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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :29.04.2019

Pronounced on :30.04.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.575 of 2011

and

M.P.No.1 of 2011

The Manager,
New India Assurance Company Limited,
K.V.R.Complex, 3rd Floor,
80 Feet Salai, Karur 639 002.

..Appellant/2nd respondent

Vs.

1.Shanmugasundaram

..1st respondent/claimant

2.T.V.Ramasamy

(The 2nd respondent herein was the first respondent before the Tribunal and he remained exparte before the Tribunal. Hence, summons to the 2nd respondent may be dispensed with)

..2nd Respondent/Ist respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 25.10.2010 made in MC.O.P.No.29 of 2009 on the file of the Motor Accidents Claims Tribunal (Court of Chief Judicial Magistrate), Namakkal.

For Appellant : Mr.S.Manohar

For Respondents : Mr.A.R.Suresh for R1
Exparte before the Tribunal-R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award and Decree dated 25.10.2010 made in MC.O.P.No.29 of 2009 on the file of the Motor Accidents Claims Tribunal (Court of Chief Judicial Magistrate), Namakkal.



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2. The averments made in the claim petition in brief are as follows:-

(i) The first respondent/claimant was aged 41 years on the date of the accident. He was working as a Lift Operator-cum-Driver and earning a sum of Rs.20,000/- per month.

(ii) On 11.07.2008 at about 9.30 a.m., the first respondent/claimant was about to board a bus bearing Registration No.TN 47 P 4569 at the Velayuthampalayam Rountana, the driver of it suddenly move the bus, as a result of which, the petitioner fell down, in which the first respondent/claimant grievous injuries (i) fracture below the right knee (ii) ankle fracture and injuries all over the body.

(iii) Immediately after the accident, the 1st respondent/claimant was taken to C.M Hospital, Namakkal. The rash and negligent riding of the rider of the above said bus was the sole reason for the above said accident. There was no negligence on the part of the 1st respondent/ claimant.

3. The owner of the bus bearing Registration No.TN 47 P 4549/ the second respondent herein was absent before the Tribunal, and therefore, he was set ex-parte. The 1st respondent/claimant contested the claim petition. Before the Tribunal, on the side of the first respondent/claimant, PW1 and PW2 were examined and Ex.A1 to Ex.A12 were marked and on behalf of the respondents, no documents were adduced.

4. After going through the oral and documentary evidence adduced before the Court, the Tribunal awarded a sum of Rs.4,71,182/- as compensation together with interest at the rate of 7.5% per annum. Having found the quantum of compensation awarded by the Tribunal is excess, the appellant/Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. After hearing both the parties and perusing the materials available on record, it is seen that the facutm of the accident involvement of the vehicle and manner of the accident and the finding of the Tribunal that the accident has taken place due to the rash and negligent driving of the driver of the second respondent's vehicle who was insured with the appellant/Insurance Company are not in dispute and the same is hereby confirmed.



6. On the point of quantum, both the parties are heard.

7. The learned counsel appearing for the appellant/Insurance Company would contend that the Tribunal has committed an error in adopting the multiplier method and also committed an error in adopting the 40% disability and treated the same as whole body disability is bad-in-law and the notional income of Rs.5,000/- is fixed by the Tribunal is also on the higher side.

8. Heard the learned counsel for the first respondent/claimant and made submissions in support of the judgment of the Tribunal.

9. After hearing both the parties and after perusing the oral and documentary evidence adduced before the Tribunal, P.W.2-Doctor who had treated the claimant had issued Exhibit P12-Disability Certificate and deposed as follows:-

(i) the first respondent/claimant is suffering from weakness, deformity with painful Restriction of Right Knee, Ankle, Leg and Foot movements due to malunited fracture Tibia and Fibula sustained injuries due to road Traffic Accident at about 25 months age. He underwent surgical line of treatment with interlocking medullary nail fixation and Fracture MM fixed with Malleolur screw. He was admitted in our Hospital from 11.07.2008 to 25.08.2008 as in-patient. The Doctor treated the patient. The Discharge summary, Bills, X-Rays and Wound Certificate issued in our hospital. He had 4 RTA injuries out of which 1 and 2 are grvious and 3 and 4 are simple in nature.

