IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.243 of 2013
and
M.P.No.1 of 2013

M/s.United India Insurance
Company Limited,
No.13-A, Nataji Road,
Manjakuppam,
Cuddalore - 1. ... Appellant /2nd Respondent

Vs.

1. K.Sankar ...1st Respondent/Petitioner

2. M/s.Lakshmi Family
Benefit Trust,
Melmaruvathur,
Maduranthagam Taluk,
Kancheepuram District. ...2nd Respondent/1st Respondent

Prayer:

The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.A.C.T.O.P.No.1058 of 2001 dated 02.03.2005 on the file of the Motor Accident Claims Tribunal, (Principal Sub Judge) Cuddalore.

For Appellant : Mrs.Renuka

For Respondent-1 : No appearance

For Respondent-2 : Set Exparte

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the judgment and decree dated 02.03.2005 passed by the Motor Accident Claims Tribunal cum Principal Sub Judge, Cuddalore in M.A.C.T.O.P.No.1058 of 2001.

2. On 22.05.2001, at 9.00 a.m., when the claimant was riding a Scooter, bearing Registration No.TN 04 B 1137, from east to west direction, at the extreme left hand side of the Cuddalore-Chitoor Main Road, near Varakalpet Railway Gate, the first respondent's Lorry, bearing Registration No. TN 21 E 2772, came in the opposite direction from west to east direction at a very high speed, in a rash and negligent manner and hit against the claimant, and thus, caused the accident. In the said accident, the claimant sustained grievous injuries and multiple fractures all over the body. Hence, the claimant made a claim in a sum of Rs.5,00,000/- as compensation.

3. The Insurance Company contested the claim by filing a counter statement, disputing their liability inter alia stating that, the claimant contributed to the accident, as he drove the Scooter in a rash and negligent manner, and that, the driver of the Lorry was not in possession of valid driving license and hence, they cannot be mulcted with any liability to pay compensation. That apart, the claim made by the claimant is not maintainable, as the owner of the Scooter, bearing Registration No.TN 04 B 1137 was not impleaded as party respondent and that, the claim made by the claimant is excessive and exorbitant. Thus, they prayed for dismissal of the Claim.

4. Before the Tribunal, in order to prove the claim on the side of the claimant, the claimant examined himself as P.W.2 besides examining two other witness as P.W.1/Baskar and P.W.3/Doctor and marked 11 documents as Ex.P.1 to Ex.P.11. On behalf of the Insurance Company, neither any witness was examined nor any document was marked.

5. The Tribunal, after analyzing the entire evidence both oral and documentary, has come to the conclusion that the accident had occurred only due to the rash and negligent act of the driver of the Lorry insured with the appellant herein/Insurance Company, and held the respondents 1 and 2 are jointly and severally liable to pay the compensation. By coming to such conclusion, the Tribunal has made the calculation under different heads and passed an award for a total compensation amount of Rs.2,32,323/-. The breakup details of the compensation are as follows:-

S.No	Heads	Amount granted
1	Permanent disability	Rs.75,000/-
2	Pain and suffering	Rs.15,000/-
3	Attender Charges	Rs.5,000/-

S.No	Heads	Amount granted
4	Nutrition	Rs.2,000/-
5	Medical Bills	Rs.23,323/-
6	Loss of income for four months	Rs.12,000/-
7	Loss of future earning capacity due to permanent disability	Rs.1,00,000/-
Total		Rs.2,32,323/-

6. Aggrieved by the finding rendered by the Tribunal with regard to the liability fastened on the appellant as well as the quantum of compensation awarded by the Tribunal as excessive and exorbitant, the appellant-Insurance Company has come out with the present appeal.

