

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2018

CORAM:

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

CMA.No.2384 of 2017 &
CMP Nos.12758/17, 5201 & 16417 of 2018
and Cross Objection No.53 of 2018

The Branch Manager,
The Oriental Insurance Co. Ltd.,
1548, Tenkasi Road, Rajapalayam 626 117,
Virudhunagar District.

...Appellant in CMA 2384/17 &
1st Respondent in Cross Obj No.53/2018

-vs-

1. Vivek ...1st Respondent in CMA 2384/17&
Cross Objector in Cross Obj No.53/2018

2. R. Kalimuthu

3. K.J.R. Jayaram Raja
... Respondents 2 & 3 in both the CMA.2384/17&
Cross Objection No.53/2018.

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 15.11.2016 made in MCOP No.433 of 2014 on the file of the Motor Accidents Claims Tribunal, (Special Subordinate Judge) at Coimbatore.

Cross Objection filed under Order 41 Rule 22 of Civil Procedure Code, to enhance the compensation amount awarded in the Judgment and decree dated 15.11.2016 made in MCOP No.433 of 2014 on the file of the Motor Accidents Claims Tribunal, (Special Subordinate Judge) at Coimbatore.

For Appellant in CMA 2384/17 & : Mr. M.Krishnamoorthy
1st Respondent in Cross Obj No.53/2018

For 1st Respondent in CMA 2384/17&: Mr.P.Arun Kumar
Cross Objector in Cross Obj No.53/2018

For R2 & R3 : Ex-parte

C O M M O N J U D G M E N T

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

The challenge in the appeal by the Insurance Company is to the award of the Tribunal granting a sum of Rs.41,60,000/- as compensation for the injuries caused to the 1st respondent in a motor accident had occurred on 19.04.2010. The injured claimant has filed Cross-objection seeking enhancement.

2. According to the claimant, on 19.04.2010 while he was travelling as a pillion rider in the motor cycle bearing Registration TN-67-K-0090, driven by his brother, the bus belonging to the 3rd respondent driven by its driver /2nd respondent in a rash and negligent manner came in the opposite direction and dashed against the two wheeler. As a result of the accident, the claimant suffered grievous injuries, which resulted in amputation of his right leg below the knee. Claiming that he was carrying on business in Micro Distributor of Nokia Mobile Phones as well as accessories, earning about Rs.48,000/- per month and that due to the amputation, he is unable to carry on the business and has suffered 100% disability, the claimant sought for a compensation of Rs.1,00,00,000/-.

3. The Claim Petition was resisted by the Insurance Company contending that the accident occurred due to the rash and negligent driving of the two wheeler by its rider and that there was no negligence on the part of the bus driver. The Insurance Company would further contend that the claimant has exaggerated the percentage of disability as well as the earnings so as to enable him to claim higher compensation.

4. The Tribunal which heard the Original Petition concluded that the accident occurred due to the rash and negligent driving of the bus. In coming to the said conclusion, the Tribunal relied upon the FIR and the evidence of P.W.1. The Tribunal also referred to the Rough Sketch filed as Ex.P2, the charge sheet in the criminal case filed as Ex.P5, and the fact that the driver of the bus pleaded guilty before the Criminal Court in support of its conclusion.

5. On the quantum, the Tribunal assessed the percentage of disability at 80%. Based on the Income-Tax Return filed, the Tribunal concluded that the loss of income due to the accident was about Rs.2,10,000/- per annum. Applying a multiplier of 18, the Tribunal quantified the future loss of earning power at Rs.30,24,000/- (Rs.2,10,000/- x 18 x 80%). The Tribunal awarded a sum of Rs.8,96,000/- towards medical expenses based on bills. It also awarded the following amounts under the other heads.

S.No.	Particulars	Amount
1.	Future Loss of Income (Rs.2,10,000/- x 80% x18)	Rs.30,24,000/-
2.	Medical Bills	Rs. 8,96,000/-
3.	Maintenance of artificial limb charges	Rs. 15,000/-
4.	Pain and Suffering	Rs. 1,00,000/-
5.	Loss of Amenities	Rs. 1,00,000/-
6.	Transportation to Hospital	Rs. 10,000/-
7.	Extra Nourishment	Rs. 10,000/-
8.	Damage to Clothing	Rs. 5,000/-
	Total	Rs.41,60,000/-

Thus the total award works out to Rs.41,60,000/-.

6. We have heard Mr.M.Krishnamoorthy, learned counsel appearing for the appellant/ Insurance Company and Mr.P.Arunkumar, learned counsel appearing for the claimant/Cross objector.

7. Mr.M.Krishnamoorthy, learned counsel appearing for the appellant/Insurance Company would strenuously contend that the Tribunal erred in applying multiplier method in the absence of any proof of actual loss of earning power. Referring to the Income-Tax returns, Mr.M.Krishnamoorthy, learned counsel, would contend that there has been increase in the income of the claimant after the accident and therefore, it cannot be said that he had incurred loss of earning power due to the injury caused.

8. Per contra, Mr.P.Arunkumar, learned counsel appearing for the 1st respondent/Cross objector would contend that the fact that the claimant had suffered an amputation cannot be disputed.

He would submit that the claimant who was only 25 years old, at the time of the accident will have to suffer for the rest of his life. Drawing our attention to the findings of the Tribunal on the loss of income, Mr.P.Arunkumar, would submit that the Tribunal has given cogent and convincing reasons for arriving at the loss of income at Rs.2,10,000/- per annum and the same does not call for interference at our hands.

9. We have considered the rival submissions.

10. While it is true that there has been increase in the income of the claimant after the accident the said fact alone cannot deter the Tribunal from awarding compensation on the ground of loss of earning power. A perusal of the Income Tax Returns would show that before the accident, the claimant was earning about Rs.2,10,000/- from other sources including salary, which he has been deprived after the accident.

11. The Tribunal has also taken into account the nature of the business carried on by the claimant to come to the conclusion that the amputation would definitely result in loss of earning power. We have also perused the documents, namely the Income-Tax returns filed as Ex.P14 and P20. The contents of the documents justify the conclusions of the Tribunal regarding loss of earning power. We, therefore, do not see any ground to interfere with the conclusions of the Tribunal on the ground of loss of earning power. We, therefore, sustain the award on the said head.

12. As regards the other amounts of compensation granted by the Tribunal, namely Medical Expenses etc., Mr. M.Krishnamoorthy, learned counsel appearing for the Insurance Company, despite his best efforts, he is unable to point out that the awards are excessive or unreasonable.

13. Though Mr.P.Arunkumar, learned counsel appearing for the claimant would seek enhancement, he is unable to point out any valid reason for enhancement. The Tribunal had considered the entire evidence on record and awarded reasonable amounts under various heads.

14. We, therefore, see no ground to enhance the award also. In fine the appeal as well as the Cross-objection are dismissed, confirming the award of the Tribunal. There shall be no order as to costs in the appeal as well as the cross-objection. Consequently, the connected miscellaneous petitions are closed.

15. The Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited within a period of six (6) weeks from the date of receipt of a copy of the judgment. On such deposit, the claimant will be entitled to withdraw the same.

jv

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

To
The Motor Accidents Claims Tribunal,
Special Subordinate Judge,
at Coimbatore.

+1CC To Mr.R.Prabakar, Advocate, SR.NO.70667
+1CC To Mr.M.Krishnamoorthy, Advocate, SR.No.70737.

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SSD(CO)
KAK(17/12/2018)