IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.04.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2526 of 2016

M/s.New India Assurance Co. Ltd.,
No.45, Moore Street,
Chennai-600 001. ...Appellant / 2nd Respondent

.vs..

1.M.Chellappan ...1ndRespondents/ claimant

2.Perfect Calibration Centre (P) Ltd.,
No.84, First Floor, Times Corner,
Gangureddy Road,
Egmore, Chennai- 600 008.
...2ndRespondents/1st Respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal order dated 16.10.2015 made in MCOP.No.7000 of 2013 on the file of the Motor Accident Claims Tribunal/II Judge, Small Causes Court, Chennai.

For Appellants : Mr.J.Chandran
For Respondents : Ms.F.Terry Chella Raja for R-1
R2 sd.NA

JUDGMENT

Being aggrieved over the finding of the Tribunal, dated 16.10.2015 made in MCOP.No.7000 of 2013 on the file of the Motor Accident Claims Tribunal/II Judge, Small Causes Court, Chennai, the second respondent-Insurance Company have come forward with 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 19.08.2013 at about 10.30. a.m., as the petitioner was riding his two wheeler bearing Registration No.TN-21-AM-7261, in S.P. Kovil, GST Service Road, Srivari Nagar, the Motor Cycle bearing Registration No.TN-01-AK-1793 came at high speed in the opposite direction dashed against the petitioner's vehicle causing him grievous injuries. The accident occurred only due to the negligence of the rider of the first respondent Motor Cycle bearing Registration No.TN-01-AK-1793. The petitioner was aged about 27 years at the time of the accident and was employed as contractor in Ford Company and was earning a sum of Rs.12,000/- per month. Due to the injuries suffered by him, he is unable to attend to his normal work. 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 filed counter contending that the accident does not occur in the manner alleged by the petitioner. It was only due to the negligence of the petitioner, the accident occurred. The rider of the first respondent vehicle did not possess valid driving licence. The claim of the petitioner is exorbitant. The plea of the petitioner about the age, avocation and income is denied. The delay in lodging the First Information Report will go to show that the first respondent vehicle is not involved in the accident. Thus, the second respondent Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioner examined himself as P.W.1 and medical expert was examined as P.W.2, produced documents Ex.P1 to Ex.P8 to prove his claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6. The Tribunal, after analysing the evidence available on record found the negligence on the part of the first respondent vehicle driver alone is cause for the accident and passed an Award for a sum of Rs.8,20,000/- as compensation to the petitioner. Being aggrieved over the finding of the Tribunal, the second respondent-Insurance Company has come forward with this present appeal seeking to set aside the award passed by the Tribunal.

7. I have heard the learned counsel appearing for the appellant/second respondent Insurance Company and the learned counsel appearing for the first respondent/petitioner and perused the materials available on record.

8. The learned counsel appearing for the appellant/second respondent Insurance Company contends that the award passed by the Tribunal is highly excessive. The Tribunal ought to have held that the accident occurred only due to the negligence of the petitioner and reduce the compensation amount. The Tribunal ought to have rejected the evidence of P.W.2 Doctor who neither treated the petitioner nor is a Orthopedic Bone Specialist to assess the disability of the petitioner. The assessment made by the Tribunal is not proper. Thus, the appellant/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 first respondent/claimant contends that the petitioner having suffered grievous head injuries and bone fracture in the left hand as well as left foot and suffering from permanent disability, the Tribunal has rightly assessed the disability and awarded fair compensation which needs no interference. Hence, the petitioner sought for dismissal of the appeal.

10. This appeal is filed only challenging the quantum of compensation awarded by the Tribunal. The finding of the Tribunal on the negligence aspect is not seriously disputed by either side. The petitioner who deposed as P.W.1 clearly stated about the manner in which the accident occurred. The police also registered the case against the first respondent driver only. The driving licence of the petitioner is also produced as Ex.P6. It is therefore 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 vehicle driver alone caused the accident. Further, there is no contra evidence let in by the respondents to disprove the claim of the petitioner. As such, it is clear that the negligence of the first respondent's vehicle driver alone caused the accident. The petitioner claims that the offending vehicle belongs to the first respondent and the same was insured with the second respondent. As such, the respondents are liable to pay compensation to the petitioners

11. The petitioner claims that he suffered fracture in his left leg, left hand and also grievous injury on his head. The petitioner produced the accident register copy as well as the wound certificate as Ex.P2. In his oral evidence P.W.1 clearly stated that he suffered fracture in his left hand and left foot and also severe injury in his head. The Doctor, who deposed as P.W.2 stated that after examining the petitioner, he found the petitioner suffering from grievous injuries and assessed the partial permanent disability at 50% and issued disability certificate Ex.P8. The Doctor also stated that the petitioner suffered fracture which reduced the functional ability of the petitioner. According to P.W.2 Doctor, the nature of injuries

suffered by the petitioner will prevent him from working as a driver. The Tribunal accepting the evidence of P.W.2 Doctor, applied the multiplier method for assessing the loss of earning capacity of the petitioner. After fixing the functional disability at 25%, the Tribunal on the basis of P.W.2 Doctor evidence awarded a sum of Rs.1,35,000/- towards the disability suffered by the petitioner. Thus, the Tribunal awarded compensation under the head of disability as well as loss of earning capacity.

