



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.09.2018

Delivered on : 15.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.1638 of 2018

Reliance General Insurance Co. Ltd.,
6, Haddows Road,
Chennai-6.

...

Appellant/2nd Respondent

Vs

1.B.Prabakaran

... 1st Respondent/Petitioner

2.V.V.Ramachandran

...2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 24.04.2015 passed in M.C.O.P.No.3339 of 2011 on the file of the Motor Accident Claims Tribunal (VI Court of Small Causes), Chennai.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.K.Prem Kumar
for respondent No.1

JUDGMENT

Calling in question the quantum of compensation of Rs.7,99,000/- awarded by the Tribunal in M.C.O.P.No.3339 of 2011, dated 24.4.2015, the appellant insurance company has filed the present appeal.

2. It is the case of the first respondent that on 21.6.2011 at about 4.30 P.M., he was travelling in the second respondent's van bearing registration No.TN-21 AC 5699 from Kamarajapuram to Magaral and while the vehicle was going near Kamarajapuram lake, the driver of the van drove the same in a rash and negligent manner and applied sudden break and the van capsized on the right side of the road. Due to the impact, the first respondent sustained multiple grievous injuries all over the body. The second respondent is the owner of the vehicle



which caused the accident and the appellant is the insurance company which insured the said vehicle. In this backdrop, the appellants claimed compensation to the tune of Rs.10 lakhs.

3. The appellant insurance company refuted the contents of the claim petition by filing a counter statement. It was alleged that the first respondent is put to strict proof of the vehicle bearing registration No.TN-21 AC 5699 was covered at the material time under the policy of insurance issued by the appellant insurance company. The appellant insurance company also denied the age, occupation and monthly income of the first respondent and that the total compensation claimed is highly excessive.

4. The learned Tribunal, by the award dated 24.4.2015 passed in M.C.O.P.No.3339 of 2011, awarded total compensation of Rs.7,99,000/-. Aggrieved by the same, the appellant insurance company has filed the present appeal.

5. The learned counsel for the appellant contended that the Tribunal erred in awarding huge compensation of Rs.7,99,000/- without any basis for the same. He would submit that the Tribunal failed to note that P.W.2-Doctor is not a competent witness to assist the Court, more particularly, when the first respondent has sustained orthopedic injury. The learned counsel further submitted that the Tribunal, in the absence of acceptable proof towards alleged avocation and income, erred in assuming Rs.9,000/- per month as income as Supervisor and applying multiplier method in granting loss of earning power. According to the learned counsel, the Tribunal erred in assuming 25% loss of earning capacity to award Rs.7,29,000/- contrary to the principles laid down by the Apex Court.

6. Per contra, reiterating the award, the learned counsel for the first respondent submitted that the total compensation of Rs.7,99,000/- awarded by the Tribunal for the injuries sustained by the first respondent, in fact, inadequacy. Further, the learned counsel submitted that the Tribunal has not awarded any amount towards pain and suffering, transport charges, extra-nourishment, medical expenses, future medical expenses and loss of income during treatment period and thus, the learned counsel prayed for awarding of amounts under the aforesaid heads also by exercising the power of this Court .

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

8. It is not necessary for this Court to narrate entire



facts in detail qua negligence and liability. It is for the reasons that these things are recorded by the Tribunal that the appellant is liable to pay the compensation to the first respondent. Since the aforesaid finding of the Tribunal is based on evidence and also none of these findings are under challenge, this Court is of the considered view that the finding of the Tribunal that the appellant to pay the compensation is confirmed.

9. The only point that arises for consideration in this appeal is whether the compensation awarded by the Tribunal is exorbitant as alleged by the appellant.

10. In the accident, the first respondent sustained displaced fracture neck of femur left hip, which was evident from Ex.P3-discharge summary issued by Sundaram Medical Foundation, Dr.Rangarajan Memorial Hospital, Chennai and the first respondent was inpatient in the hospital from 23.6.2011 to 27.6.2011. During treatment closed reduction and DHS fixation left hip was done. As per Ex.P2-scan report, there is an impression that "fracture of neck of left femur".

