sustained by the claimant in O.P.No.806 of 2014 viz., fracture in the fibula bone of the right leg, Mr.M.B.Raghavan would contend that the injuries sustained would not have a bearing on the income of the injured.

5. In O.P.No.805 of 2014, the Claimant is said to be running a business in computer service. He has suffered twin fracture on the right leg. The Doctor has assessed the disability at 45%. The Tribunal had taken the functional disability at 10% and has worked out the compensation payable for loss of earning power at Rs.5,41,440/-. In determining the same, the Tribunal had taken the monthly income of the injured at Rs.28,200/- and 10% of the same is taken as the loss of earning power i.e, Rs.2820/- per month. Thus, calculated, the loss of earning power works out to Rs.5,41,440/- (Rs.2,820 x 12 x 16).

6. We have considered the evidence on record. We find that the claimant has suffered twin fractures in the right leg. Considering his age at the time of the accident as well as the nature of injuries, we are of the opinion that the Tribunal was justified in assuming the loss of income at 10%. We do not think that the said conclusion of the Tribunal calls for interference. As regard the compensation awarded under other heads viz., permanent physical disability, attender charges, loss of income

during the period of treatment, medical expenses are concerned, we find that these amounts are reasonable and the learned counsel for the Insurance Company also does not pray for any reduction on the said heads. We are therefore of the opinion that the compensation granted to the claimant in O.P.No.805 of 2014 (CMA.No.159 of 2018) is just and reasonable.

7. While determining the quantum of compensation awarded to the claimant in O.P.No.806 of 2014, the Tribunal has adopted a notional income at Rs.12,000/- per month, she being a student of Engineering. The Tribunal concluded that 50% permanent disability caused to her because of the injury would result in 30% functional disability. Based on the above finding, the Tribunal has awarded a sum of Rs.7,77,600/- (Rs.3600 x 12 x 18) towards loss of earning power.

8. Mr.M.B.Raghavan, learned counsel for the Insurance Company would contend that the only injury suffered by the claimant was a fracture in the fibula bone on the right leg. He would also point out that she being aged only 17 years, there would not be any difficulty in the bone getting united properly. It is also seen from the evidence that she had completed the B.E.Course which she was pursuing at the time of accident. There is absolutely no evidence to show that there would be any loss of income to her in view of the injuries suffered by her. We therefore find that the adoption of 30% as functional disability by the Tribunal is on the higher side.

9. Considering the age of the injured, we feel that the functional disability could be taken at 15% instead of 30% as arrived at by the Tribunal. If thus worked, the compensation for loss of earning power would be Rs.1800 x 12 x 18 = Rs.3,88,800/- . The Tribunal has awarded a sum of Rs.1 lakh towards loss of studies; Rs.8,000/- towards Attender charges, Rs.21,000/- towards transportation, Rs.4,73,293/- towards medical expenses, Rs.1,50,000/- towards permanent disability etc. We do not think that there is any ground for reduction of the compensation awarded under other heads. Thus, the claimant would be entitled to a total sum of Rs.13,50,693/-, which is rounded off to Rs.13,50,000/-.

10. In the result, the CMA No.160 of 2018 allowed in part as follows:-

(i) The award of the Tribunal is modified and reduced from Rs.17,39,500/- to Rs.13,50,000/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit with proportionate costs.

iii) It is stated that the Insurance Company has deposited the 50% of the award. The Insurance Company

is directed to deposit the balance amount as per the modified award within a period of four weeks. On such deposit, the claimant is permitted to withdraw the balance amount as awarded by this Court since the first respondent in CMA No.160 of 2018 has also attained majority.

iv) The remaining amount is to be paid over to the appellant Insurance Company.

C.M.A.No.159 of 2018 is dismissed. No costs. Consequently, connected miscellaneous petition are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

svki

To

The Motor Accidents Claims Tribunal,
IIIrd Judge,
Court of Small Causes, Chennai.

Copy To

The Section Officer,
VR Section, High Court,
Madras. (2 Copies)

+2cc to Mr.M.B.Gopalan Asso., Advocate, S.R.No.62767, 62768

+2cc to Mr.T.G.Ravichandran, Advocate, S.R.No.62050, 62051

CMA Nos.159 and 160 of 2018

ssi(Co)

cs/16/11/2018

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