

In the High Court of Judicature at Madras
Coram
Dated: 27.09.2018
The Honourable Mr.Justice K.K. SASIDHARAN
and
The Hon'ble Mr.Justice RMT. TEEKAA RAMAN

C.M.A.No.2154 of2018
and
CMP No.16809 of 2018

Universal Sompo General Insurance Company Limited,
No.6-G-1,Cathedral Garden Road,
Nungambakkam,
Chennai - 600 034
..Appellant

..vs..

1.D. Varadaraj
2.S. Sivagami ..Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 08.11.2016 passed in MCOP No.263 of 2014 by the Motor Accident claims Tribunal (Chief Judicial Magistrate Court), Namakkal.

For Appellant : Mr.R. Mohan Babu
For Respondents : Mr.Ma.P. Thangavel

JUDGMENT

(Judgment of the Court was delivered by RMT. TEEKAA RAMAN,J.,)

The Insurance Company is on appeal on the ground of both on liability as well as on the quantum of compensation awarded by Motor Accident claims Tribunal (Chief Judicial Magistrate Court), Namakkal. The first respondent has moved the Motor Accident Claims Tribunal to claim compensation of Rs.15,00,000/- for the injuries sustained in the accident that had occurred on 24.09.2013.

2. The case of the claimant before the Tribunal was while the claimant was travelling in TATA 407 Van bearing Registration No.TN 55 F 5286, driven by its driver in a rash and negligent manner, suddenly hit behind the lorry bearing Registration No.HR 63 B 7510 which was parked on the left side of the road resulted in the claimant suffering grievous injuries. The claimant claimed compensation of Rs.15,00,000/-.

3. The claim made by the claimants was resisted by the appellant Insurance Company and stated that the Insurance Corporation is not liable to pay any compensation.

4. To substantiate the claim of compensation, the claimant himself was examined as P.W.1 and the Doctor who has given treatment was examined as P.W.2 and Exs.P.1 to P.15 were marked. On the side of the Insurance Company no oral and documentary evidence was adduced.

5. The Tribunal, after considering the oral and documentary evidence came to the conclusion that the accident was due to rash and negligent act of the driver of the TATA 407 Van bearing Registration No.TN 55 F 5286, and accordingly laid responsibility on both the respondents before the Tribunal and held that the respondents are jointly liable to pay the compensation. Based on the medical evidence of P.W.2, the doctor and the documentary evidence of the treatment, the Tribunal awarded Rs.13,84,800/- as compensation with 7.5% interest. The break up details of the compensation amount, awarded by the Tribunal are as follows:

Loss of income for two months :Rs. 12,000

(2 x Rs.6,000)

Transportation to hospital :Rs. 20,000

Extra nourishment :Rs. 25,000

Medical bills :Rs. 4,71,880

Future prospects :Rs. 8,16,000

Loss of love and affection :Rs. 40,000

_____ Total :Rs.13,84,880

Aggrieved against the finding and the award of quantum, the Insurance Company has filed the present appeal.

6. The learned counsel for the Insurance Company has contended that the trial Court has failed to consider that the claimant is a gratuitous passenger and as such, he is not covered under the policy of the van and therefore, the Insurance Company is not liable to pay the compensation. Secondly, the quantum of compensation arrived is also excessive and hence sought to set aside the award passed by the Tribunal.

7. Per contra, the learned counsel for the respondent/claimant would contend that the award is too low and prayed for enhancement suo-motu.

8. Mr.Ma.P.Thangavel, learned counsel entered caveator and heard the caveator and the learned counsel appearing for the Insurance Company.

9. The points for consideration arise in this appeal is as under:-

(i) Whether the rash and negligent driving by the driver of the TATA 407 Van bearing Registration No.TN 55 F 5286, caused the accident?

(ii) Whether the compensation awarded by the Tribunal is excessive?

(iii) To what relief they are entitled?