7. The learned counsel appearing for the appellant/Insurance company contended that the Tribunal failed to consider that the accident occurred only due to negligence on the part of the claimant. He further contended that the Tribunal ought not to have awarded compensation under two different heads i.e., “Loss of Income” and “Permanent Disability” and the percentage of disability fixed by the Tribunal is high and the compensation awarded under those heads are also excessive. In this regard, he relied upon the decision rendered by this Court, in the case of Cholan Roadways Corporation Ltd., Vs Ahmed Thambi and others reported in [(2006(4) CTC 433], wherein, at paragraph No.19 it is held as follows:-

> "19. In order to avoid any future confusion and to bring more clarity and transparency in the award of damages, it is necessary that the Tribunal, while awarding damages, should itemise the award under each of the head namely, pecuniary losses and non pecuniary losses. In the non-pecuniary losses the Tribunal shall consider (a) pain and suffering (b) loss of amenity (c) loss of expectation of life, hardhsip, mental stress, etc., (d) loss of prospect of marriage and under the head pecuniary losses, the Tribunal shall consider loss of earning capacity and loss of future earnings as one component apart from medical and other expenses and loss of earning, if any from the date of accident till the date of trial. When loss of earning capacity is compensated as also the

non-pecuniary losses under (a) to (d) permanent disability need not be separately itemised. The reference is answered accordingly".

8. Heard the learned counsel appearing for the appellant/Insurance Company and perused the materials available on record. Though notice served on the first respondent/claimant on 23.01.2013, there is no appearance on their behalf.

9. On a perusal of the award passed by the Tribunal with respect to the cause of the accident, it is seen that there is a clear cut finding by the Tribunal that the accident had occurred solely due to the rash and negligent act of the driver of the lorry, insured with the appellant/Insurance Company and rightly held that both the respondents 1 and 2, viz., the insured and insurer are liable to pay the compensation. Hence, this Court is not inclined to interfere with findings with regard to the liability aspect.

10. As far as the quantum of compensation fixed by the Tribunal is concerned, it is seen that the Tribunal, considering the nature of injuries sustained by the appellant, which is a permanent disability and taking into consideration the evidence of P.W2, which was corroborated by deposition of PW-3/Doctor, who assessed the disability at 40% and Ex.P10, viz., Disability Certificate issued by P.W.3 in this regard, awarded a sum of Rs.75,000/- towards disability. Therefore, this Court finds that the just and fair compensation awarded by the Tribunal towards "permanent disability" requires no interference in this Appeal.

11. Insofar as the contention putforth by the learned counsel appearing for the appellant that the Tribunal should not have awarded compensation under two different heads i.e., "Loss of future earning capacity" and "Permanent Disability" is concerned, this Court would like to point out that the compensation awarded towards "permanent disability" is entirely different from the compensation awarded towards "loss of future earning capacity". Therefore, the ratio laid down by this Court, in the case of Cholan Roadways Corporation Ltd. (supra), which is relied upon by the learned counsel is not applicable to the present case, as, in the said judgment, this Court has treated the compensation awardable under "Loss of Earning Capacity" and "Loss of Future Earnings" as one component, whereas, in the present case, the Tribunal has awarded compensation of Rs.1,00,000/- only towards "Loss of Future

Earning Capacity" and nothing was awarded towards "Loss of Earnings". Therefore, the Tribunal, to compensate the same, awarded a sum of Rs.1,00,000/- only towards “Loss of future earning capacity”, which appears to be reasonable, and the same requires no interference.

12. Similarly, the compensation awarded by the Tribunal under other heads, viz., i) Pain and Sufferings; ii) Attender Charges; iii) Nutrition; iv) Medical Bills; v) Loss of Income for four months and vi) permanent disability, are concerned, the same are found to be just and reasonable and requires no reduction. Accordingly, this Court confirms the compensation awarded by the Tribunal.

13. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal, after deducting the amount already deposited, if any, together with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this judgment. The interest awarded by the Tribunal at the rate of 9% per annum is reduced to 7.5% per annum. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through NEFT or RTGS within a period of one week thereon. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The learned Principal Sub Judge, Cuddalore.
Motor Accident Claims Tribunal.

+1cc to M/s.J.Jayandra Krishnan, Advocate Sr.14028

C.M.A.No.243 of 2013

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srg 03/01/2020