IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2019

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.1406 of 2015
and
M.P.No.1 of 2015

The Branch Manager,
The Oriental Insurance
Company Limited,
81-C, 1st floor, k.R.C. Complex,
Chennai Salai,
Krishnagiri 635 001 :Appellant/2nd Respondents

Vs

1.Perumal : 1st Respondent/Petitioner

2.M.Ramakrishnan : 2nd Respondent/1st Respondent

PRAYER: 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.2432 of 2013 dated 10.03.2015 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Krishnagiri.

For Appellant : Mr.M.Krishnamoorthy
For Respondents : Mr.Mukund R Pandian for R1
R2- Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the decree and Judgment passed in M.C.O.P.No.2432 of 2013 dated 10.03.2015 on the file of the learned Motor Accident Claims Tribunal, Special Subordinate Court, Krishnagiri. The appeal has been preferred by the Oriental Insurance Company Limited, aggrieved against the award made by the Tribunal at Rs.8,97,438/- against the claim of Rs.15,00,000/-.

2. The brief case leading to the claim petition is that on 03.03.2012, at about 07.30 a.m., when the claimant/first respondent herein was travelling in a lorry bearing Registration

No. TN 24 T 2364 as a cleaner belonging to the second respondent in Chengam to Tiruvanamalai main road, driven by its driver in a rash and negligent manner and while he was nearing Thokkavadi Housing board diversion road, the driver of the said lorry lost his control and dashed against the road side Tamarind tree. As a result of which, the driver of the said lorry sustained fatal and crush injuries and he died on the spot. The claimant/first respondent herein sustained grievous injuries. Immediately, he was admitted in the Government Hospital, Chengam. Thereafter, he was shifted to Vinayagamission Hospital, Salem for further treatment and a criminal case in Crime No.96 of 2012 was also registered by the Chengam Police. Due to the said accident, the claimant/first respondent met with lot of sufferings including loss of income, permanent disability, pain and sufferings, Medical expenses and other related sufferings.

3. The appellant/ Insurance Company totally denied the allegations made in the claim application. The appellant/Insurance Company further contended that the assessment made by P.W.2 towards disability at 55 % and the monthly income fixed by the Tribunal at Rs.5,500/- are highly excessive. The Tribunal has awarded towards loss of earning power, by applying the multiplier method and the sum determined as Rs.4,75,200/- is also on the higher side. He further contended that the Tribunal has awarded towards future medical expenses and pain and sufferings are excessive, exorbitant and unsustainable.

4. The Tribunal after analysing the evidence on record, awarded a compensation of Rs.8,97,438/- together with interest at the rate of 7.5% to the claimants, under the following heads:

S.No	Head	Compensation (in.Rs.)
1.	Loss of earning capacity	4,75,200.00
2.	Partial loss of income	27,500.00
3.	Pain and sufferings	50,000.00
4.	Nutrition	10,000.00
5.	Transportation	29,100.00
6.	Medical bills	1,70,638.00
7.	Future medical expenses	1,00,000.00
8.	Attender's charge	10,000.00
9.	Loss of amenities	25,000.00
Total		8,97,438.00

5. Aggrieved over the award passed by the tribunal, the appellant/ Insurance Company has filed the present appeal.

6.On perusing the award passed by the Tribunal, it is observed that the claimant/first respondent herein sustained severe injuries due to the said accident, which has been spoken by him before the Tribunal. Ex.P.2 (Discharge Summary) reveals the fact that the claimant took treatment at Vinayaga Mission Hospital, Salem, for Pelvic unstable fracture right segmental ilium fracture with left superior and inferior pubic rami fracture with pubic diasthesis; surgery - ORIF with reconstruction plate for ilium fracture; ORIF with reconstruction plate for pubic rami fracture.

7.PW.2/ Doctor was also examined on the side of the claimant/first respondent, who issued the Disability Certificate / Ex.P8 at 55% and also deposed clearly about the nature of injuries sustained by the claimant due to PTS, stiffness in muscle and knee, the range of movement of muscle and knee in right leg was reduced. Therefore, the claimant was not able to stand and walk for a long time.