12. Pointing it out, the learned counsel appearing for the appellant/second respondent Insurance Company contended that the petitioner having suffered only simple fracture of Toe and finger, cannot claim compensation for loss of earning power, as there is no functional disability suffered by him. It is also pointed out that in the case of total amputation of whole middle finger, the Apex Court fixed the disability only at 12% and in another case fixed the disability at 20% only and relied upon the ruling reported in 2018 AIR SC 788 in support of his contention. In the case on hand, admittedly, the Doctor who deposed as P.W.2 did not give treatment to the petitioner and he has not produced any calculation sheet along with the disability certificate. As such, the assessment of P.W.2 Doctor cannot be accepted in toto. Therefore, on the basis of Ex.P8 disability certificate and following the ruling relied upon by the learned counsel appearing for the appellant/second respondent Insurance Company, it will be appropriate to fix the partial permanent disability suffered by the petitioner at 25%. As the accident occurred in the year,2013, it will be appropriate to compensate the petitioner by providing Rs.3,000/- per percentage as disability. Thus, the compensation for disability is calculated as follows. Rs.3,000/- x 25% = Rs.75,000/-.

13. The Tribunal, considering the fact that the petitioner suffered Crush injury in the left foot, fracture of 2^{nd} head of metatarsal bone left hand metacarpal bone fracture and grievous injuries on his head and found that at least 25% of the earning capacity of the petitioner would have been affected. Further, considering the age of the petitioner was 27 years, as per driving licence produced as Ex.P6, fixed the notional income of the petitioner at Rs.7,500/- and granted a sum of Rs.3,82,500/- by applying multiplier 17. Pointing it out, the learned counsel appearing for the appellant/second respondent Insurance Company contends that it is unwarranted. Admittedly, there is no evidence available on record to show that the petitioner suffered loss of income or any disadvantage in his work. However, keeping in mind that he is a driver and there is nothing on record to show that his driving licence is cancelled and he could make earning by working otherwise then the driver also, it will be appropriate to conclude that he would have

suffered 10% loss of earning capacity and accordingly, the following amount is provided towards loss of earning capacity. On the basis of Ex.P5 Salary Certificate, Ex.P6 driving licence and the fact that the accident occurred during, 2013, and the petitioner has not examined any one from the establishment where he was employed to prove the contents in Ex.P5 Salary Certificate, the Tribunal is justified in fixing the notional income at Rs.7,500/- per month. Accordingly, the loss of future earning capacity is calculated as follows. Rs.7,500/- x 12 = Rs.90,000/- x 17 = Rs.15,30,000/- x 10% = Rs.1,53,000/-. Keeping in mind the petitioner under went treatment for a length of period, he could not have attended to his work as driver. Hence, the Tribunal is justified in providing compensation for loss of income during treatment period at the rate of Rs.7,500/- x 6 months by awarding Rs.45,000/- and the same is just and proper.

14. The Tribunal has awarded a sum of Rs.1,50,000/- for pain and sufferings and further sum of Rs.50,000/- for loss of amenities. This, according to the learned counsel appearing for the appellant/second respondent Insurance Company is highly excessive. Considering the period of treatment undergone by the petitioner and that the petitioner find difficulty in lifting heavy objects with his left hand and difficulty in walking and climbing the staircase, it will be appropriate to provide him Rs.50,000/- towards loss of amenities. Further, for pain and suffering under gone by him, it will be sufficient to provide a sum of Rs.50,000/- instead of Rs.1,50,000/- given by the Tribunal. It would be appropriate to provide Rs.25,000/- for Transportation, nourishing food and miscellaneous expenditure instead of Rs.50,000/- provided by the Tribunal. The sum of Rs.5,000/- provided towards medical expenses and Rs.2,100/- towards attender charges granted by the Tribunal is confirmed.

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

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Transportation, nourishing food and others	50,000.00	25,000.00
2.	Medical Expenses	5,000.00	5,000.00
3.	Attender Charges	2,100.00	2,100.00
4.	Pain and sufferings	1,50,000.00	50,000.00
5.	Permanent Disability	1,35,000.00	75,000.00
6.	Loss of earning during treatment period	45,000.00	45,000.00

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
7.	Loss of earning capacity	3,82,500.00	1,53,000.00
8.	Loss of amenities	50,000.00	50,000.00
	Total	8,19,600.00	4,05,100.00

Accordingly, the quantum of compensation warded by the Tribunal is modified and the same is reduced to Rs.4,05,100/-.

16. In the result, the civil miscellaneous appeal is partly allowed. No costs. The amount of Rs.8,20,000/- awarded by the Tribunal dated 16.10.2015 made in MCOP.No.7000 of 2013 on the file of the Motor Accident Claims Tribunal/II Judge, Small Causes Court, Chennai is hereby reduced to Rs.4,05,100/-. The second respondent Insurance company is directed to deposit the entire award amount of Rs.4,05,100/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit of the 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 first respondent/claimant is permitted to withdraw the award amount with accrued interest by filing necessary application before the Tribunal. The appellant/second respondent Insurance Company is permitted to withdraw the excess amount deposited if any before the trial Court.

Sd/-
Assistant Registrar(CS VII)

//True Copy//
Sub Assistant Registrar

rrg

To

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

+1cc to Mr.J.Chandran, Advocate, S.R.No.31698
+1cc to Mr.M.Malar, Advocate, S.R.No.31944

C.M.A.No.2526 of 2016

KJI(CO)
GSP(12/06/2018)