IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.512 of 2015
and
M.P.No.1 of 2015

The Branch Manager
Oriental Insurance Co. Ltd.
Branch Office, P.B.No.30
No.59, Raja Street
Gobichettipalayam - 638 476
... Appellant/Respondent No.2

Vs

1. U.Nizam ... Respondent/Petitioner
2. S.Vinothkumar ... Respondent/Respondent No.1

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 22.9.2014 passed in M.A.C.T.O.P.No.1911 of 2013 by the Motor Accidents Claims Tribunal (Special Court for Motor Accident Cases) at Krishnagiri.

For Appellant : Mr.M.Krishnamoorthy

For Respondents: Mr.Mukund R.Pandiyan (for R1)
R2 - Ex-parte

JUDGMENT

Calling in question the decree and judgment dated 22.9.2014 passed in M.A.C.T.O.P.No.1911 of 2013 by the Motor Accidents Claims Tribunal (Special Court for Motor Accident Cases) at Krishnagiri, the present civil miscellaneous appeal is filed by the insurance company.

2. The facts in a nutshell are as under: The first respondent is the claimant. The averments in the claim petition are to the effect that on 26.3.2010 at about 1250 Hours, when the first respondent was riding the Hero Honda motorcycle bearing registration No.TN 24 E 7741 to his office from the Post Office situate near the the Rayakottai Road over-bridge, the

second respondent, who is the driver-cum-owner of the auto, which was driven by him in a rash and negligent manner, came from the opposite direction at an uncontrollable speed and hit the first respondent's vehicle and caused the accident. It is stated that due to the said impact, the first respondent fell down and sustained multiple injuries on his head and other parts of the body. He was taken to Government Hospital, Krishnagiri and after being given first aid, he was taken to Nimhans Hospital, Bangalore and then to St.Johns Medical College Hospital, Bangalore and was admitted in the ICU and given treatment. He was operated on 26.3.2010 and discharged on 3.4.2010. It is stated that even after discharge, he was taking periodical treatment in private clinics at Krishnagiri. In this regard, a criminal case was also registered in Crime No.168 of 2010 on the file of the Krishnagiri Taluk Police Station under Sections 279 and 337 of the Indian Penal Code. In such backdrop, the first respondent filed claim petition seeking compensation of Rs.7,00,000/-.

3. Resisting the claim petition, the appellant herein, who has insured the vehicle of the second respondent, filed a counter denying the manner of accident. The age, occupation and income of the first respondent was also denied.

4. The learned Tribunal, decree and judgment dated 22.9.2014 passed in M.A.C.T.O.P.No.1911 of 2013, awarded compensation of Rs.3,55,000/- to the first respondent with interest at the rate of 6% per annum from the date of the claim petition till realization.

5. Assailing the said judgment and decree, the present appeal is filed by the insurance company.

6. The learned counsel for the appellant contended that the amount awarded is excessive considering the fact that the first respondent suffered only fracture of distal end of right radius and underwent treatment for nine days. He added that the disability has been excessively fixed at 35% by P.W.2, who had neither treated the first respondent, nor followed any guidelines to assess the disability.

7. He further contended that the monthly income of the first respondent has been fixed at Rs.6,000/-, which is on the higher side and moreover, the amount awarded towards loss of earning power to the tune of Rs.2,55,000/- is also excessive. He submitted that the Tribunal ought not to have applied multiplier method, when there is no conclusive evidence to the effect that disability had resulted in loss of earning capacity.

8. Per contra, the learned counsel appearing for the first

respondent claimant company reiterated the reasons that weighed with the Tribunal in awarding compensation and prayed for dismissal of this appeal.

9. I have heard Mr.M.Krishnamoorthy, learned counsel for the appellant and Mr.Mukund R.Pandiyan, learned counsel for the 1st respondent and also perused the materials available on record.

10. According to the first respondent, on 26.3.2010 while he was riding the Hero Honda motorcycle bearing registration No.TN-24 E 7741 to his office from the post office situate near Rayakottai Road over bridge, the driver of the auto bearing registration No.TN-24 F 9927 belonging to the 2nd respondent insured with the appellant drove the same in rash and negligent manner coming on the opposite direction dashed against the Hero Honda motorcycle and caused the accident. Due to the accident, the first respondent sustained fracture on his right hand and other multiple injuries on his head and other parts of the body.

11. Before the Tribunal, the appellant insurance company took defence that the first respondent has failed to mention details of licence particulars of the second respondent, who is the driver cum owner of the offending auto. The Tribunal in its order recorded that Ex.P6 is the insurance policy of the offending vehicle valid up to 19.11.2010 and Ex.P7 is the driving licence of the driver of the offending vehicle. In paragraph 8, the Tribunal held as under:

> "8. POINT NO.2: The petitioner has marked Ex.P6 Insurance Policy which reveals that the 1st respondent is the owner of the offending vehicle and it is valid up to 19.11.2010. Ex.P7 Driving License which reveals that the driver of the offending vehicle had valid driving license during the time of accident. Hence, the respondents are liable to pay compensation to the petitioner."

The Tribunal went on further held in the same paragraph as under:

> " .... Ex.P6 Insurance policy which reveals that the 1st respondent is the owner of the offending vehicle and it is valid up to 04.12.2009. The petitioner has not produced the Driving Licese of the driver of the offending vehicle in Col.No.16 (a) of petition, the petitioner has not mentioned the particulars of the driving license. Hence the 1st respondent alone is liable to pay compensation to the petitioner. But that is not the law, the innocent injured should not be left in lurch. The settled position of law is that in such circumstances, the insurer should remit the

compensation amount to the Tribunal and thereafter recover the same from the insurer. In this case the offending was duly insured with the 2nd respondent and the 1st respondent is the owner of the same and hence the 2nd respondent cannot escape from his liability. Hence, the 2nd respondent is to pay the compensation to the petitioner and recover the same from the 1st respondent. The point is answered accordingly.

