IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A. No.2181 of 2018
and
C.M.P.No.17025 of 2018

The Oriental Insurance Company Ltd.,
3rd Party, Claims Hub 1st Floor,
Vijayalakshmi Complex, No.32/312,
13th Street, Phase 2, Sathuvachari,
Vellore District. ... Appellant

-vs-

1.Milton Mariappan
2.S.Rayappan Rajesh ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree passed in MCOP.No.376 of 2014 on 12.03.2018 on the file of the learned Motor Accident Claims Tribunal (Special Subordinate Judge), Tirupattur, Vellore District.

For Appellant : Mr.J.Chandran

For Respondents : Mr.V.Kumaravelan for R1
R2 - Not ready notice

J U D G M E N T

[Judgment of the Court was delivered by R.SUBRAMANIAN,J.]

The Insurance Company which suffered an award for payment of Rs.56,58,978/- as compensation for the injuries suffered by the 1st respondent/ claimant has come forward with this appeal challenging the quantum of compensation.

2. According to the claimant, while he was riding his two-wheeler bearing registration No.TN-23-M-9933 on the extreme left

side of the road on Dharmapuri - Tirupattur main road, near Su Pallipattu Over Bridge towards Tirupattur, a lorry bearing registration No.TN-03-H-3448 owned by the 2nd respondent and insured with the appellant Insurance Company which was driven by its driver in a rash and negligent manner in the opposite direction dashed against the motor cycle causing grievous injuries to the claimant. Due to the crush injury suffered, right leg of the 1st respondent/ claimant was amputated just below the hip, resulting in a permanent disability and 100% loss of earning power. Hence, the claimant sought for a compensation of Rs.75,00,000/-.

3. The claim petition was resisted by the Insurance Company contending that the accident did not occur in the manner suggested by the claimant. It was contended that the claimant did not possess a valid driving license at the time of the accident and he drove the vehicle in a rash and negligent manner resulting in the accident. The Insurance Company also disputed the nature of the injuries, percentage of disability and claim relating to loss of earning power. The Tribunal which heard the Original Petition concluded that the accident occurred due to the rash and negligent driving of the driver of the lorry.

4. In coming to the said conclusion, the Tribunal relied upon the evidence of PW1 the claimant himself and the fact that an FIR was filed against the lorry driver. The contents of the accident register which was produced as Ex.P6 was also taken note of by the Tribunal. On the quantum, the Tribunal assessed the percentage of disability at 90% based on the disability certificate issued by the Medical Board of the Tirupattur Government Hospital. The amputation of the right leg up to the hip was also taken into account by the Tribunal in coming to the said conclusion. The Tribunal however assessed the functional disability at 80%. In coming to the said conclusion, the Tribunal considered the nature of the injuries and the disability certificate issued by the Medical Board of the Tirupathur Government Hospital. The Tribunal also concluded that the claimant could do some work though with difficulty. The Tribunal fixed the monthly income of the injured claimant at Rs.17,200/-, based on the pay slips marked as Exs.P22 to P24. The Tribunal added 40% towards future prospects and arrived at the monthly income for the purposes of calculation of the loss of dependency at Rs.24,080/-. The annual dependency was thus worked out at Rs.2,88,960/-. The Tribunal applied the multiplier of 15 and arrived at the loss of earning capacity at Rs.34,67,520/-. The Tribunal also awarded a sum of Rs.2,00,000/- for pain and suffering, Rs.25,000/- for extra nourishment, Rs.15,36,458/- towards medical expenses based on bills, Rs.10,000/- towards attender charges, Rs.50,000/- towards transportation, Rs.1,00,000/- towards loss of amenities. Apart

from awarding Rs.2,70,000/- towards permanent disability at Rs.3,000/- per percentage. Aggrieved, the Insurance Company is on appeal.

5. We have heard Mr.J.Chandran, learned counsel appearing for the Insurance Company and Mr.V.Kumaravelan, learned counsel appearing for the 1st respondent/ claimant. The 2nd respondent viz., owner of the offending lorry had remained exparte before the Tribunal and hence notice to him in this appeal is dispensed with.

6. Mr.J.Chandran, learned counsel appearing for the Insurance Company would contend that the Tribunal erred in concluding that the entire negligence was on the part of the lorry driver. We find that the Tribunal had relied upon valid documentary evidence in the form of the accident register, the First Information Report and the oral evidence of the claimant himself to conclude that there was no negligence on the part of the claimant.