11. P.W.2-Dr.Saravanabavanandham examined the first respondent after the accident and assessed the disability at 50% for the displaced fracture of neck of femur on left side. Ex.P8 is the disability certificate issued by him.

12. Though the appellant contended that the Tribunal failed to note that P.W.2 is not a competent witness to assist the Court, nothing has been produced to rebut the oral evidence of P.W.2 as well as Ex.P8-disability certificate. Merely stating that the evidence of P.W.2 no way assist the Court is not enough.

13. The Tribunal held that the earning skill of the first respondent was affected due to the road accident and therefore, for the purpose of calculating the earning capacity, it would be appropriate to take 25% loss. Considering the nature of injuries sustained by the first respondent, for the purpose of calculating earning capacity, 25% loss taken by the Tribunal is perfectly correct and this Court maintained the same, as the Tribunal having seen the injured fixed 25% loss.

14. In his claim petition, the first respondent stated that he was a Supervisor in construction work in Senthil Construction, Kancheepuram and was earning Rs.15,000/- per month. But no proof has been produced. In the absence of proof, the Tribunal has fixed the monthly income of the first respondent at Rs.9,000/-. Adding 50% towards future prospects, the Tribunal has taken the monthly income at Rs.13,500/-.



WEB COPY

15. In M.Shivakumar v. The Managing Director, BMTC, reported in 2017 (1) TN MAC 598 (SC), the Hon'ble Supreme Court assessed the monthly income of a Casual worker as Rs.15,000/-. In the aforesaid decision, the Hon'ble Supreme Court held:

"8. For a Casual Worker, who goes from house to house and place to place doing his Painting work it is difficult to get any evidence, since there is no Employer. He does his daily work sometimes piece rated work as well. That is why he made a moderate self estimation of his Income to Rs.15,000 to Rs.16,500."

16. In the present case, though the first respondent mentioned his employer, he had failed to produce any proof to show his monthly income, nor he examined his employer. However, the oral evidence of P.W.1/injured assumes much importance. The appellant insurance company has not adduced any oral evidence to disprove the oral evidence of P.W.1. Therefore, this Court finds that considering the avocation of the first respondent, the Tribunal was right in taking the monthly income of the first respondent at Rs.13,500/- after adding 50% future prospects.

17. The learned counsel for the appellant contended that multiplier method is not warranted in this case and therefore, the Tribunal erred in adopting the multiplier method. The injuries sustained by the first respondent due to accident are not denied by the appellant. Further, on a perusal of the award, the Tribunal recorded the arguments of the learned counsel for the appellant that disability percentage 50% is higher side. There is no dislocation and only 30% is right percentage. Thus, it is the admitted case of the appellant that the first respondent sustained 30% disability and the 30% disability affected his normal avocation and also loss of earnings.

18. It is settled that efforts should always be made to award an adequate compensation not only for the physical injury and treatment, but also for the loss of earnings and inability to lead a normal life and enjoy amenities, which would have been enjoyed but for the disability caused due to the accident.

19. As stated supra, the Tribunal has taken the disability as 25% for the purpose of determining the compensation towards loss of earning capacity. Considering the nature of injuries, the calculation for the loss of earning capacity taken by the Tribunal at Rs.7,29,000/- is absolutely reasonable warranting no interference.

20. The Tribunal awarded Rs.70,000/- towards medical



expenses. The first respondent produced Ex.P4-medical bills where from it is seen that he had incurred Rs.69,228.52 towards medical expenses. Since Rs.70,000/- awarded by the Tribunal is based on documentary evidence, the same is maintained.

WEB COPY

21. The learned counsel for the first respondent submitted that the first respondent is entitled more compensation than awarded by the Tribunal without filing separate appeal and/or cross objection and it is obligatory on the part of the Appellate Court to consider the same and to award enhanced compensation. The learned counsel has not produced any citation in support of his contention. However, this Court is taken judicial note of the following decisions of the Hon'ble Supreme Court as well as Bombay High Court in considering the arguments made by the learned counsel for the first respondent.

