IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3734 of 2013 &
M.P.No.1 of 2013

The Oriental Insurance Company Limited,
Divisional Office at A.A. Complex,
First Floor,159-Kumaran Road,
Tiruppur. ...Appellant/3rd Respondent

Vs

1. A.Ganesh .. 1st Respondent/Petitioner

2. G.Selvakumar .. 2nd Respondent/1st Respondent

3. M/s.Poppys Knit Weaver Private Limited,
33-M.P.Nagar, Tiruppur.
...3rd Respondent/2nd Respondent

Prayer:
Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award passed by the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Erode in M.C.O.P.No.92 of 2009 dated 03.08.2012.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.R.Nalliyappan for R1
R2 - Tapal returned
R3 - No Appearance

JUDGMENT

The instant appeal has been filed by the Insurance company challenging the Award dated 03.08.2012 passed by the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Erode in M.C.O.P.No.92 of 2009.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i) The first respondent sustained injuries on 04.07.2008 as a result of an accident caused by a Tempo Van bearing Registration No.TN-39-AD-2328 owned by the third respondent and insured with the Appellant.

(ii) The first respondent preferred a claim seeking a compensation of Rs.3,10,000/- before the Motor Accidents Claims Tribunal in M.C.O.P.No.92 of 2009. The Motor Accidents Claims Tribunal by its Award dated 03.08.2012 in M.C.O.P.No.92 of 2009 directed the Appellant to pay the first respondent a sum of Rs.4,90,000/- together with interest at the rate of 9%, Per Annum from the date of claim till the date of realisation.

(iii) Aggrieved by the Award dated 03.08.2012 passed in M.C.O.P.No.92 of 2009, the instant appeal has been filed by the Insurance Company.

3.Heard, Mr.S.Arun Kumar, learned Counsel for the Appellant and Mr.R.Nalliyappan, learned Counsel for the first respondent. The second and third respondents have remained exparte both before the Tribunal as well as this Court.

4.According to the learned Counsel for the Appellant, the Tribunal while assessing the compensation ought not to have applied the multiplier method. He submitted that the first respondent has sustained only right arm fracture and has suffered only 39.4 percentage of disability as a result of the accident and further he is running his own business and was the Managing Partner in the said business and therefore the Tribunal ought not to have applied the multiplier method while assessing the compensation.

5.Per contra, the learned Counsel for the first respondent would submit that due to the injuries sustained by the first respondent, the first respondent discontinued his business as he was unable to perform his regular activity for the effective running of his business.

6. According to him, the first respondent sustained grievous injuries namely,

1.Bone fracture at right fore arm
2.Grievous injury in the right hand
3.Injury in the right wrist and abrasions all over the body. According to him, even now the first respondent is handicapped from doing any activity because of the injuries sustained by him as a result of the accident caused by the insured vehicle. As directed by this Court, the first respondent was also personally present before this Court on 24.10.2018.

7. This Court, after having considered the materials available on record and after having examined the impugned award and after hearing the submissions of the respective Counsels observes the following:

(a) The injuries sustained by the first respondent as stated supra are grievous injuries. The first respondent has produced the wound certificate which is marked as Ex.A5 and has also filed the disability certificate Ex.A.19 before the Tribunal. As per the disability certificate Ex.A19 which has been accepted by the Tribunal, the disability sustained by the first respondent was assessed at 39.4% as a result of the injuries sustained by him. The first respondent was also hospitalized for 11 days between 04.07.2008 to 09.07.2008 and 12.03.2009 to 18.03.2009. The discharge summary from the hospital concerned was also marked as Ex.A.9 before the Tribunal. The nature of injuries sustained by the first respondent has also not been disputed by the Appellant before the Tribunal.

(b) The first respondent has also filed Sales tax receipts - Ex.A.13, Tax receipts-Ex.A.14, Tamil Nadu General Sales Tax Registration Certificate Ex.A.15, Registration of Central Sales Tax- Ex.A.16, Certificate of Commercial Tax and Form-D - Ex.A.17. These documents clearly establish that the first respondent was the managing partner in a partnership business at the time of the accident.

(c) The first respondent was running a Bearing Company and another Mechanical Concern at the time of the accident. The Tribunal has observed that a man doing mechanical work needs to have good physic and he may have to lift heavy articles. The Tribunal has also observed that he may have to use his right arm to do hard labour and will have to ride two wheelers quite often.