7. Despite his best efforts, Mr.J.Chandran, learned counsel appearing for the appellant Insurance Company is unable to point out any material/ evidence to dislodge the finding of the Tribunal regarding negligence. Though the Insurance Company examined two witnesses none of them have spoken about the negligence on the part of the claimant/ 1st respondent. We therefore see no reason to interfere with the finding of the Tribunal on the question of negligence.

8. On the quantum, Mr.J.Chandran, would submit that the Tribunal erred in taking the entire income without deducting any amount towards income tax, as well as the statutory deductions that were made by the employer which were admittedly to the tune of Rs.2,655/-. We find some force in the contention of the learned counsel for the Insurance Company regarding the quantum of loss of earning power arrived at by the Tribunal.

9. We find that the Tribunal had taken the income at Rs.17,200/- per month and has added 40% towards future prospects in arriving at Rs.34,67,520/- as total loss of earning power. We find that the Tribunal has not deducted any amount towards income tax and it has not taken into account the statutory deductions that were made from the salary of the 1st respondent/ claimant. Instead of adding 40% towards future prospects and then deducting certain amount towards income tax as well as the statutory deductions, we deem fit to take the monthly salary as evidenced by the salary certificates viz., Ex.P22 to P24 as the basis and calculate the loss of earning power without adding any amount towards future prospects. The result would be the same if we are to add a certain percentage towards future prospects and

make certain deductions towards income tax. We therefore calculate the loss of dependency as follows:- '

Rs.17,200/- x 12 x 15 x 80% = 24,76,800/-

10. Considering the nature of injuries as well as the amputation suffered by the 1st respondent/ claimant, we sustain the finding of the Tribunal that the loss of earning power would be 80%. After having determined the loss of earning power at 80%, the Tribunal has granted Rs.2,70,000/- towards permanent disability. We find that the said amount should be only Rs.2,40,000/- i.e., Rs.3,000/- per percentage for 80%.

11. The award of the Tribunal under the heads pain and suffering, medical expenses, extra nourishment and loss of amenities are confirmed as we find those awards are just and reasonable. Considering the nature of the permanent disability suffered by the claimant, the Tribunal has awarded a sum of Rs.10,000/- towards attender charges. It is seen from the records that the claimant has been hospitalized for a substantially long period and he would have definitely incurred a significant amount as attender charges. We therefore award a sum of Rs.50,000/- towards attender charges.

12. The Tribunal has awarded a sum of Rs.50,000/- towards transportation after disbelieving the bills submitted by the claimant. Once the Tribunal had chosen to disbelieve the bills submitted by the claimant, the award of Rs.50,000/- towards transportation charges cannot be justified. Hence, the same is reduced to Rs.10,000/-. In view of the above, the award of the Tribunal is modified as follows:-

Award towards		Amount
Permanent disability	:	Rs. 2,40,000/-
Loss of earning power	:	Rs. 24,76,800/-
Pain and sufferings	:	Rs. 2,00,000/-
Medical expenses	:	Rs. 15,36,458/-
Extra nourishment	:	Rs. 25,000/-
Attender charges	:	Rs. 50,000/-
Transportation	:	Rs. 10,000/-
Loss of amenities	:	Rs. 1,00,000/-
Total	:	Rs. 46,38,258/-

13. The same is rounded off to Rs.46,40,000/-. In view of the above, the appeal is partly allowed, the award of the Tribunal is modified as above and the award will carry interest

at 7.5% per annum from the date of petition till date of payment. It is stated that the Insurance Company has already deposited Rs.40,00,000/- pursuant to the interim order of this Court. Insurance Company is directed to deposit the balance amount within a period of four weeks from the date of receipt of a copy of the judgment. On such deposit, the claimant is permitted to withdraw the entire compensation. There shall however be no order as to costs in this appeal. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

dsa

To

1. The Motor Accident Claims Tribunal,
   Special Subordinate Judge,
   Tirupattur, Vellore District.

2. The Section Officer,
   VR Section, High Court,
   Madras-104 (2 copies)

+1cc to Mr.V.Kumaravelan, Advocate, S.R.No.72607
+1cc to Mr.J.Chandran, Advocate, S.R.No.72732

C.M.A. No.2181 of 2018

SS(CO)
CS/21/01/2019