IN THE JUDICATURE OF MADRAS HIGH COURT

Reserved on : 07.02.2018

Delivered on : 18.03.2018

CORUM

THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

C.M.A.No.1831 of 2014

M/s.ICICI Lombard General Insurance Company Ltd.,
First Floor, Omalur Main Road,
Near New Bus Stand,
Salem-4. ... Appellant

Versus

1.N.Suresh
2.K.Munusamy ... Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree dated 08.02.2013 in M.C.O.P.No.1418 of 2008 passed by the Motor Accident Claims Tribunal (I Additional District Judge) at Salem.

For Appellant : Mr.R.Sree Vidhya

For Respondents : Mr.S.P.Yuvaraj

* * * * *

JUDGMENT

(Judgment of the Court was delivered by **R.SUBBIAH, J.,)**

Questioning the quantum of compensation awarded by the Motor Accident Claims Tribunal (I Additional District Judge) at Salem, in and by award dated 08.02.2013 in M.C.O.P.No.1418 of 2008, the present appeal has been filed by the Insurance Company.

2. Since the present appeal has been filed challenging only the quantum of compensation, it is not necessary for this Court to traverse into the other aspects of the award passed by the Tribunal.

3. The 1st respondent herein is the claimant before the Tribunal. It is the case of the claimant that he was working as Technician Grade-V, Hyundai Motors India Ltd, Chennai and he was receiving a monthly salary of Rs.30,000/- as well as other allowances. On 05.05.2008 at 7.45 am, the claimant, along with his friends, was standing on the extreme left side of the road at Sunga Chavadi, Thiruperumpudhur. At that time, a lorry bearing Reg.No.TN-21-W-0959 came in a rash and negligent manner at hectic speed and dashed against him. In the said accident, the claimant had sustained grievous injuries on his left hand, left leg and facial injuries. He also sustained pelvic rami bone fractures, 2nd & 3rd rib of the claimant also fractured. Due to the injuries sustained by him in the said accident, he could not stand, sit and walk. He had spent more than Rs.8 lakhs for his medical expenses. He is also not in a position to do his job. Hence, he has made a claim for a sum of Rs.50 lakhs as compensation, as against the owner of the lorry as well as its insurer viz., the appellant herein.

4. Before the Tribunal, the Insurance Company resisted the claim made by the claimant, by filing a detailed counter.

5. In order to prove the income earned by the claimant, before the Tribunal, the claimant examined himself as P.W.1, besides examining two Doctors as P.W.2 & P.W.3 and marked twenty one documents as Ex.P.1 to

Ex.P.21. On the side of the Insurance Company, the Manager, Human Resource Department from Hyundai Motor Co. Ltd, viz., one Jayakumar was examined as R.W.1, through whom salary receipts of the petitioner were marked as Ex.R.1.

6. The Tribunal, after analysing the entire evidence adduced on either side, has come to the conclusion that the accident was the result of the dash and negligent driving of the driver of the lorry. By coming to such a conclusion, the Tribunal has calculated the compensation under different heads and passed an award for a total sum of Rs.35,19,100/- as compensation. The break up details of the compensation amount awarded by the Tribunal are follows_

Loss of income for three months	: Rs. 73,900.00
Medical expenses	: Rs. 6,67,000.00
Permanent disability	: Rs. 5,00,000.00
Loss of earning capacity	: Rs.20,40,000.00
Pain and sufferings	: Rs. 1,00,000.00
Extranourishment	: Rs. 50,000.00
Transportation	: Rs. 25,000.00
Medical attendant	: Rs. 10,000.00
Damages to cloths and articles	: Rs. 2,500.00
X-ray	: Rs. 650.00
Future medical expenses	: Rs. 50,000.00
	Rs.35,19,050/-
	rounded of to Rs.35,19,100/-

Aggrieved over the quantum of compensation awarded by the Tribunal, the Insurance Company has forward with the present appeal.

