

IN THE HIGH COURT OF JUDICATE AT MADRAS

DATE : 28.03.2018

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THE HON'BLE MR.JUSTICE R.SUBBIAH

and

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

C.M.A.No.897 of 2014

and

M.P.No.1 of 2014

The Branch Manager,
M/s.United India Insurance Company Ltd.,
No.71, Salai Street,
Thillainagar, Trichy-1. ... Appellant/2nd respondent

Vs.

1.Mr.Paramasivam

2.Adaikalasamy

... Respondents/Petitioner and 1st respondent

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.03.2013 in M.C.O.P.No.279 of 2009 passed by the Motor Accidents Claims Tribunal (Subordinate Court) Ariyalur.

For Appellant : Mr.N.Vijayaraghavan

For Respondents: Mr.Paramasivadoss
for Mr.S.Gunalan (For R1)
R2-Not ready in Notice

JUDGMENT

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

Questioning the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Subordinate Court) Ariyalur, in and by award dated 28.03.2013 in M.C.O.P.No.279 of 2009, the present appeal has been filed by the Insurance Company.

2.The 1st respondent herein is the claimant before the Tribunal. It is the case of the claimant that on 20.04.2007 at about 11.40 am, while he was riding Hero Honda Motorcycle

bearing Reg.No.TN-22-P-8586 on Ariyalur-Jayamkondam Road, keeping left side of the road, a car bearing Reg.No.TN-57-A-5995 belonging to the 2nd respondent herein and insured with the appellant Insurance Company came in a rash and negligent manner and dashed against the motorcycle, thus, caused the accident. In the said accident, the claimant had sustained fracture on his right leg. He had undergone an operation on his right leg and steel-rod was fixed in his right leg and his right leg was shortened by three inches. On account of the disability suffered by the claimant, he is not in a position to continue his avocation, who was a driver by avocation. Hence, the claimant made a claim for a sum of Rs.50 lakhs as compensation before the Tribunal.

3.In order to prove his income before the Tribunal, on the side of the claimant, he examined himself as P.W.1 besides examining one Dr.Rathinasamy as P.W.2 and marked 27 documents as Ex.P.1 to Ex.P.27. On the side of the Insurance Company, a Junior Assistant from Regional Transport Office was examined as R.W.1 and driving licence of the driver of the offending car was marked as Ex.R.1.

4.The Tribunal, after analysing the entire evidence, has come to the conclusion that the accident is the result of the rash and negligent driving of the driver of the car bearing Reg.No.TN-57-A-5995 belonging to the 2nd respondent herein and insured with the appellant Insurance Company. By coming to such a conclusion, the Tribunal has made the calculation under different heads and passed an award for a total sum of Rs.25,00,983/- as compensation. The break up details of the compensation amount awarded by the Tribunal are as follows_

Loss of income	=Rs. 20,40,000/-
Medical Expenses	=Rs. 2,60,000/-
Medical expenses to medicines & x-ray based on Ex.P.5	=Rs. 1,76,083/-
Transportation based on Ex.P.6	=Rs. 24,900/-
Total	= Rs.25,00,983/-

Aggrieved over the quantum of compensation awarded by the Tribunal, the present appeal has been filed by the Insurance Company as stated supra.

5.It is the main contention of the learned counsel for the appellant/Insurance Company that before the Tribunal in order to prove the percentage of disability suffered by the claimant, on his side, one Dr.Rathinasamy was examined as P.W.2, who had

assessed the percentage of the disability suffered by the claimant at 45%. But, while calculating the compensation under the head of loss of income by applying multiplier method, the Tribunal has fixed the functional disability suffered by the claimant at 100% on the reasoning that on account of the disability suffered by him, he would not be in a position to continue his avocation who is a driver by avocation. By rendering such a finding, the Tribunal has taken a sum of Rs.10,000/- as monthly income of the claimant and thereafter, by applying multiplier 17, the Tribunal has awarded a sum of Rs.20,40,000/- as compensation under the head of loss of income. In this regard, the learned counsel for the appellant/Insurance Company submitted that 100% functional disability fixed by the Tribunal is not correct; therefore, by fixing the disability suffered by the claimant at 45%, the compensation amount awarded by the Tribunal has to be modified.

6. In view of the above said submission made by the learned counsel for the appellant/Insurance Company, this Court had also referred the claimant to the Medical Board, Government Headquarters Hospital, Ariyalur, and obtained the report from the Medical Board dated 15.02.2018. The Medical Board has assessed the disability suffered by the claimant at 45%.

