IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2018

CORAM

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

C.M.A.No.3057 of 2013
and
M.P.No.1 of 2013 and M.P.No.1 of 2015

The Branch Manager,
United India Insurance Co. Ltd.,
Mailam Road, Tindivanam. .. Appellant/2nd Respondent

Vs.

1.Ramkumar ...1st Respondent/Petitioner

2.J.Elumalai ...2nd Respondents/1st Respondent

Civil Miscellaneous Appeals have been filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 11.03.2013 in M.C.O.P.No.120 of 2011 passed by the Motor Accidents Claims Tribunal (I Additional District Court), at Tindivanam.

For Appellant : Mr.S.Arun Kumar
For Respondents: Mr.R.C.Paul Kanagaraj (For R1)

JUDGMENT

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

This appeal has been filed by the Insurance Company challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (I Additional District Judge), Tindivanam, in and by award dated 11.03.2013 in M.C.O.P.No.120 of 2011.

2.The 1st respondent herein is the claimant before the Tribunal. It is case of the claimant that he is an Engineering Graduate. He was working in a private concern and earning a sum of Rs.30,500/- per month. On 20.07.2007, while the claimant, along with his friend Obliprakash, was riding a motor cycle bearing Reg.PY-01-AG-5557, near Mugalivakkam, a lorry bearing Reg.No.TN-20-7882 owned by the 2nd respondent herein and insured with the appellant herein/Insurance Company came in a rash and negligent manner and dashed against the motor cycle from behind, as a result of which the claimant was thrown out of the motor cycle and he sustained multiple injuries all over his body. Further, he sustained crush injury on his left leg and he was treated in MIOT Hospital and his left leg below the knee was amputated. He was inpatient for more than two months. Hence, he made a claim of Rs.30 lakhs as compensation.

3.Before the Tribunal, the case of the claimant was resisted by the Insurance Company by filing a detailed counter, contending that the accident was the result of the rash and negligent riding of the two-wheeler. Thus, they denied their liability to pay the compensation amount.

4.In order to prove their case before the Tribunal, on the side of the claimant, he examined himself as P.W.1, besides examining one Dr.Sekar as P.W.2 and marked 19 documents as Ex.P.1 to Ex.P.19. On the side of the Insurance Company, neither oral nor documentary evidence was adduced.

5.The Tribunal, after analysing the entire evidence, has come to the conclusion that the accident was the result of the rash and negligent driving of the lorry bearing Reg.No.PY-01-AG-5557 by its driver owned by 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.26,27,522/-. The break up details of the compensation amount are as follows:

Future Loss of Income	=Rs.16,93,200/-
Medical Expenses	=Rs. 4,35,807/-
Instrument charges	=Rs. 2,48,515/-
For future repair instrument charges once in 5 years	=Rs. 1,00,000/-
Loss of amenities	=Rs. 50,000/-
Pain and suffering	=Rs. 50,000/-
Extra-nourishment	=Rs. 25,000/-
Conveyance allowances	=Rs. 25,000/-
Total	=Rs.26,27,522/-

Aggrieved over the quantum of compensation, the present appeal has been filed by the Insurance Company.

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

7.So far as the quantum of compensation is concerned, it is contended by the learned counsel for the appellant/Insurance Company that it is the case of the claimant that on account of the accident, his left leg below the knee was amputated. But, the Tribunal has fixed the disability suffered by the victim at 83%, which is extremely on the higher side. It is further submitted that the Tribunal has fixed a higher sum of Rs.10,000/- as monthly income of the victim and made the calculation and awarded an exorbitant amount of Rs.16,93,200/- under the head of loss of income. But, no tangible evidence was produced by the 1st respondent/claimant to show that he was earning a sum of Rs.10,000/- per month. Further, the learned counsel for the appellant/Insurance Company submitted that since the amputation was only below the knee, by fixing the disability at 50% and taking lessor sum as monthly income, calculation could be made to arrive at a just and proper compensation.

8.Per contra, the learned counsel appearing for the claimant made his submissions supporting the award passed by the Tribunal.

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

10.With regard to the loss of income, it is the case of the claimant that he is an Engineering graduate. He was working a private concern and earning a sum of Rs.30,500/- per month. In this regard, he has also marked Ex.P.16-Salary Certificate issued by FAG Bearing India Limited. But, the claimant has not chosen to examine any official from the said company. Hence, the Tribunal has fixed only a sum of Rs.10,000/- as monthly income of the victim, which cannot be said to be on the higher side considering the present day cost of living. However, We find that on account of the accident, the victim's left leg below the knee was amputated. Since the amputation is only below the knee, the percentage of disability fixed by the Tribunal at 83% appears to be on the higher is side. Hence, We are of the opinion that by fixing 50% disability, the calculation could be made to arrive at a just and proper compensation for loss of income.

11.Accordingly, if a sum of Rs.10,000/- is taken as monthly income of the victim and disability is fixed at 50%, then, the compensation under the head of loss of income works out to Rs.10,20,000/- (10,000 x 50/100 x 12 x 17). Hence, the sum of Rs.16,93,200/- under the head of loss of income awarded by the Tribunal is hereby modified and reduced to Rs.10,20,000/-. Further, it is seen that the Tribunal has not awarded any amount for attender charges. Hence, a sum of Rs.25,000/- is hereby awarded for attender charges. Except the above modifications, the compensation amounts awarded by the Tribunal under other heads remain unaltered as the same are reasonable. Consequently, the total compensation amount of Rs.26,27,522/- awarded by the Tribunal is hereby modified and reduced to Rs.19,79,322/-. The break up details of the modified/reduced compensation amount are as follows_

Future Loss of Income	=Rs.10,20,000/-
Medical Expenses	=Rs. 4,35,807/-
Instrument charges	=Rs. 2,48,515/-
For future repair instrument charges once in 5 years	=Rs. 1,00,000/-
Loss of amenities	=Rs. 50,000/-
Pain and suffering	=Rs. 50,000/-
Extra-nourishment	=Rs. 25,000/-
Conveyance allowances	=Rs. 25,000/-
Attender charges	=Rs. 25,000/-
Total	=Rs.19,79,322/-

10.In the result, the Civil Miscellaneous Appeal is partly allowed and the total compensation amount of Rs.26,27,522/- awarded by the Tribunal is hereby modified and reduced to Rs.19,79,322/-. The appellant/Insurance Company is directed to deposit the entire modified compensation amount with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, after deducting the amount if any already deposited, 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 with accrued interest thereon by making necessary application before the Tribunal. It is made clear that in case of any balance amount remains after withdrawal by the claimant, the Insurance Company is entitled to withdraw the balance amount. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//
Sub Assistant Registrar

To,
The Motor Accidents Claims Tribunal
(I Additional District Judge) at Tindivanam.

+1cc to Mr.S.Arun kumar, Advocate, S.R.No.15580

C.M.A.No.3057 of 2013
and
M.P.No.1 of 2013 and M.P.No.1 of 2015

PPA(CO)
GSP(12/06/2018)