

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2151 of 2015 and

M.P.No.1 of 2015

M/s The Oriental Insurance Company Limited,
No.17-A, Krishnagiri Road,
SKS Complex,
Ranipet-632 401.

..Appellant/2nd Respondent

Vs.

1.K. Kamalakannan

2.K. Manikandaram

.. Respondents/Petitioner/1st Respondent

[R2 set exparte before the Tribunal]

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree in M.C.O.P.No.3062 of 2010, dated 25.02.2015 on the file of the Motor Accident Claims Tribunal, Court of Small Causes-IV, Chennai.

For Appellant : Mr.N.Vijayaraghavan

For R1 : Mr.V.G.Anbarasu

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/Insurance Company against the award and decree in M.C.O.P.No.3062 of 2010, dated 25.02.2015 on the file of the Motor Accident Claims Tribunal-IV Court of Small Causes, Chennai (for short, 'the Tribunal').

2. The appellant is the 2nd respondent in M.C.O.P.No.3062 of 2010, on the file of the Motor Accident Claims Tribunal-IV Court of Small Causes, Chennai (for short, 'the Tribunal'). The 1st respondent filed the said claim petition, claiming a sum of Rs.13,74,000/- as compensation for the injuries sustained by him in the accident that took place on 05.06.2009.

3. The Tribunal, considering the pleadings, oral and documentary evidence let in by the parties, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the 2nd respondent and directed

the appellant/Insurance Company to pay a sum of 10,77,000/- as compensation to the 1st respondent at the first instance and recover the same from the appellant/Insurance Company. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant has come out with the present appeal.

4. The learned counsel appearing for the appellant contended that the first respondent suffered only simple injuries, whereas, the Tribunal erred in applying the multiplier method to arrive at the compensation under the head "loss of income". Further, in the absence of any evidence with regard to avocation and income, the Tribunal erred in fixing the income of the first respondent at Rs.7,000/- per month. The amounts awarded by the Tribunal under different heads, and prayed for setting aside the award of the Tribunal.

5. Per contra, the learned counsel appearing for the 1st respondent/Claimant contended that due to the fracture sustained in the accident, the 1st respondent being the supplier of goods, is unable to do the work as he was doing earlier and his natural life is also affected. The Tribunal, considering the pleadings, oral and documentary evidence, with regard to the nature of the injuries and disability suffered by the first respondent, rightly applied the multiplier method for granting compensation and the amounts awarded by the Tribunal under different heads are just and proper and the same do not warrant any interference by this Court and prayed for dismissal of this appeal.

6. Heard the learned counsel appearing for the appellant as well as the 1st respondent and perused all the materials available on record.

7. From the materials available on record, it is seen that the 1st respondent contended that he was supplier of goods and was earning a sum of Rs.7,000/- per month, but he has not produced any material evidence to substantiate the same. However, the Tribunal has taken the entire sum of Rs.7,000/- as his notional income per month. This Court, considering the fact that there was no material available to prove the avocation and income of the first respondent, this Court fixes the notional income of the 1st respondent as Rs.6,500/- per month. Further, the Tribunal, taking into account the judgment of the Division Bench of this Court in United India Insurance Company Vs. Veluchamy reported in 2005 (1) CTC 38, applied the multiplier method, in the case of injury and awarded a sum of Rs.7,56,000/- [Rs.7,000/- x 12 x 15 x 60%] as compensation under the head "loss of future earnings". Considering the facts and circumstances of the case and having regard to the nature of the injuries and the disability sustained by the 1st respondent, this Court is of the view that the multiplier "10" would be proper.

PW2-Doctor has certified the percentage of disability suffered by the first respondent as 65%, whereas the Tribunal reduced the same to 60% without giving any reason. The first respondent is entitled to a sum of Rs.5,07,000/-[Rs.6500 x 12 x 10 x 65/100] for 65% disability towards loss of future earnings.

8. As regards the compensation awarded other heads, considering the nature of the injuries and the percentage of disability sustained and the period of treatment undergone by the first respondent a sum of Rs.75,000/- awarded towards pain and suffering is reduced to Rs.50,000/-, Rs.50,000/- awarded towards Extra Nourishment is reduced to Rs.25,000/-, Rs.50,000/- awarded towards transport charges is reduced to Rs.10,000/-, Rs.3,000/- awarded towards damages to clothes is reduced to Rs.1,000/-. The amounts awarded by the Tribunal at Rs.30,000/- towards attender charges, Rs.84,000/- towards loss of income and Rs.25,000/- towards loss of amenities are excessive and the same are reduced to Rs.10,000/-, Rs.39,000/- and Rs.15,000/- respectively. The amounts awarded under the heads medical expenses is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl. No.	Description	Amount awarded by the Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Future Earnings	7,56,000/-	5,07,000/-	reduced
2.	Pain and Suffering	75,000/-	50,000/-	reduced
3.	Extra Nourishment	50,000/-	25,000/-	reduced
4.	Transport to Hospital	50,000/-	10,000/-	reduced
5.	Damages to clothes	3,000/-	1000/-	reduced
6.	Attender Charges	30,000/-	10000/-	reduced
7.	Loss of Income	84,000/-	39000/- (Rs.6,500/- x 6 months)	reduced
8.	Medical Expenses	4,000/-	4,000/-	confirmed

9.	Loss of Amenities	25,000/-	15,000/-	reduced
	Total	10,77,000/-	6,61,000/-	Reduced by 4,16,000/-

9. In the result, the appeal is partly allowed and the award of the Tribunal at Rs.10,77,000/- is reduced to Rs.6,61,000/- along with interest and costs. The appellant/Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.3062 of 2010. On such deposit, the 1st respondent is permitted to withdraw the award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. The appellant/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P. No.3062 of 2010, if the entire amount has already been deposited. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

msm

To

1. The IV Judge,
Court of Small Causes,
(Motor Accident Claims Tribunal),
Chennai.

Copy to:

- 2.The Section Officer,
V.R.Section, High Court, Chennai.

+lcc to Mr.V.G.Anbarasu, Advocate sr.4528

+lcc to Mr.N.Vijayaraghavan, Advocate sr.4794

C.M.A.No.2151 of 2015

kk(co)

nr 27/09/2019