7.It is the submission of the learned counsel appearing for the appellant/Insurance Company that it is the case of the claimant before the Tribunal that he was working as a Technician Grade-V, Hyundai Motors India Ltd, Chennai and earning a sum of Rs.30,000/- per month. Though it is claimed by the claimant that he was earning Rs.30,000/- per month, Ex.P.10-salary slips would show that he was receiving only a sum of Rs.25,739/- as monthly salary. On the side of the Insurance Company, the Manager in Hyundai Motors India Ltd, Chennai was summoned and examined as R.W.1, through whom pay slip of the claimant for the month of May,2008 was marked as Ex.R.1. The evidence of R.W.1 and Ex.R.1 would show that the claimant was paid monthly gross salary of Rs.24,633/-. Further, R.W.1 has admitted in his evidence that from the monthly of July 2009, the claimant has rejoined his employment and he has been assigned non-manufacturing activities in the company. Therefore, the evidence of R.W.1 would clearly show that the claimant is still continuing his employment. But, the Tribunal has taken a higher sum of Rs.10,000/- as monthly loss of income (ie., total of loss of income of Rs.5,000/- and loss of promotional income of Rs.5,000/-) which resulted in awarding an exorbitant sum of Rs.20,40,000/- under the head of loss of earning capacity. That apart, the Tribunal has separately awarded compensation of Rs.5 lakhs under the head of permanent disability, which is not sustainable. Since the Tribunal has awarded compensation under the head of loss of earning capacity, it ought not to have separately awarded compensation under the head of permanent disability. Hence, according to the learned counsel for the appellant/Insurance Company, the compensation amount awarded under the head of permanent disability has to be set aside and the amount awarded under the head of loss of earning capacity needs proper reduction. That apart, the learned counsel for the appellant/Insurance Company submitted that the compensation amounts awarded by the Tribunal under other heads, particularly Pain & suffering, extra-nourishment and transportation are also on the higher side. Thus, he sought for proper reduction in the compensation amount awarded by the Tribunal.

8.Per contra, the learned counsel appearing for the 1st respondent/claimant submitted that the claimant has clearly adduced evidence as P.W.1 that he was receiving a sum of Rs.5,000/- per month as additional income by doing Overtime Work; that due to the disability suffered by him on account of the accident, he has become unfit to continue in manufacturing unit and he was assigned duty in non-manufacturing activities as such he is not able to earn additional income of Rs.5,000/- per month by doing overtime work. Further, there is no scope for any promotional opportunities to the claimant due to his disability. Considering all these aspects, the Tribunal has rightly taken a sum of Rs.10,000/- as monthly loss of income. That apart, the learned counsel for the 1st respondent/claimant by relying upon the decision of the Hon'ble Supreme Court reported in ***2012(2) TN MAC 562 (SC) [K.Suresh Vs. New India Assurance Co. ltd., and another]*** submitted that the compensation under the head of loss of earning capacity is not a bar to grant compensation under the head of permanent disability. Thus, he submitted that absolutely there is no infirmity in the compensation amount of Rs.5 lakhs awarded by the Tribunal under the head of permanent disability. That apart, the learned counsel for the 1st respondent/claimant would submit that the compensation amounts awarded by the Tribunal under other heads are also reasonable and it needs no modification. Thus, he sought for dismissal of the appeal.

9.Keeping the submissions made on either side, We have carefully gone through the entire materials available on record.

10.From a perusal of the materials available on record, We find that at the time of accident, the claimant was working as Technician Grade-V in Hyundai Motors India Ltd, Chennai and he was receiving a sum of Rs.24,633/- per month as salary. But, it is the main submission of the learned counsel for the appellant/Insurance Company that even after the accident, the claimant is continuing his employment with Hyundai Motors India Ltd, Chennai. When that being so, the Tribunal ought not to have fixed higher sum of Rs.10,000/- per month as loss of income, which resulted in awarding an exorbitant amount of Rs.20,40,000/- under the head of loss of earning capacity.

11.Per contra, it is the submission of the learned counsel appearing for the 1st respondent/claimant that the claimant was originally working in the manufacturing unit and he was earning additional income of Rs.5,000/- per month by doing overtime work, but due to the disability suffered by him in the accident, now he has been given employment in non-manufacturing activities and there is no scope of any promotional opportunities for the claimant. Under such circumstances, according to the learned counsel for the 1st respondent/claimant, absolutely there is no need to interfere with the quantum of compensation awarded by the Tribunal.

12.We find from the materials available on record that in the accident, the claimant had sustained the following injuries in the accident_

1)Multiple laceration of upper lip and right side of the face

2)Degloving injury measuring 8 x 8 cm over left arm near elbow lateral aspect of the elbow.

3)Exposing muscles and extending to forearm

4)Laceration over the politeal fossa measuring 8 x 4 cm

5)Punctured wound and laceration over left thigh

6)Deformity of the left leg. Dorsalis pedis artery not present

7)Bilateral clavicle appears clinically normal

8)Chest compression

9)Pelvic compression and distraction

10)Cervical and spinal tenderness

11)No cervical, thoracic, lumbar tenderness

12)Right cleavicale upper limb clinically normal.

There was a surgery in the left leg and plates and secrews were implanted.