12. Though the Tribunal held that the driver of the offending vehicle had valid driving licence during the time of accident, because of non-mentioning of details of the driving licence of the driver of the offending vehicle, the Tribunal ordered pay and recover. The said approach adopted by the Tribunal is not acceptable for the reason that when the Tribunal found that the driver of the offending vehicle was possessing a valid driving licence at the time of accident, it ought not to have ordered pay and recover.

13. Admittedly, the respondents 1 and 2 have not challenged the said finding of the Tribunal. When this Court finds that the first respondent has produced Ex.P7-driving licence of the driver of the offending vehicle and also Ex.P6-insurance policy of the offending vehicle to show that at the time of accident the offending vehicle was duly insured with the appellant insurance company, the direction of the Tribunal directing the the appellant insurance company to pay first and then recover from the owner of the offending vehicle cannot be sustained. Therefore, the appellant who is the insurer of the offending vehicle at the time of accident is liable to pay the compensation to the victim.

14. As far as the quantum of compensation challenged by the appellant in this appeal is concerned, in his claim petition, the first respondent stated that he had sustained the following injuries in the accident:

(i) Swelling right wrist
(ii) 3 x 4cm laceration upper lip
(iii) Abrasion root of note.

Before the Tribunal, the first respondent produced Ex.P2-wound certificate. The first respondent also produced Ex.P3-wound certificate issued by St.John's Medical College Hospital, Bangalore, wherein the injuries sustained by the first respondent has been mentioned as under:

(i) Sutured wound over upper lip measuring 2cm in length.
(ii) Tenderness, swelling and deformity over right wrist. X-ray shows fracture right distal radiums.

(iii)Multiple abrasion of varying dimensions over frontal region and both feet.

Ex.P4 is the discharge summary, where from it is seen that the first respondent was admitted in St.John's Medical College Hospital, Bangalore on 26.3.2010 and discharged on 03.4.2010. P.W.2-Doctor who examined the first respondent after the accident, assessed the disability as 35% and issued Ex.P10-disability certificate.

15. By relying upon the decision of the Hon'ble Apex Court in Sarla Verma and others v. Delhi Transport Corporation and another, reported in 2009 ACJ 1298, taking the disability as 25% and adopting multiplier method, the Tribunal has awarded compensation of Rs.2,55,000/- towards loss of earning capacity. Admittedly, the present case is not fit for applying multiplier method as the first respondent had sustained 35% of disability. Nothing has been produced by the first respondent to show that there was functional disability. Therefore, I am of the view that this is a fit case to award compensation towards disability on percentage basis.

16. In the absence of any rebuttal evidence by the appellant insurance company to disprove Ex.P10-disability certificate issued by P.W.2-Doctor, this Court is inclined to take the disability as 35%.

17. In National Insurance Company Ltd. v. G.Ramesh, reported in 2013 (2) TN MAC 583, the Hon'ble Apex Court has considered Rs.3,000/- per percentage of disability. Following the decision of the Apex Court in National Insurance Company Ltd. v. G.Ramesh, supra, this Court has taken Rs.3,000/- per percentage of disability. Taking the disability as 35%, an amount of Rs.1,05,000/- is awarded towards loss of continuing/permanent disability.

18. The Tribunal awarded Rs.20,000/- towards loss of earning for four months; Rs.40,000/- towards pain and suffering; Rs.20,000/- for extra-nourishment and transport charges; Rs.10,000/- for attender charges and Rs.10,000/- towards discomforts and loss of amenities in life. Considering the injuries sustained by the first respondent in the accident and the treatment undergone by him in two hospitals, this Court finds that compensation of Rs.20,000/- awarded by the Tribunal for loss of earning for four months; another Rs.20,000/- for extra-nourishment and transport charges; Rs.40,000/- towards pain and suffering; Rs.10,000/- for attender charges and another Rs.10,000/- for loss of amenities in life and discomforts are quite reasonable and the same are maintained.

19. In view of the above discussion, the total compensation

of Rs.3,55,000/- awarded by the Tribunal is reduced to Rs.2,05,000/- as under:

Heads	Rs.
Disability	1,05,000.00
Loss of earning for four months	20,000.00
Pain and suffering	40,000.00
Extra-nourishment and transport charges	20,000.00
Attender charges	10,000.00
Loss of amenities and discomforts	10,000.00
Total	2,05,000.00

20. In so far as rate of interest is concerned, the Tribunal has awarded interest at 6% per annum from the date of filing of claim petition and the rate of interest awarded by Tribunal is on the lower side. Even though the first respondent has not filed any cross-appeal questioning the rate of interest, in view of the decision of the Hon'ble Supreme Court in TNSCTC v. S.Rajapriya, reported in 2005 AIR SCW 2542, the rate of interest is enhanced to 7.5% per annum from the date of filing of the claim petition.

21. In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.3,55,000/- awarded by the Tribunal is reduced to Rs.2,05,000/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit payable by the appellant insurance company. The appellant insurance company is directed to deposit the reduced compensation of Rs.2,05,000/- along with the interest within a period of twelve weeks from the date of receipt of a copy of this order. On such deposit, the first respondent is permitted to withdraw the amount on filing proper cheque application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

The Motor Accident Claims Tribunal,
(Special Court for Motor Accident Cases)
at Krishnagiri.

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.69628
+1cc to Mr.Mukund R.Pandiyan, Advocate, S.R.No.70065

Copy To
The Section Officer,
VR Section, High court,
Madras-104 (2 copies)

C.M.A.No.512 of 2015 and
M.P.No.1 of 2015

CP(CO)
CS/21/01/2019