(ii) He was working as Lift Operator at the time of the accident. He cannot do heavy work. It is highly strainful to do the work using his Right lower limb and also specifically deposed that the disability sustained by the claimant is a functional disability at 40%.

10. Taking into the consideration, the law laid down by the Hon'ble Supreme Court in Rajkumar's case reported in 2011 ACJ 1 [Rajkumar Vs. Ajay Kumar and another] in respect of functional disability whole body disability has to be assessed. Accordingly, the whole body disability is re-assessed as in the case of the claim petitioner as 25% and taking note of the fact that the claimant was employed as a Lift Operator-cum-Driver, the disability is calculated based on Government of India Ministry of Welfare Uniform Definitions of the Physically handicapped code Annexure V, year 1986, a sum of Rs.5,000/- fixed by the Tribunal is enhanced to Rs.5,500/- as loss of income sustained by the claimant and in view of the oral evidence of P.W.2-Doctor coupled with Exhibit A17-Disability and



also coupled with Exhibit A2-Wound Certificate, this Court is of the considered view that the permanent disability is calculated at Rs.5,500/- and awarded a sum of Rs.2,47,500/- (Rs.5,500x12x15x25%).

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11. Since the first respondent/claimant was admitted as an in-patient from 11.07.2008 to 25.08.2008 in C.M.Hospital, Namakkal, the sum of Rs.25,000/- granted by the Tribunal towards 'pain and sufferings' and the same is reduced to Rs.10,000/-. With regard to a sum of Rs.15,000/- granted by the Tribunal towards 'nutrition and extra nourishment' and the same is reduced to Rs.5,000/-. With regard to 'transportation' a sum of Rs.10,000/- granted by the Tribunal and the same is reduced to Rs.5,000/-. With regard to 'loss of amenities' and 'attender's charges', this Court awards a sum of Rs.5,000/- each. With regard to 'medical bill' a sum of Rs.61,182 as per Exhibit A3, as awarded by the Tribunal and the same is hereby confirmed.

12. Accordingly, the award of the Tribunal in M.C.O.P.No. 74 of 2011 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Permanent disability	Rs. 3,60,000	Rs. 2,47,500/-
2.	Pain and sufferings	Rs. 25,000/-	Rs. 10,000/-
3.	Nutrition and Extra Nourishment	Rs. 15,000/-	Rs. 5,000/-
4.	Transportation	Rs. 10,000/-	Rs. 5,000/-
5.	Medical Bills	Rs. 61,182/-	Rs. 61,182/-
6.	Loss of amenities	----	Rs. 5,000/-
7.	Attender's charges	----	Rs. 5,000/-
	Total	Rs. 4,71,182/-	Rs.3,38,682/-

The compensation awarded by the Tribunal is reduced from Rs.4,71,182/- to Rs.3,38,682/- which shall carry interest at the rate of 7.5% per annum.

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed to the limited extent indicated above. No costs. Consequently, connected M.P. is closed.

(ii) The quantum of compensation awarded by the Tribunal is reduced from Rs.4,71,182/- to Rs.3,38,682/-.



(iii) It is stated pursuant to the order dated 09.03.2011 passed in M.P.No.1 of 2011 in C.M.A.No.575 of 2011, the appellant/Insurance Company deposited 50% of the award amount together with interest and costs into the credit of M.C.O.P.No.29 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal. The balance amount of compensation is directed to be deposited by the appellant/Insurance Company within a period of twelve weeks from the date of receipt of a copy of this order.

(v) The first respondent/claimant is directed to withdraw the compensation with accrued interest. The excess amount if any lying in deposit shall be withdrawn by the Insurance Company. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To
1.The Motor Accidents Claims Tribunal,
(Court of Chief Judicial Magistrate),
Namakkal.

copy to

The Section Officer,
V.R.Section,
High Court,
Madras.

+1 cc to Mr.S.Manohar Advocate sr42028
+1 cc to Mr.A.R.Suresh Advocate sr43005

C.M.A.No.575 of 2011 and
M.P.No.1 of 2011

aa28/11/2019