IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.10.2018

Delivered on : 15.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.1970 of of 2015

The Manager,
Royal Sundaram Aliance Insurance Co. Ltd.,
Corporate Office,
No.45 & 46, Whites Road,
Chennai - 14. ...Appellant/2nd Respondent

Vs

1.S.Kumar

2.P.Balasubramanian ...Respondents/Claimant & 1st Respondent
(2nd Respondent remained exparte)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 01.04.2015 passed in M.C.O.P.No.2106 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub Judge), Krishnagiri.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.Mukund R.Pandian
for respondent No.1

JUDGMENT

The appellant insurance company is challenging the award dated 01.04.2015 made in M.C.O.P.No.2106 of 2013 by the Motor Accidents Claim Tribunal (Special Sub Judge), Krishnagiri.

2. The first respondent is the claimant and the second respondent is the owner of the lorry, which dashed against the first respondent. The appellant is the insurance company with which the lorry was insured.

3. It is stated that on 29.06.2007 at about 8.30 hours, the first respondent was riding his motorcycle bearing registration No.KA-51 L 1695 from Hosur to Bangalore Road and while he was proceeding near Zuzuvadi 'U' turn, a lorry bearing

registration No.KA-05 AF 5511 driven by its driver in a rash and negligent manner dashed against the first respondent, as a result, the first respondent sustained grievous injuries. Therefore, the first respondent filed the claim petition claiming compensation of Rs.20,00,000/-.

4. The appellant insurance company filed a counter before the Tribunal refuting the claim petition, inter alia, pleading that the first respondent has to prove the fact that the lorry bearing registration No.KA-05 AF 5511 was insured with the appellant. It is also stated that the driver of the lorry did not have valid driving licence on the date of accident. That apart, the appellant disputed the disability, age, occupation and income of the first respondent and pleaded that the claim made by the first respondent is, in any event, exorbitant.

5. The Tribunal, on consideration of the oral and documentary evidence placed before it, by the award impugned, awarded compensation to the tune of Rs.10,80,340/- to the first respondent.

6. Calling in question the said award, the present appeal is filed by the appellant insurance company.

7. The learned counsel for the appellant has not disputed the liability fastened on the appellant. However, the learned counsel mainly contended that the Tribunal erred in adopting multiplier method while determining compensation for disability. The learned counsel further submitted that the nature of injuries, disability and the occupation of the first respondent do not warrant application of multiplier method for assessing compensation towards disability. Hence, awarding of Rs.7,48,800/- towards disability of 65% is highly excessive, as the first respondent was not referred to the Medical Board for assessing the disability. The learned counsel further submitted that in the present case the Tribunal ought to have adopted Rs.3,000/- per percentage of disability.

8. Per contra, reiterating the findings of the Tribunal in respect of quantum, the learned counsel for the first respondent, submitted that considering the nature of injuries sustained and the period of treatment undergone by the first respondent, the Tribunal awarded compensation and there is no need to interfere with the same.

9. I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

10. The challenge made by the appellant in this appeal is the Tribunal erred in applying multiplier method. Further, the injuries sustained by the first respondent and also the disability suffered by him, do not warrant application of multiplier method and that the Tribunal ought to have taken Rs.3,000/- per percentage of disability.

11. In the accident, the first respondent sustained (i) head injury; (ii) undisplaced chip fracture right medial epicondyle with right ulnar neuropathy and (iii) left upper limb brachial plexus injury and had taken treatment as inpatient from 29.6.2007 to 09.07.2007 at K.R. Hospital, Bangalore. The appellant has not disputed the injuries sustained by the first respondent.

12. After the accident, P.W.2-Dr.Devendiran, examined the first respondent and assessed the disability at 65%. Ex.P12 is the disability certificate issued by P.W.2. In his evidence, P.W.2 clearly deposed that due to ulnar neuropathy in right hand, the first respondent was not able to move his 4th and 5th fingers and also due to injuries sustained in the accident, the first respondent was not able to do his daily work as before.

13. Though the appellant insurance company contended that the first respondent was not referred to Medical Board for assessing the disability and the disability assessed by P.W.2 cannot be taken into account, admittedly, it had not taken steps to do so. The appellant simply thrown the burden on the Tribunal that the first respondent was not referred to the Medical Board by the Tribunal to assess the disability. In its order, the Tribunal held that the appellant insurance company has not examined any Expert to disprove the percentage of disability issued by P.W.2. The Tribunal further held that in respect of his avocation, the first respondent was totally disabled. As rightly held by the Tribunal when the appellant has not examined any Expert to disprove Ex.P12-disability certificate issued by P.W.2, it cannot contend that the Tribunal erred in adopting multiplier method in awarding compensation towards disability. Finding that there was functional disability, the Tribunal has adopted multiplier method in the present case.