(d) In the impugned Award, the Tribunal has also extracted the statement made by the Doctor in the disability certificate that due to the injuries, the first respondent's movements of right arm have been restricted and his radial nerve has also been impaired. But the first respondent has not placed anything before the Tribunal except his disability certificate assessing his disability at 39% to prove that due to the injuries sustained by him, he has lost his future earning capacity.

8.Taking note of the fact, that the first respondent being a partner of a business concern and considering the nature of injuries sustained by him, though grievous in nature, it may not have impaired the first respondent from his future earning capacity permanently. At the most, he may have suffered loss of income for a particular period of time. Therefore, in the considered view of this Court, the Tribunal ought not to have applied the multiplier method in assessing the compensation payable to the first respondent but instead, ought to have awarded compensation towards loss of income for a particular period.

9.In the considered view of this Court, considering the nature of injuries sustained by the first respondent and the nature of his business, this Court is of the opinion that the first respondent would have suffered loss of income for a period of ten months. The Tribunal has assessed the monthly income of the first respondent at Rs.10,000/- and therefore the first respondent is entitled to be paid Rs.1,00,000/- (10 months *Rs.10,000/-) towards loss of income.

10.The Tribunal under the impugned Award has accepted the disability certificate and assessed the disability of the first respondent at 39.4%. This Court rounds of the disability to 40%. The year of the accident is on 04.07.2008. Considering the year of the accident, the age of the first respondent and the nature of his business, the disability compensation payable to the first respondent is assessed by this Court at Rs.1,20,000/- calculated at the rate of Rs.3,000/- (3,000/- x 40%) per percentage of disability.

11.The Tribunal under the impugned Award has awarded a sum of Rs.60,000/- towards medical bills, which appears to be just and reasonable. But the Tribunal has not awarded any compensation to the first respondent towards loss of amenities, transportation and extra nourishment charges which in the considered view of this Court, ought to have been awarded to the first respondent. Therefore, this Court awards Rs. 20,000/- for loss of amenities, Rs.10,000/- for transportation and Rs.10,000/- for extra nourishment charges. Further the compensation awarded to the first respondent towards pain and suffering is also low and it is enhanced from Rs.10,000/- to Rs.30,000/- by this Court.

12. In all put together, the compensation awarded by the Tribunal under the impugned Award is reduced to Rs.3,50,000/- from Rs.4,90,000/- as tabulated below:

Sl. No.	Amount awarded by tribunal	Reduced award amount passed by this Court
Disability (40 x Rs.3,000/-)	Rs. 4,20,000/-	Rs. 1,20,000/-
Loss of Income (10 months x Rs.10,000/-)	--	Rs. 1,00,000/-
Medical Bills	Rs. 60,000/-	Rs. 60,000/-
Pain & suffering	Rs. 10,000/-	Rs. 30,000/-
Loss of amenities	--	Rs. 20,000/-
Transportation	--	Rs. 10,000/-
Extra Nourishment	--	Rs. 10,000/-
Total	Rs. 4,90,000/-	Rs. 3,50,000/-

13. In the result,

i) The Civil Miscellaneous Appeal is partly allowed. No costs. The connected Miscellaneous Petition No.1 of 2013 is closed.

ii) The compensation awarded by the Tribunal is reduced from Rs.4,90,000/- to Rs.3,50,000/- along with interest at the rate of 9% per annum from the date of claim, till the date of deposit.

iii) It is represented that the entire Award amount has already been deposited before the Tribunal. The first respondent is permitted to withdraw the sum of Rs.3,50,000/- together with the accrued interest by filing an appropriate application before the Tribunal.

iv) The Appellant Insurance Company is also permitted to withdraw the balance amount lying to the credit of M.C.O.P.No.92 of 2009 after payment of the modified amount awarded by this Court along with accrued interest on filing an appropriate application.

v) The Tribunal under the impugned Award has already granted pay and recovery rights to the Appellant and the said finding is also hereby confirmed by this Court.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

msr/arb

To

1. Motor Accidents Claims Tribunal,
   Chief Judicial Magistrate Court,
   Erode.

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

+1cc to M/s.Ananda Gomathy, Advocate, S.R.No.73563
+1cc to Mr.R.Nalliyappan , Advocate, S.R.No.73150
+1cc to Mr.Arun Kumar, Advocate in S.R.No.73652

C.M.A.No.3734 of 2013 &
M.P.No.1 of 2013

SSD(CO)
CS/24/01/2019