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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.10.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A(MD)No.1245 of 2015
and
M.P(MD)No.1 of 2015

Iffco Tokyo General Insurance Company Limited,
Through its Branch Manager,
Office No.82, Third Floor,
Court Road,
Nagercoil.

.. Appellant/2nd Respondent

-Vs-

1.Iskak

.. 1st Respondent/Petitioner

2.Rooth

.. 2nd Respondent/1st Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, dated 01.04.2015 passed in M.C.O.P.No.257 of 2014 on the file of the Motor Accident Claims Tribunal/Special Subordinate Court, Tirunelveli.

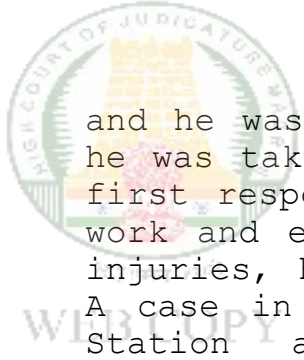
For Appellant : Mrs.K.R.Shiva Shankari
For R - 1 : Mr.V.Sasikumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award, dated 01.04.2015 made in M.C.O.P.No.257 of 2014 by the Motor Accident Claims Tribunal/Special Subordinate Judge, Tirunelveli.

2. Short facts necessary for the disposal of this appeal, are as follows:

2.1. On 17.02.2013 at about 06.00 p.m., the first respondent/claimant was riding his motorcycle bearing Registration No.TN-75-H-7828 from Colachal to Mandaikadu Main Road near Kottilpadau Petrol Bulk from West to East. At that time, a car bearing Registration No.TN-74-L-6321 belonging to the second respondent, insured with the appellant/Insurance Company came from the opposite side and hit against the motorcycle. Due to the said impact, the first respondent/claimant sustained multiple injuries



and he was taken to Dhiraviyam Hospital, Nagercoil and thereafter, he was taking treatment as inpatient. At the time of accident, the first respondent/claimant was aged 25 years and was doing a mason work and earning a sum of Rs.15,000/- per month. Due to the said injuries, he was not able to do his work as he was doing earlier. A case in Crime No.72 of 2013 was registered by Kulachal Police Station and the same is pending. Therefore, the first respondent/claimant filed a claim petition, claiming a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as compensation.

(ii) The second respondent/owner of the offending vehicle remained *exparte* before the Tribunal. However, the appellant/Insurance Company filed the counter statement denying all the averments stated in the claim petition and prayed for the dismissal of the claim petition.

(iii) Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P.1 to P.15 were marked. On behalf of the appellant-Insurance Company, neither oral evidence nor documentary evidence was let in.

(iv) On contest, the Tribunal, considering the pleadings, oral and documentary evidence let in on either side, found that the accident occurred only due to the rash and negligent driving of the rider of the second respondent and fastened the liability on the appellant/Insurance Company and awarded a sum of Rs.10,16,260/- along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs.

(v) Aggrieved over the award of the Tribunal, the appellant/Insurance Company has filed the present appeal.

3. The learned counsel appearing for the appellant/Insurance Company contended that the first respondent/claimant has suffered only 50% of partial permanent disability. The first respondent/claimant has not let in any evidence to show that he is totally disabled and could not do any work. In such circumstances, in view of the Judgment of the Honourable Supreme Court in **Rajkumar Vs. Ajaikumar** reported in **2011 (1) SCC 343**, the first respondent/claimant is not entitled to pay compensation by applying multiplier method. The first respondent/claimant has not let in any evidence to show that he requires medical treatment in future and the Tribunal has erroneously awarded a sum of Rs.2,00,000/-. The amount of Rs.75,000/- awarded towards pain and sufferings is exorbitant. The amounts awarded under the other heads are excessive and prayed for modifying the quantum of compensation granted to the first respondent/claimant.

4. Per contra, the learned counsel appearing for the first respondent/claimant contended that the Doctor, who was examined as P.W.2, has deposed that the first respondent/claimant cannot use his hands for his work. Hence, the Tribunal, considering the same, has

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applied multiplier method. The Tribunal, considering the nature of injuries and treatment taken by the first respondent/claimant, has awarded proper compensation and prayed for dismissal of the Civil Miscellaneous Appeal.

5. Heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing for the first respondent and also perused the materials available on record.

6. The issue to be decided in the present Civil Miscellaneous Appeal is as to whether the quantum of compensation awarded by the Tribunal is just or excessive.

7. From the materials available on record, it is seen that the first respondent/claimant was working as a mason and P.W.2-Doctor, has deposed that the first respondent/claimant has suffered 53% partial permanent disability. The Tribunal applied multiplier method on the ground that the Doctor has deposed that it is difficult for the first respondent/claimant to use his hands. But, there is nothing on record to show that the first respondent/claimant is totally immobilised and he cannot do any work, as he was doing earlier or he cannot do any work in view of the injuries sustained by him. In the absence of such evidence, the Tribunal has erred in applying multiplier method. In **United India Insurance Company Limited Vs. Veluchamy and another** reported in **I (2006) ACC 416**, the Division Bench of this Court has held that in the absence of any proof of total disablement resulting in functional disability, multiplier theory cannot be invoked. From the nature of injuries sustained by the first respondent/claimant, it is not a fit case to apply multiplier method.

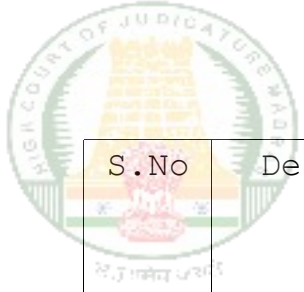
8. The award of the Tribunal granting compensation under the head of permanent disability viz., a sum of Rs.4,86,000/- is set aside and the first respondent/claimant is entitled to Rs.3,000/- per percentage and the Tribunal, without any basis, reduced the percentage of disability to 50% from 53%.

9. The first respondent/claimant is entitled to **Rs.1,59,000/-** (53% X Rs.3,000/-) towards permanent disability. A sum of Rs.75,000/- awarded by the Tribunal for pain and sufferings is reduced to **Rs.50,000/-**. The Tribunal has awarded a sum of Rs.2,00,000/- towards future medical expenses without there being any evidence and the same is set aside.

10. The amounts awarded under the other heads, viz., a sum of Rs.54,000/- towards loss of income for treatment period, a sum of Rs.30,000/- towards transport, nourishment and attender charges and a sum of Rs.1,71,260/- towards medical bills are reasonable and they are confirmed.

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Therefore, this Court modifies the award of the Tribunal by enhancing the compensation, as under:-



S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning capacity	4,86,000	1,59,000	Reduced
2.	Loss of income for treatment period	54,000	54000	Confirmed
3.	Transport, nourishment and attender charges	30,000	30,000	Confirmed
4.	Pain and sufferings	75,000	50,000	Reduced
5.	Future medical expenses	2,00,000	-	Deleted
6.	Medical bills	1,71,260	1,71,260	Confirmed
	Total	10,16,260	4,64,260	By reducing a sum of Rs.5,52,000/-

11. Therefore, the appellant/Insurance Company is liable to pay a sum of Rs.4,64,260/- with interest at the rate of 7.5% p.a., from the date of claim petition till the date of deposit and proportionate costs.

12. In the result, this Civil Miscellaneous Appeal is partly allowed. The appellant/Insurance Company is directed to deposit the compensation amount with accrued interest and costs to the credit of M.C.O.P.No.257 of 2014 on the file of the Motor Accident Claims Tribunal/Special Subordinate Court, Tirunelveli, within a period of eight weeks from the date of receipt of copy of this judgment, less the amount, if any, already deposited. On such deposit, the first respondent/claimant is permitted to withdraw the said award amount, less the amount, if any, already withdrawn, by making necessary application before the Tribunal. The appellant/Insurance Company is permitted to withdraw the excess amount, if any. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/



To

1. The Motor Accidents Claims Tribunal,
Special Subordinate Judge, Tirunelveli.

2. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.S.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 90553
+ 1 CC TO Mr.V.SASIKUMAR, ADVOCATE IN SR No. 90776

PS

TE/RSK/SAR-2 : 28/12/2018 : 5P/6C

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