7. Now, the learned counsel for the appellant/Insurance Company, by placing reliance upon the said report of the Medical Board submitted that 100% functional disability fixed by the Tribunal cannot be sustained. Thus, he sought for suitable modification in the compensation amount awarded by the Tribunal.

8. Per contra, the learned counsel appearing for the 1st respondent/claimant has submitted that the nature of injury sustained by the claimant on his right leg would show that the claimant cannot continue his avocation, who is a driver by avocation; under such circumstances, 100% functional disability fixed by the Tribunal cannot be found fault with. 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. From a perusal of the materials available on record, We find that the evidence on record would show that earlier the claimant had been working as a Supervisor in a Singapore Ship Yard upto 21.02.1997; thereafter, he was working as a driver in a private company. In order to prove his avocation, he has also marked Ex.Ps.8-14 & 19-27. From the materials placed on record, We find that the claimant was initially working as a Supervisor and not as a driver. Further, in our opinion, the nature of the disability suffered by the victim will not preclude him from engaging himself in any other work. Under such circumstances, 100% functional disability fixed by the Tribunal is apparently wrong. Therefore, We are of the opinion that by fixing the

disability suffered by the claimant/victim at 45%, the calculation has to be made to arrive at a just and proper compensation. As fixed by the Tribunal, If the monthly salary of the claimant is taken as Rs.10,000/-, then 40% amount has to be added towards future prospects. If 40% amount is added, then the total monthly income works out to Rs.14,000/-. As the claimant was aged 35 years at the time of accident, the correct multiplier that has to be applied in this case is 16. If the multiplier 16 is applied, then the total loss of income with proportion to 45% disability works out to Rs.12,09,600/-(14,000 x 12 x 16 x 45/100). Hence, the sum of Rs.20,40,000/- awarded by the Tribunal under the head of loss of income is hereby modified and reduced to Rs.12,09,600/-.

10. However, it is seen that the Tribunal has not awarded any amount under the head of pain and sufferings. Considering the long period of treatment undergone by the claimant, We are of the opinion that a sum of Rs.1 lakh could be awarded under the head of pain and sufferings; accordingly, the same is hereby awarded. Further, considering the fact that on account of the disability suffered by the claimant, he would find it difficult to carry on his normal day-to-day works as he was doing before the accident. In such a way, the claimant is entitled to be compensated. Hence, a sum of Rs.1 lakh is hereby awarded for the loss of amenities. Similarly, the claimant/victim is entitled to compensation for extra-nourishment and accordingly, a sum of Rs.50,000/- is hereby awarded for extra-nourishment. Further, the Tribunal has not awarded any amount towards attender charges. Hence, a sum of Rs.25,000/- is hereby awarded towards attender charges. It is seen that the Tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs.20,000/- is hereby awarded for loss of estate. In addition to the above, a sum of Rs.34,000/- is hereby awarded for mental agony.

Loss of income	=Rs.12,09,600/-
Medical Expenses	=Rs. 2,60,000/-
Medical expenses to medicines & x-ray based on Ex.P.5	=Rs. 1,76,083/-

Transportation based on Ex.P.6	=Rs. 24,900/-
Loss of amenities	=Rs. 1,00,000/-
Pain and sufferings	=Rs. 1,00,000/-
Extra-nourishment	=Rs. 50,000/-
Attender charges	=Rs. 25,000/-
Loss of estate	=Rs. 20,000/-
Mental agony	=Rs. 34,000/-

Total	=Rs.19,99,583/-
(rounded off to Rs.20,00,000/-)	

11. In the result, the Civil Miscellaneous Appeal is partly allowed and the total compensation amount of Rs.25,00,983/- (Rupees Twenty Five Lakhs Nine Hundred and Eighty Three only) awarded by the Tribunal is hereby modified and reduced to Rs.20,00,000/- (Rupees Twenty Lakhs Only). The appellant/Insurance Company is directed to deposit the entire modified compensation amount, after adjusting 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 being made, the claimant is entitled to withdraw the same by making necessary application before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssv

To,
Motor Accidents Claims Tribunal,
(Subordinate Court) Ariyalur.

+1cc to Mr.M.B.Gopalan, Advocate sr.no.24073

C.M.A.No.897 of 2014
and
M.P.No.1 of 2014

gj (co)
nr 18/06/2018

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