IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.4 of 2018
and C.M.P.No.43 of 2018

United India Insurance Co. Ltd.,
Big Bazaar Street
Dharapuram Post
Dharapuram Taluk
Tirupur District. .. Appellant/3rd Respondent

Vs

1.T.Gopalakrishnan ... 1st Respondent/Petitioner

2.N.Madavan
3.A.Sundararaj ... Exparte before Lower Court

4.M.Megudeeswaran

5.Tata AIG General Insurance Company Ltd.
Jaya Enclave
3rd Floor, 1057, Avinashi Road
Coimbatore - 641 018
Coimbatore District. .. Respondents/Respondents 1, 2, 4 & 5

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 28.03.2016 made in M.C.O.P.No.519 of 2010 on the file of Motor Accident Claims Tribunal, Dharapuram, Subordinate Court, Dharapuram.

For Appellant : Mr.C.Paranthaman
For Respondents: Mr.Ma.P.Thangavel for R1
Mr.S.Manohar for R5

JUDGMENT

[Judgment of the Court was made by N.KIRUBAKARAN, J]

This appeal has been preferred by the appellant-Insurance Company questioning the fixing of liability on the driver of the appellant's insured vehicle and awarding a sum of Rs.60,000/-

for the disability sustained by the first respondent-claimant, due to the injury sustained by him in the accident occurred on 20.11.2008, when the first respondent-injured was driving his Car from Kangayam to Dharapuram, which was hit by a Eicher Van, insured with the appellant insurance company, coming from the opposite direction and went into opposite lane and hit the Car. The Tribunal found that the accident occurred because of the rash and negligent driving of the driver of the Eicher Van and determined the disability at 60% and awarded a sum of Rs.16,28,278/- as compensation. The said award is being challenged before this Court.

2. Heard Mr.C.Paranthaman, learned counsel appearing for the appellant, Mr.Ma.P.Thangavel, learned counsel appearing for the first respondent/claimant and Mr.S.Manohar, learned counsel for the fifth respondent.

3. Though Ex.P1-F.I.R has been filed against the first respondent-injured, based on the complaint given by the driver of the Eicher van, P.W.3 eyewitness categorically stated that the accident occurred because of the rash and negligent driving of the appellant insured vehicle viz., Eicher Van. Ex.P3-sketch would also disclose that the insured vehicle of the appellant-Insurance Company was responsible for the accident, as it went into the opposite direction and hit against the Car, in which, the first respondent/victim was travelling. There is no repetal evidence on the side of the appellant to show that the accident occurred because of the rash and negligent driving of the victim. Therefore, the Tribunal rightly held that the accident occurred because of the rash and negligent driving of the Eicher Van, which was insured with the appellant-insurance company. Hence, the Tribunal rightly reached the factual conclusion that because of the rash and negligent driving of the driver of the Eicher Van, the accident occurred.

4. In the accident, the first respondent-claimant sustained grievous injuries over his head, face, chest, hands right leg and liver. It is evident from Ex.P7 to P10-discharge summary, the claimant was admitted in Kovai Medical Center Hospital, Coimbatore as in-patient for four times. He was operated and plate was fixed and subsequently, k-wire has also been fixed. Further the blood clot in the abdomen was left out by a procedure. He was hospitalized for the following periods:

20.11.2008 to 03.01.2009, 18.01.2009 to 21.01.2009, 09.02.2009 to 12.02.2009 and 04.03.2009 to 09.03.2009.

From the above, it is clear that the claimant has been regularly taking treatment and underwent surgery. P.W.2-Doctor deposed that the claimant sustained 72% disability as per Ex.P15. Though the Doctor spoke about 72% disability, the Tribunal determined the disability at 60%. The determination of 60%

disability based on 72% disability, as determined by the Tribunal is sustainable.

5. With regard to the income, the Tribunal determined the monthly income at Rs.4,500/- notionally, in the absence of any proof regarding the income. The accident occurred on 20.11.2018. An agriculturalist cannot be expected to give any receipt for his income. If any receipt is issued, which would be only for the purpose of the case. The Honourable Supreme Court determined the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident, which occurred in the year 2008 in Syed Sadiq Vs.United India Insurance Company, reported in 2014 (1) TNMAC 459. Following the said judgment, this Court re-determined the monthly income at Rs.6,500/-.

6. As per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), 40% has to be added as future prospects, as the claimant is aged about 36 years. Along with 40%, the monthly income would be at Rs.9,100/- (Rs.6,500/- + 40% of Rs.6,500/-). The age of the victim is 36 and the appropriate multiplier, as per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), is '15' and the loss of income would be determined as follows:

6,500+40%x12x15x60/100 = 9,82,800/-.

7.Rs.60,000/- has been awarded by the Tribunal towards permanent disability and the same is sustainable. Rs.25,000/- awarded towards future medical expenses also confirmed. Rs.10,000/- awarded towards transportation and Rs.5,000/- awarded towards extra nourishment are very low and therefore, the same are enhanced at Rs.25,000/- each. Rs.7,500/- awarded by the Tribunal towards attendant charges is confirmed. Rs.10,34,778/- awarded towards medical expenses as per Ex.P-11 series is also confirmed. The details of the modified compensation as per the above discussion are as under:

Head	Amount (Rs.)
Loss of income	9,82,800
Permanent disability	60,000
Future Medical Expenses	25,000
Transportation	25,000
Extra Nourishment	25,000
Attendant Charges	7,500

Head	Amount (Rs.)
Medical Expenses	10,34,778
Total	21,60,078

8. Hence, the total compensation comes to Rs.21,60,078/- rounded off to Rs.21,60,000/-. Since the driver of the victim did not possess a valid driving license, a sum of Rs.1 lakh is deducted for violating the provisions of the motor vehicle. Therefore, the claimant is entitled to get a sum of Rs.20,60,000/- as compensation.

9. Though the appeal has been preferred by the Insurance Company, the facts and circumstances of the case, enables this Court to enhance the compensation awarded by the Tribunal from Rs.16,28,278/- to Rs.20,60,000/- by re-appreciating the evidence on record and applying the correct position of law, as on date and invoking Order XLI Rule 33 CPC and Section 151 CPC as well as Article 227 of the Constitution of India. Moreover, the provisions of Motor Vehicles Act are benevolent in nature and what is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by the claimant, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC). The interest fixed by the Tribunal at 7.5% is unaltered. The first respondent-claimant is directed to pay the requisite court-fee, if any, within a period of two weeks from the date of receipt of a copy of this order, failing which the enhancement made by the Court shall be automatically deleted.

10. The appellant-Insurance Company is directed to deposit the entire amount along with interest and costs (except for future medical expenses of Rs.25,000/-) within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer the entire award amount to the bank account of the claimant with interest and costs through RTGS within a period of one week thereon.

11. Accordingly, this Civil Miscellaneous Appeal is dismissed by enhancing the Compensation amount of Rs.16,28,278/- to Rs.20,60,000/- No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

vsm

To

The Motor Accident Claims Tribunal,
Subordinate Court, Dharapuram.

+1cc to Mr.S.Manohar, Advocate SR.No.43530
+2cc to Mr.C.Paranthaman, Advocate SR.No.43817
+1cc to Mr.Ma.P.Thangavel, Advocate SR.No.43754

C.M.A.No.4 of 2018

CNR(CO)
GN(23/08/2018)