



IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 11.03.2019

JUDGMENT PRONOUNCED ON : 28.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.NO.2461 OF 2011

AND

MP.NO.1 OF 2011

Branch Manager,
The New India Assurance Co Ltd
Chennai E-98 Coast Chambers
First Floor, No.92, G.N. Chetty Road
T. Nagar, Chennai

.. Appellant/2nd Respondent

Versus

1.Bhoopathi
2.P.Subramani

.. 1st Respondent/Petitioner
...2nd Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.07.2010 made in M.C.O.P.No.469 of 2005 on the file of the Motor Accident Claims Tribunal -cum- Additional, Sub-Court, Tiruppur.

For Appellant : Mr.S.Jayasankar

For Respondents : Mr.S.S.Swaminathan (for R1)
: Not ready in notice (for R2)

JUDGMENT

The appellant/Insurance company has preferred this appeal, challenging the award dated 27.07.2010 passed in M.C.O.P.No.469 of 2005 on the file of the Motor Accident Claims Tribunal -cum- Additional, Sub-Court, Tiruppur only in so far as it relates to quantum of compensation awarded by the Tribunal and the insurance company is not questioning the fastening of the liability on them.

2.The gist of the case of the first respondent/claimant is that on 15.06.2004, at about 9.00 hours, when the claimant was



traveling as pillion rider in the motorcycle bearing Regn.No.TN-39-Z-0264 in Veerapandi ring road near Veerapandi Mahalingam Kovil, an Auto bearing Regn.No.TN-39-X-3297 driven by its driver in a rash and negligent manner, dashed against the claimant. In the impact, the claimant sustained grievous injuries, including fracture to his right leg. Immediately, he was admitted to the Ganga Hospital, Coimbatore as inpatient, where he took treatment for one month and spent huge amount towards medical expenses. The claimant was employed in Dyno Tex Apparels, Vigneswara Nagar, Tirupur and was earning Rs.4,000/- as monthly income. After the accident, the claimant was unable to do his normal work. Therefore, the claimant filed the claim petition in M.C.O.P.No.469 of 2005 before the Tribunal, claiming a sum of Rs.9,14,000/- as compensation, which was restricted to Rs.5,00,000/-.

3.The Insurance company opposed the claim petition by contending that the driver of the two wheeler had in fact driven the vehilce in a rash and negligent manner and, therefore, the insurance company is not liable to pay compensation. The Insurance company has also denied the age, income, nature of the injuries sustained by the claimant and prayed for dismissal of the claim petition.

4.Before the Tribunal, in order to prove the averments in the claim petition, the claimant examined himself as PW.1, the co-worker, who drove the two wheeler, was examined as PW.2 and one Dr. Senthil Kumar was examined as PW.3. There were six documents marked as Ex.P1 to P6. On the side of the respondents, one Velumani was examined as RW.1 and Sureshkumar was examined as RW.2 and two documents namely Ex.R1/ Photo copy of investigation report & Ex.R2/Copy of Insurance Policy were marked.

5.The Tribunal, after considering the oral and documentary evidence, assessed the disability of the claimant at 45%. By taking the monthly salary of the claimant at Rs.4,000/- notionally, by applying multiplier 16, the Tribunal awarded a sum of Rs.7,68,000/- towards permanent disability. Out of this sum of Rs.7,68,000/-, the Tribunal concluded that for 45% disability, the claimant is entitled to Rs.3,45,600/- towards permanent disability. That apart, Rs.57,051/- was awarded towards medical expenses as per the bills. The Tribunal also awarded Rs.25,000/- towards pain and suffering. In all, a sum of Rs.4,34,651/- was awarded as total compensation in favour of the claimant.

6.The learned counsel appearing for the appellant/ Insurance company would contend that the Tribunal awarded excessive amount in respect of permanent disability by adopting multiplier method



by taking the disability at 45%. There is no justification on the part of the Tribunal in adopting multiplier method, when the Doctor had assessed the disability only at 47.2%. Therefore, the learned counsel for the appellant prayed for setting aside the award of the Tribunal.

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7. On the above contention, this Court heard the counsel for the claimant, who justified the award passed by the Tribunal and prayed for dismissal of the appeal.