8.The finding made by P.W.2 and the disability assessed at 55%, the said stiffness in the leg does not cause 55% disability. Hence, the appellant/ Insurance Company vehemently argued that only for the stiffness in the knee and muscle, the assessment made by the Doctor/ P.W.2 at 55% is highly excessive and the sum awarded by the Tribunal towards disability is also on the higher side.

9.The appellant/Insurance Company also brought to the notice of this Court that the age of the claimant/first respondent was mentioned in his claim petitioner as 40 years, the Tribunal has taken the age of the claimant at 35years at the time of the accident, without any basis and hence, the appellant/ Insurance Company is very much aggrieved by determining the age of the claimant. The loss of earning capacity fixed by the Tribunal in the absence of any relevant proof, the award made by the Tribunal is highly excessive and has to be modified by taking Rs.3,000/- per percentage and it has to be awarded as Rs.1,35,000/- (Rs.3,000/- x 45%) towards disability, which is very much reasonable.

10.The other grievance raised by the appellant/Insurance Company that in the absence of any records or proof for future medical treatment, the sum awarded by the Tribunal towards future medical expenses at Rs.1,00,000/- is without any basis. Therefore, this Court has to set aside the same. The sum awarded under the head of pain and sufferings at Rs.50,000/- is very much aggrieved by the appellant/Insurance Company, when it is observed that the petitioner was taken treatment as in-patient only for a period of 21 days and further the nature of injuries sustained by him only the fracture in pelvic bone. The said sum ought to have been modified.

11.The claimant/first respondent is very much aggrieved by the income taken by the Tribunal at Rs.5,500/- and it has to be taken at Rs.8,000/-. In the absence of proof of income, this Court is of the view that it would be appropriate to calculate the monthly income at Rs.6,000/-. Accordingly, this Court grants Rs.30,000/- towards loss of income for a period of five months. As rightly contended by the learned counsel for the appellant/Insurance Company, as there is no proof for future medical expenses, hence the award passed by the Tribunal towards future medical expenses for Rs.1,00,000/- is hereby set aside. As per Ex.P5, the sum awarded by the Tribunal towards medical bills at Rs.1,70,638/- is very much reasonable. Considering the nature of injuries sustained by the claimant and period of treatment taken by him, this Court is inclined to reduce the award amount towards pain and sufferings from Rs.50,000/- to Rs.35,000/-. In view of the above, the award passed by the Tribunal is modified as follows:

S.No	Head	Awarded by the Tribunal	Enhanced Compensation (in.Rs.)
1.	Loss of earning capacity	4,75,200.00	1,35,000.00
2.	Partial loss of income	27,500.00	30,000.00
3.	Pain and sufferings	50,000.00	35,000.00
4.	Nutrition	10,000.00	10,000.00
5.	Transportation	29,100.00	29,100.00
6.	Medical bills	1,70,638.00	1,70,638.00
7.	Future medical expenses	1,00,000.00	
8.	Attender's charge	10,000.00	10,000.00
9.	Loss of amenities	25,000.00	25,000.00
Total		8,97,438.00	4,44,738.00

Thus, the claimant/first respondent herein is entitled to a sum of Rs.4,44,738/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit.

12.In the result,

(i)The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii)The compensation awarded by the tribunal is reduced from Rs.8,97,438/- to Rs.4,44,738/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii)The appellant/ Oriental Insurance Company Limited, is directed to deposit the entire amount, awarded by this Court along with interest and costs before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon.

(iv) It is represented that the entire compensation awarded by the tribunal was already deposited by the appellant Insurance Company. The Insurance Company is at liberty to withdraw the award amount paid in excess of the award passed by this court.

Sd/-
Assistant Registrar(AD-I)

// True Copy//

Sub Assistant Registrar

vkr

To

The Motor Accidents Claims Tribunal,
The Special Subordinate Judge, Krishnagiri.

Copy to: The Section Officer, V.R. Section,
High Court, Madras.

+1cc to Mr.Mukund R.Pandian, Advocate, SR.No.64763.
+1cc to Mr.M.Krishnamurthy, Advocate, SR.No.63503.

C.M.A.No.1406 of 2015
and
M.P.No.1 of 2015

SJ(CO)
CSR:13.02.2020