IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 30.10.2019
CORAM:
THE HONOURABLE MRS. JUSTICE R. HEMALATHA
C.M.A.No.3722 of 2013
and
C.M.P.No.5926 of 2017

Universal Sompo General Insurance Co. Ltd.,
"Capitale Towers, " 5th Floor,
"B" - Wing No.554-555,
Anna Salai, Teynampet, Chennai. . Appellant /2nd respondent

Vs.

1.Anthonisamy ..1st Respondent/ Petitioner

2.R. Gopinath ..2nd Respondent/1st respondent
(2nd respondent set exparte before the Lower Court and hence may be dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree made in M.C.O.P.No.857 of 2010, dated 14.03.2013 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Pondicherry.

For Appellant : Mr.N. Vijayaraghavan

For Respondent-1 : Mr.A. Muthukumar
R2 : Ex-parte

JUDGMENT

The appellant, Universal Sompo General Insurance Co. Ltd., is the second respondent in M.C.O.P.No.857 of 2010, on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Pondicherry. The first respondent/injured filed the claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.12,00,000/- for the injuries sustained by him in a road accident on 02.12.2009.

2.The case of the claimant is that, on 02.12.2009, he was riding his bi-cycle along Vazhudavur Road, Thilaspet, and at about 8.45 p.m, a speeding lorry bearing Registration No: TN-

69-C-9419 hit him, as a result of which he sustained grievous injuries. According to the claimant, the rash and negligent driving of the driver of the lorry was the cause for the accident, and that since the said lorry is insured with the Universal Sompo General Insurance Co. Ltd., the owner and the insurer are jointly and severally liable to pay compensation.

3.The second respondent (owner of the offending vehicle) remained absent before the Tribunal and therefore he was set exparte. The learned III Additional District Judge, Pondicherry after analyzing the evidence on record, awarded a compensation of Rs.4,03,500/- with interest at 7.5% p.a as compensation to the claimant. Aggrieved over the orders passed by the Tribunal, the Insurance Company has filed the present appeal.

4.Mr.N.Vijaya Raghavan, learned counsel appearing for the appellant/Insurance Company contended that the Tribunal was wrong in adopting multiplier method for calculating the loss of earning capacity, especially when there is no permanent functional disability and further contended that exorbitant amounts were awarded under other heads also. He therefore prayed for scaling down the compensation.

5.Mr.A.Muthu Kumar, learned counsel appearing for the first respondent contended that as per the disability certificate issued by Dr.G.Senthil (PW2), the claimant has malunion of right supracondylar and right humerus bones and hence the claimant is unable to continue to do his work. He further contended that the Tribunal after analyzing the oral and documentary evidence adduced on both sides, awarded a just compensation to the claimant and the same need not be disturbed at this stage.

6. A perusal of the discharge summaries (Exs.P.4 - 6) shows that the claimant has sustained a fracture of right humerus and malunion of right supracondylar and right humerus bones. Dr.G. Senthil(P.W.2) has assessed the partial permanent disability at 45%. It is seen from medical bills (Exs.P.14,P.15 P.17 and Ex.P18 ) that the claimant has incurred medical expenses to the tune of Rs.73,663/- and the Tribunal after considering the same has awarded Rs.74,000/- towards medical expenses.

7. A Division Bench of the Hon'ble Supreme Court of India in the decision in Rajkumar vs Ajaykumar and Another reported in 2011 (1) SCC 343 has held that where the claimant suffers permanent disability as a result of injuries, the assessment of compensation under the head loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity and that the Tribunal should not mechanically apply the percentage of permanent disability as the

percentage of economic loss or loss of earning capacity. It is further observed that in most of the cases, the percentage of economic loss ie., percentage of loss of earning capacity arising from a permanent disability would be different from the percentage of permanent disability.

8.Considering the injuries sustained by the claimant, the award passed by the Tribunal cannot be said to be exorbitant. Therefore, I do not see any reason to interfere with the findings of the Tribunal.

9.In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs.

(ii) The orders passed by the Tribunal is upheld.

(iii) The appellant/Insurance Company is directed to deposit the award amount i.e.,Rs.4,05,500/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.857 of 2010 on the file of III Additional District Judge, Motor Accident Claims Tribunal, Pondicherry, within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the first respondent/claimant is at liberty to withdraw the same after following due process of law.

(v) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

smn

To

The Judge,
Motor Accident Claims Tribunal,
III Additional District Judge, Pondicherry.

Copy to:
The Section Officer, VR Section, High Court,Madras.

+1cc to Mr.N.Vijayaraghavan , Advocate SR.No. 90881
+1cc to Mr.A.Muthukumar, Advocate SR.No. 90071

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A.SK(21/07/2020)