14. In Civil Appeal No.1329 of 2017 (Sandeep Khanuja v. Atul Dane and another) decided on 02.02.2017, the Hon'ble Supreme Court held:

> "10. In some cases for personal injury, the claim could be in respect of lifetime's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be

> considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases and that is now recognised mode as to the proper measure of compensation is taking an appropriate multiplier of an appropriate multiplicand. In that case, after following the judgment in Kerala SRTC v. Susamma Thomas, the Court chose to apply multiplier of 18 keeping in view the age of the victim, who as 25 years at the time of the accident.

15. In the case of Arvind Kumar Mishra v. New India Assurance Co. Ltd., 2010 (10) SCALE 298, the accident resulted 70% permanent disablement. The Hon'ble Supreme Court held the functional disability to be 70%. The loss of earning capacity was computed according to the multiplier method. The Hon'ble Supreme Court held as under:-

> "The basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was in so far as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered. In some cases for personal injury, the claim could be in respect of life time's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases - and that is now recognized mode as to the proper measure of compensation - is taking an appropriate multiplier of an appropriate multiplicand."

16. In a case like this and having regard to injuries suffered by the first respondent, there is a definite loss of future earning capacity and it calls for grant of compensation with the adoption of multiplier method. This Court does not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the first respondent in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of

the wrongdoer and the Court must take care to give him full and fair compensation for that he had suffered.

17. On the facts and circumstances of the case, this Court finds that the Tribunal has not committed any error in adopting multiplier method in the present case. On the other hand, considering the disability assessed by P.W.2 and also taking note of Ex.P12-disability certificate, the Tribunal was right in awarding Rs.7,48,800/- towards loss of earning capacity.

18. The Tribunal awarded Rs.30,000/- towards loss of income for five months period. When the Tribunal has awarded amount towards loss of earning capacity based on the disability multiplied with the monthly income, it ought not to have awarded amount separately under the head loss of income. Therefore, a sum of Rs.30,000/- awarded by the Tribunal towards loss of income for five months period is deleted.

19. The Tribunal awarded Rs.50,000/- towards extra-nourishment and transportation charges. This Court finds that an amount of Rs.50,000/- collectively awarded under the head extra-nourishment and transport charges is little high and the same is reduced to Rs.30,000/- i.e., Rs.15,000/- each head.

20. The Tribunal awarded Rs.30,000/- towards attender charges. As stated supra, the first respondent had taken treatment as inpatient from 29.6.2007 to 09.7.2007. Considering the period of treatment undergone by the first respondent, an amount of Rs.30,000/- awarded by the Tribunal towards attender charges is reduced to Rs.15,000/-.

21. The Tribunal awarded Rs.50,000/- towards pain and suffering and another Rs.50,000/- towards loss of amenities. Considering the nature of injuries and also discomforts and loss of amenities in life, Rs.50,000/- each awarded by the Tribunal towards pain and suffering and loss of amenities are maintained.

22. The Tribunal awarded Rs.71,540/- towards medical expenses and for future medical expenses, the Tribunal awarded Rs.50,000/-. Since Rs.71,540/- awarded by the Tribunal is based on Ex.P8-medical bills, the same is confirmed. Similarly, considering the nature of injuries sustained by the first respondent, Rs.50,000/- awarded by the Tribunal towards future medical expenses is also confirmed. Thus, the total compensation of Rs.10,80,340/- awarded by the Tribunal is reduced to Rs.10,15,340/- as under:

Loss of earning capacity	:	Rs.7,48,800.00
Pain and suffering	:	Rs. 50,000.00
Loss of amenities	:	Rs. 50,000.00
Extra-nourishment and		

Transport charges	:	Rs. 30,000.00
Attender charges	:	Rs. 15,000.00
Medical expenses	:	Rs. 71,540.00
Future medical expenses	:	Rs. 50,000.00
Total	:	Rs.10,15,340.00

23. In the case on hand, the Tribunal awarded interest at the rate of 6% per annum. The learned counsel for the first respondent submitted that the Tribunal erred in awarding of interest at the rate of 6% per annum and the same needs modification. The accident in question is of the year 2007. At the relevant point of time, the rate of interest is 7.5% per annum. Considering the rate of interest during 2007, this Court is inclined to modify the rate of interest from 6% to 7.5% per annum.

24. In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.10,80,340/- awarded by the Tribunal is reduced to Rs.10,15,340/- payable with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellant insurance company is directed to deposit the modified amount along with the interest and costs within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the first respondent is permitted to withdraw the amount along with accrued interest, if any. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

vs

To
The Special Sub Judge,
The Motor Accidents Claims Tribunal,
Krishnagiri.

Copy To
The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.24804

+1cc to Mr.Mukund R.Pandian, Advocate SR.No.25889

C.M.A.No.1970 of 2015

SSI(CO)
GMY(10/12/2019)