10. After hearing both the parties and perusing the documents before the Tribunal, it is seen that the owner of P.W.1, the conductor have set criminal law in motion by filing Ex.P.5 first information report and after investigation, Ex.P.4 charge sheet has been filed before the competent jurisdictional court and the driver is also convicted before the Judicial Magistrate as could be seen from Ex.P.4 and the case has been taken on file by the learned Judicial Magistrate No.I, Namakkal in STC

No.214/2014. Accordingly, the Tribunal held that the accident had taken place due to rash and negligent driving by the driver of the TATA 407 Van bearing Registration No.TN 55 F 5286 and the driver of the lorry as projected by the Insurance Company does not warrant interference at this appellate stage.

11. Based on Ex.P.1, first information report, the Tribunal has correctly come to the conclusion that even as per the evidence of the owner of the vehicle at the earliest point of time, under Ex.P.1, he has categorically stated that no vehicle is owned by his wife and the claimant was working as a cleaner and he was travelling in the course of his employment and the said submission has come up at the earliest point of time. Accordingly, it appears from the records that the Tribunal has negated the plea of the insurance company that the injured is a gratuitous passenger and has rightly held that he is a cleaner and has travelled in the vehicle in the course of his employment and in view of the specific evidence under Ex.P.1 and also the evidence of P.W.1, the Tribunal has rightly come to the conclusion that the injured claimant is the cleaner in the vehicle and has travelled in the van at the time of accident only as a cleaner and consequently held that as per the policy condition the appellant Insurance Company is liable which is well merited and well founded and does not warrant any interference and accordingly, this point is held against the appellant Insurance Corporation.

12. The next contention of the learned counsel for the appellant Insurance Company is that the quantum awarded by the Tribunal is excessive and after going through the records, it is seen that as per Ex.P.13, the claimant was born on 1982 and accordingly, the age of the injured was 31 years and taking note of the fact that the claimant is the cleaner and minimum wages for the cleaner could be Rs.200/- and he worked 20 days in a month and accordingly, monthly income arrived at cannot be found fault with and the same does not call for any interference.

13. Further more, it is seen from the documentary evidence Exs.P.6 to P.12 coupled with oral evidence of P.W.2 doctor that the claimant injured sustained multiple fractures and the x-ray and the discharge summary given by Ganga Hospital, Coimbatore duly substantiate the said finding arrived by P.W.2 doctor and based upon the medical evidence of P.W.2 doctor coupled with documentary evidence Exs.P.6 to P.12, the Tribunal has rightly come to the conclusion that the claimant has suffered 100% disability and accordingly, calculated the disability at 100% and based upon the age, he has adopted multiplier of $\square 17 \square$ and fixed monthly income of a Cleaner as Rs.4,000/- and awarded Rs.8,16,000/- as loss of future income. The multiplier $\square 17 \square$ and the monthly income of Rs.4,000/-, which in our opinion, are just and reasonable and does not call for any interference and other non-conventional amounts awarded by the Tribunal is found to be reasonable and based on the medical bill a sum of Rs.4,71,880/- was awarded and hence we do not find any merit in the plea raised by the Insurance Company that the award passed by the Tribunal is excessive .

14. In the result, the Civil Miscellaneous Appeal is dismissed and the award passed by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court), Namakkal in MCOP No.263 of 2014 stands confirmed.

15. It is submitted by the Caveator that only a sum of Rs.25,000/- has been deposited by the Insurance Company for the purpose of filing the appeal and the appellant Insurance Company is directed to deposit the balance amount awarded by the Tribunal with 7.5% interest within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is permitted to withdraw the same. No costs. Consequently, connected CMP No.16809 of 2018 is closed.

(K.K.S.J.,) (T.K.R.J.,)

27 September 2018

sr

Speaking Order/Non-Speaking Order

Index:yes/no

website:yes/no

To

Motor Accident claims Tribunal
(Chief Judicial Magistrate Court), Namakkal

K.K. SASIDHARAN,J.,
and
RMT. TEEKAA RAMAN,J.,

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