8. Heard the counsel for both sides and perused the materials placed on record.

9. After perusing the records, it is seen that at the time of accident, the claimant was aged 18 years and working in a company called Dyno Tex Apparels at Tiruppur and earning a sum of Rs.4,000/- per month. The Tribunal concluded that, as a Tailor by profession, the claimant could have earned a sum of Rs.4,000/- per month and after applying multiplier of 16, arrived at a sum of Rs.7,68,000/- as loss of income and out of this amount, for 45% disability, awarded Rs.3,45,600/- towards permanent disability.

10. The learned counsel appearing for the Insurance company would contend that adoption of multiplier method by the Tribunal is an erroneous one and the driver of the offending vehicle i.e., Auto, does not possess necessary badge endorsement at the time of accident. Hence, the Insurance company seeks to be exonerated from the liability on the ground that the award amount is excessive.

11. The learned counsel appearing for the claimant/first respondent contended that considering the nature of injury, the claimant is unable to carry his avocation of Tailoring as before. Hence, the adoption of multiplier method by the Tribunal is sustainable and further he submitted that in the light of decision rendered by the Honourable Supreme Court in Mukund Dewangan Vs. Oriental Insurance Company Ltd., reported in AIR 2017 SC 3668, a person who has a valid licence to drive a light motor vehicle can drive a vehicle of same category and obtaining endorsement or badge is not necessary. In view of the Judgment of the Hon'ble Supreme Court referred to above, the appellant/Insurance Company cannot be exonerated from its liability on the ground that the driver of the insured vehicle did not obtain endorsement or badge.

12. After hearing both sides and perusing the records, more particularly, the finding of the Tribunal that the accident had occurred due to the rash and negligent driving of the driver of the offending vehicle, which is not disputed by the Insurance



company and this Court does not feel it just and proper to interfere with the said finding of the Tribunal.

13. On going through the evidence adduced by the appellant before the Tribunal, it is seen that the badge endorsement is not required for LMV vehicle, as cited supra.

14. Now, on the point of adoption of multiplier method, assessment of disability and pecuniary loss, the learned counsel for the claimant/first respondent drew my attention that to the evidence of the Doctor/PW.3 viz., Dr. Senthilkumar, which clearly shows that the claimant has suffered multiple fracture on the right knee region and he lost flush up to Grade -III region and he has underwent surgery, and that plates and screws were implanted. Thereafter, plastic surgery has also been done, due to the mal-union of fibula bone. Hence, he could not continue his avocation in the same manner as before the accident.

15. Thus, this Court is of the considered view that the criteria laid down for adoption of multiplier method, as per the decision rendered by the Honourable Supreme Court in the case of Rajkumar Vs. Ajaykumar & another, reported in 2010 (2) TN MAC 581 SC is satisfied in this case. This Court feels that the Tribunal has fairly calculated the compensation award amount towards disability at 45% at Rs.3,45,600/-. Hence, fixing the disability at 45% cannot be found fault. Without taking into consideration the crush injuries on the right knee and lost of flush up to Grade - III, the disability fixed by the Tribunal is also be fair and reasonable compensation as per the above said case cited supra and the amounts awarded under the other heads by the Tribunal are hereby confirmed. Hence, the Civil Miscellaneous Appeal is liable to be dismissed.

16. In the result,

(i) the Civil Miscellaneous Appeal is dismissed by confirming the award of the Tribunal passed in MCOP.No.469 of 2005 on the file of the Motor Accident Claims Tribunal-cum-Additional, Sub-Court, Tiruppur.

(ii) The appellant/Insurance company is directed to pay the compensation amount Rs.4,34,650/- after deducting the amount if any, already deposited by them, as awarded by the Tribunal, within a period of twelve weeks from the date of receipt of a copy of this Judgement.

(ii) On such deposit being made, the claimant/first respondent herein is entitled to withdraw the award amount, by moving appropriate application, as per the direction given by the Tribunal along with interest and costs.



(iv) Consequently, the connected miscellaneous petition is closed. No costs.

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Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

klt

To

1. The Motor Accident Claims Tribunal cum
Additional Sub Court, Tiruppur.
2. The Section Officer,
V.R.Section, High Court, Madras - 104.

+1cc to Mr.S.S.Swaminathan, Advocate, S.R.No.54338

CMA.No.2461 of 2011

CP(CO)
CS/20/11/2019