22. In Jitendra Khimshankar Trivedi and others v. Kasam Daud Kumbhar and others, reported in (2015) 4 SCC 237, the Hon'ble Supreme Court held:

"12. The Tribunal has awarded Rs.2,24,000 as against the same, the claimants have not filed any appeal. As against the award passed by the Tribunal when the claimants have not filed any appeal, the question arises whether the income of the deceased could be increased and compensation could be enhanced. In terms of Section 168 of the Motor Vehicles Act, the courts/the Tribunals are to pass awards determining the amount of compensation as to be fair and reasonable and accepted by the legal standards. The power of the courts in awarding reasonable compensation was emphasised by this Court in Nagappa v. Gurudayal Singh, (2003) 2 SCC 274, Oriental Insurance Co. Ltd. v. Mohd. Nasir, (2009) 6 SCC 280 and Ningamma v. United India Insurance Co. Ltd., (2009) 13 SCC 710. As against the award passed by the Tribunal even though the claimants have not filed any appeal, as it is obligatory on the part of the courts/the Tribunals to award just and reasonable compensation, it is appropriate to increase the compensation."

23. Relying upon the decision of the Hon'ble Supreme Court in Jitendra Khimshankar Trivedi and others, supra, in Oriental Insurance Co. Ltd. v. Smt.Kiran and others, reported in 2017 SCC OnLine Bom 7723, the Bombay High Court held as under:

"8. It is clear from the above judgment that even in an appeal by the non-claimant, the claimant can indeed seek enhancement in quantum of compensation



even without filing any cross-objection and it is obligatory for the appellate court to consider the same and award him the compensation which, in its opinion, is just and fair.

WEB COPY

9. This being the law settled by Hon'ble Supreme Court, I do not think that there is any scope left out to consider the argument canvassed by learned counsel for the appellant. The argument of learned counsel for the appellant is, therefore, rejected. Accordingly, I find that the oral claim raised on behalf of the claimants seeking enhancement of compensation in the present appeal is tenable before this Court."

The aforesaid decisions of the Hon'ble Supreme Court and the Bombay High Court are taken note of by this Court in considering the arguments of the learned counsel for the first respondent and those two decisions will squarely applicable to the case on hand.

24. Admittedly, in the case on hand, the Tribunal has not awarded any amount towards pain and suffering, transport charges, extra-nourishment, medical expenses, future medical expenses and loss of income during treatment period. Following the decisions of the Hon'ble Supreme Court as well as the Bombay High Court, supra, and in the interest of justice, this Court considers it appropriate to award Rs.25,000/- towards pain and suffering; Rs.20,000/- towards transport charges; Rs.10,000/- towards extra-nourishment; Rs.10,000/- towards attender charges and Rs.15,000/- towards future medical expenses. Thus, the total compensation of Rs.7,99,000/- awarded by the Tribunal is enhanced to Rs.8,79,000/- as under:

Loss of earning capacity:	Rs.7,29,000.00
Medical expenses :	Rs. 70,000.00
Pain and suffering :	Rs. 25,000.00
Transport charges :	Rs. 20,000.00
Attender charges :	Rs. 10,000.00
Extra-nourishment :	Rs. 10,000.00
Future medical expenses :	Rs. 15,000.00

Total :	Rs.8,79,000.00

25. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. However, the award dated 24.4.2015 passed in M.C.O.P.No.3339 of 2011 on the file of the Motor Accident Claims Tribunal (VI Court of Small Causes), Chennai is modified, thereby directing the appellant to pay Rs.8,79,000/- to the first respondent with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within



a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent is permitted to withdraw the same on filing application before the Tribunal. The first respondent is directed to pay the requisite amount of court fee within a period of one month from the date of this judgment. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vs

To

The Motor Accidents Claims Tribunal,
Vi Court of Small Causes,
Chennai.

Copy TO

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

+lcc to Mr.S.Arun Kumar, Advocate, S.R.No. 24658

C.M.A.No.1638 of 2018

GP(CO)
GN(14/10/2019)