IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1674 of 2006
and C.M.P.No.7353 of 2006

United India Insurance Company Limited
Peria Kadai Street
Tarapuram. ..Appellant / 2nd Respondent

Vs

1.Rajeswari

2.Ramasamy ..Respondents/Petitioner/
1st Respondent

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 13.08.2004 made in MACTOP No.680 of 2001 on the file of the Motor Accidents Claims Tribunal (Additional District Court) Fast Track Court No.5, Coimbatore at Tiruppur.

For Appellant : Mr.K.Suryanarayanan

For Respondents : Mr.Ma.P.Thangavel for R1

Not ready in Notice Reg.R2

JUDGMENT

This appeal is preferred by the Insurance Company against the award of a sum of Rs.3,50,180/- towards compensation to the first respondent, for the injuries suffered by her in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 23.06.2001 at about 8.30 hours, the first respondent was walking in the mud road in Kamanaichen Palayam, Karanampettai. At that time, a van bearing Reg.No.TN-39-8811 came in a rash and negligent manner and dashed against her. Due to the said impact, she was thrown away and sustained grievous injuries. The first respondent filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal arrived at the total compensation at Rs.3,50,180/- with interest at the rate of 9% p.a., from the date of petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant has submitted that the Tribunal has erroneously fixed the monthly income of the claimant as Rs.3,000/- per month without any documentary evidence. The Tribunal has also erroneously fixed the disability of the claimant at 32%, while it can be only 14% as per the Schedule-I to the Workmen Compensation Act. Finally, it is submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

5.The learned counsel for the first respondent / claimant has submitted that the Tribunal has correctly considered the materials and evidence available on record and has arrived at the compensation, which is just and reasonable and hence the same need not be interfered with by this Court.

6.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

7.Ex.P2 is the Wound Certificate, in which it is stated that there are crush injuries in the left upper limb, elbow, forearm and in the index finger of the claimant; dislocation of 5th metacarpal base in the left hand and injury in the left thumb tip of the claimant. Considering the nature of injuries, P.W.3-Doctor determined the disability of the claimant at 32%. Based on the same, the Tribunal came to the conclusion that the injured sustained 32% disability and accordingly awarded a sum of Rs.32,000/- towards permanent disability. At this juncture, it would be appropriate to refer to the judgment of the Hon'ble Supreme Court in the case of Raj Kumar v. Ajay Kumar and another, reported in 2011 ACJ 1, which deals with Permanent Disability. Paragraph-8 of the said judgment reads as under:

> "8.Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the

percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45 per cent as the permanent disability, will hold that there is 45 per cent loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may, however, note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case of course. Tribunal will adopt the said percentage of determination of compensation. [See for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co.Ltd., 2010 ACJ 2867 (SC) and Yadava Kumar v. Divisional Manager, National Insurance Co.Ltd., 2010 ACJ 2713 (SC)]."

A reading of the above paragraph of the judgment of the Hon'ble Supreme Court makes it clear that what requires to be assessed by the Tribunal is the effect of permanent disability on the earning capacity of the injured and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money to arrive at the future loss of earnings, by applying the standard multiplier method used to determine loss of dependency. Applying the said principle to the facts of the present case, this Court is not inclined to interfere with the finding of the Tribunal as regards the percentage of disability. Accordingly, the amount awarded by the Tribunal towards permanent disability is confirmed.

8.Further, relying upon the evidence of the P.W.1-claimant and P.W.2-Viswanathan, co-employee of the claimant, the Tribunal came to the conclusion that the injured / claimant would have earned Rs.3,000/- per month, adopted the correct multiplier of 18 and accordingly awarded a sum of Rs.2,07,360/- towards loss of income, for 32% disability (3000 x 12 x 18 x 32/100). This Court is not inclined to interfere with the same. The amount awarded by the Tribunal towards medical expenses at Rs.1,02,820/- is based upon Ex.P4-Medical bills, which is an actual expenditure. Further the amounts awarded towards pain and suffering at Rs.5,000/- and towards extra nourishment at Rs.3,000/- are very reasonable. Hence the same are confirmed.

9.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

KM

To

1. The Motor Accidents Claims Tribunal
(Additional District Court) Fast Track Court No.5,
Coimbatore at Tiruppur.

copy to: The Section Officer,
VR Section, High Court, Madras.

+1 cc to M/s.K.Suryanarayanan, Advocate, S.R.No.46818

+1 cc to M/s.Ma.P.Thangavel, Advocate, S.R.No.48242

C.M.A.No.1674 of 2006
and C.M.P.No.7353 of 2006

GJ(CO)
SSM(22/10/2019)