13.Considering the nature of the injuries sustained by the claimant, We are of the opinion that the claimant is entitled to compensation for the loss of earning capacity. But, at the same time, considering the fact that the claimant is still working in Hyundai Motors India Ltd, Chennai, the sum of Rs.10,000/- fixed by the Tribunal as monthly loss of income appears to be on the higher side. Hence, by fixing a sum of Rs.7,500/- as monthly loss of income, the calculation could be made to arrive at a just and proper compensation under the head of loss of earning capacity. Accordingly, if a sum of Rs.7,500/- is taken as monthly loss of income, then the annual loss of income works out to Rs.90,000/-. As the claimant was aged 29 years at the time of accident, the correct multiplier that has to be applied in this case is

17. If so applied, then the total works out to Rs.15,30,000/-, which is hereby awarded under the head of loss of earning capacity. Thus, the sum of Rs.20,40,000/- awarded by the Tribunal under the head of loss of earning capacity is hereby modified and reduced to Rs.15,30,000/-.

14.It is yet another contention of the learned counsel for the appellant/Insurance Company that when the Tribunal has awarded compensation under the head of loss of earning capacity, it ought not to have awarded compensation under the head of permanent disability. But, the said contention of the learned counsel for the appellant/Insurance Company cannot be accepted, in view of the decision of the Hon'ble Supreme Court reported in ***2012(2) TN MAC 562 (SC) [K.Suresh Vs. New India Assurance Co. ltd., and another]*** wherein it has been held that the compensation under the head of loss of earning capacity is not a bar to grant compensation under the head of permanent disability. However, We find that the compensation of Rs.5 lakhs awarded by the Tribunal under the head of permanent disability appears to be on the higher side, hence, the same needs proper modification. The evidence on record would show that the claimant has suffered disability at 30%. Hence, he is entitled for compensation for 30% disability at the rate of Rs.2,000/- per percentage. As such, a sum of Rs.60,000/- is hereby awarded under the head of permanent disability. Thus, the sum of Rs.5 lakhs awarded by the Tribunal under the head of permanent disability is hereby modified and reduced to Rs.60,000/-.

15.That apart, We find that the sum of Rs.1,00,000/- awarded by the Tribunal under the head of pain & sufferings appears to be on the higher side. Hence, the same is hereby reduced to Rs.50,000/-. Similarly, as the sum of Rs.50,000/- awarded by the Tribunal for extra-nourishment is on the higher side, the same is hereby reduced to Rs.25,000/-. Further, it is seen that the compensation amounts awarded by the Tribunal under the head of transportation and medical attender are also on the higher side. Hence, the sum of Rs.25,000/- for transportation awarded by the Tribunal is hereby reduced to Rs.10,000/- and the sum of Rs.10,000/- for medical attender awarded by the Tribunal are also reduced to Rs.5,000/-, which would be just and proper compensation under the said head in the present facts of the case.

16.Except above modifications in the compensation amounts, the compensation amounts awarded by the Tribunal under other heads remain unaltered as the same appear to be reasonable. Consequently, the total compensation amount of Rs.35,19,100/- awarded by the Tribunal is hereby modified and reduced to Rs.24,74,050/-. The break up details of the modified/reduced compensation amount are as follows_

Loss of income for three months	: Rs. 73,900.00
Medical expenses	: Rs. 6,67,000.00
Permanent disability	: Rs. 60,000.00
Loss of earning capacity	: Rs.15,30,000.00
Pain and sufferings	: Rs. 50,000.00
Extra-nourishment	: Rs. 25,000.00
Transportation	: Rs. 10,000.00
Medical attendant	: Rs. 5,000.00
Damages to cloths and articles	: Rs. 2,500.00
X-ray	: Rs. 650.00
Future medical expenses	: Rs. 50,000.00
	Rs.24,74,050/-

17.In the result, the appeal is partly allowed and the total compensation amount of Rs.35,19,100/- awarded by the Tribunal is modified and reduced to Rs.24,74,050/-. The appellant/insurance company is directed to deposit the entire modified compensation amount, after deducting the amount if any already deposited, with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the entire amount with accrued interest thereon, by making necessary application before the Tribunal. No costs.

(R.P.S.J.,) (P.D.A.J.,)
16.03.2018

Internet : Yes / No
Index : Yes / No
ssv

To,
The Motor Accident Claims Tribunal,
(I Additional District Judge)
at Salem.

R.SUBBIAH, J.,
and
P.D.AUDIKESAVALU. J.,

(ssv)

Pre-delivery Judgment
in
C.M.A.No.1831 of 2014

16.03.2018