IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 12.10.2018	Delivered on 26.10.2018

CORAM:

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

CMA.No.400 of 2017
and CMP No.2819 of 2017

Divisional Manager,
M/s. New India Assurance Co. Ltd.,
2nd Floor, Arcot Woodlands Complex,
Bharathi Road, Cuddalore 1. ... Appellant/ 2nd Respondent

-vs-

1. Kevin Davis Stewart ..1st Respondent/Claimant

2. Mohammed Ismail ... 2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment passed in M.C.O.P. No.3430 of 2014 on 17.09.2016 on the file of the Learned Motor Accident Claims Tribunal (Special Sub-Judge) at Cuddalore District.

For Appellant : Mr.J.Chandran

For Respondents : Mr.N.Damodaran for R1

J U D G M E N T

R.SUBRAMANIAN, J.

This appeal is at the instance of the Insurance Company, which suffered an award for payment of a sum of Rs.61,95,810/- as compensation for the injuries caused to the claimant/1st respondent in a motor accident that occurred on 24.04.2014.

2. While the claimant, who was the student of Engineering in Manakula Vinayagar Egineering College, Pondicherry, was riding his two-wheeler, bearing Registration No.PY-01-BX-2396, on

Maraimalai Adigal Salai at Orleanpet, Pondicherry, a Tempo Van bearing Registration No.PY 01 S 9878, came in the opposite direction, driven in a rash and negligent manner by its driver, dashed against the motor cycle. As a result of which the claimant sustained grievous injuries. It is the further case of the claimant that he was forced to discontinue his studies and has to be under the care of an attender right through 24 hours. The claimant thus sought for a compensation of Rs.1,00,00,000/-.

3. The Claim Petition was resisted by the Insurance Company contending that it was the claimant who contributed to the accident by its rash and negligent driving. The Insurance Company would also contend that the nature of the injuries suffered as well as the cost of medical treatment have been exaggerated in order to claim higher compensation.

4. The Tribunal which heard the Original Petition found that the offending Tempo was being driven on the wrong side of a one-way road. The Tribunal also found that the evidence of P.W.2, Vinayagam, an eye witness to the accident was in time with the contents of the FIR that was filed immediately after the accident.

5. Considering the above, the Tribunal concluded that the accident occurred due to the rash and negligent driving of the driver of the Tempo insured with the appellant Insurance Company. On the nature of the injuries, the Tribunal referred to the Discharge Summary as well as the evidence of the Doctors who were examined as P.Ws.3, 4 and 5, to conclude that the disability caused to the claimant is almost 100%. The Tribunal took the monthly income of the injured claimant notionally at Rs.12,000/- and applying multiplier of 18 arrived at the pecuniary loss at Rs.25,92,000/-.

6. The Tribunal further awarded a sum of Rs.3,00,000/- towards pain and suffering, Rs.1,00,000/- towards loss of amenities, Rs.1,00,000/- towards loss of marriage prospects, Rs.4,00,000/- towards future medical expenses, Rs.50,000/- towards maintenance of wheel chair, Rs.4,883/- for special diet, Rs.15,000/- towards extra nourishment, Rs.24,15,950/- towards medical expenses and Rs.22,040/- towards transportation. In all the amount awarded by the Tribunal worked out to Rs.61,95,810/-.

7. Aggrieved the Insurance Company has come up on appeal.

8. We have heard Mr.J.Chandran, learned counsel appearing for the appellant Insurance Company and Mr.N.Damodaran, learned counsel appearing for the 1st respondent/claimant. The 2nd respondent the owner of the vehicle though served does not appear either in person or through counsel.

9. Mr.J.Chandran, learned counsel appearing for the Insurance Company would attempt to argue the question of negligence, however, when it was pointed out that the Insurance Company has not chosen to let in any evidence to show absence of negligence on the part of the driver of the Tempo or the negligence on the part of the injured claimant, Mr.J.Chandran, would fairly restrict his arguments to the quantum of compensation only.

10. On the quantum, the learned counsel would submit that the Tribunal erred in taking the disability at 100%. The injuries suffered by the claimant are very serious in nature. The Discharge Summary issued by Apollo Hospital, Chennai, shows that the claimant has suffered

Severe Traumatic Brain injury - Diffuse Adnexal Injury

Multiple Hemorrhagic Contusions

Traumatic IVH

Right Frontal, Left Parietal Thin SDH

Comminuted Fracture of Left Frontoparietal Bone

Right Femur Fracture

Tracheits and Pneumonia

11. It is also seen that the claimant was an in-patient from 24.04.2014 to 06.07.2014. Again the claimant was admitted to Pondicherry Institute of Medical Sciences, on 19.08.2014 was in-patient till 25.08.2014, where he had underwent Tracheostomy as evidenced by various CT Scan Reports filed as Exs.P11 to P15. From the evidence of the three Doctors who have been examined as P.Ws.2, 3 and 4, the Tribunal had concluded that the loss of earning capacity would be 100%, P.W.3 is a Orthopedic Surgeon, P.W.4 is a Neuro Surgeon. From their evidence, it is clear that the claimant cannot do any work including his daily routine activities without help of an attender. From Ex.P43 Wound Certificate, it is seen that the Brain of the injured claimant has been largely affected and even breathing is difficult. It is seen that the tube has been provided to discharge fluids secreting in the brain.

12. It is also seen that the movements of the limbs are severally affected because of the fracture to the femur as well as the cytoma bones. All these fractures have been taken into account by the Tribunal to come to the conclusion that though the physical disability is 75%, the functional disability would be 100%. Though, the three Doctors have been extensively cross-examined by the Insurance Company, we do not find that their evidence in Chief-examination has been discredited in any manner, except for making various suggestions, there has been no fruitful cross-examination of three expert witnesses.

13. We are, therefore, of the considered opinion that the award of the Tribunal cannot be termed as excessive or un-reasonable. In fact the Tribunal has not granted any amount towards attender charges and under other heads which was normally awarded in case of injuries which lead to the claimant being rendered dependant on assistance of others.

14. We, therefore, see no reason to interfere with the award of the Tribunal. The Appeal is dismissed, confirming the award of the Tribunal. However, there will be no order as to costs. Consequently, the connected miscellaneous petition is 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 compensation.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jv

To

The Special Sub-Judge
Motor Accident Claims Tribunal
Cuddalore District.

Copy To

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

+1cc to Mr.N.Damodaran, Advocate, S.R.No.73231

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SV(CO)
CS/12/12/2018