IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2836 of 2019
and
C.M.P.No.14766 of 2019

The Manager,
United India Insurance Co. Ltd.,
Silingi Buildings,
No.134, Greams Road,
Chennai - 600 006. ... Appellant/2nd Respondent

vs.

1.A.Mohammed Thameem

2.The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai - 600 003. ... Respondents/Petitioner & 1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 12.07.2018 made in MCOP.No.1480 of 2010 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : Mr.S.Arun Kumar

For Respondent 1 : Mr.A.V.Jay Ganesh

For Respondent 2 : Mr.V.C.Selvasekaran

JUDGMENT

[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

This appeal has been filed by the Insurance Company challenging the award dated 12.07.2018 passed by the Motor Accident Claims Tribunal, Sixth Court of Small Causes, Chennai in MCOP.No.1480 of 2010.

Brief facts leading to the filing of the instant appeal:

2. The first respondent sustained injuries as a result of an accident caused by a lorry bearing registration No.TN07-P-7912 owned by the second respondent and insured with the Appellant. The accident happened on 03.02.2010 while the first respondent was riding his motor cycle bearing registration No.TN05-W-4853 along the Vaidyanathan Over Bridge, Eastern side, Tondiarpet, Chennai from east to west direction, when the lorry bearing registration No.TN04-P-7912 (insured vehicle) driven by its driver on the same direction in a rash and negligent manner dashed against the motor cycle by its left side bumper. As a result of the said impact, the first respondent fell down from the motor cycle and sustained grievous injuries.

3. The first respondent preferred a claim before the Motor Accident Claims Tribunal, Sixth Court of Small Causes, Chennai in MCOP.No.1480 of 2010 seeking a compensation of Rs.60,00,000/- for the injuries sustained by him as a result of the accident caused by the lorry (insured vehicle).

4. The Motor Accident Claims Tribunal by its award dated 12.07.2018 passed in MCOP.No.1480 of 2010, directed the Appellant insurance company to pay the first respondent a sum of Rs.33,95,800/- together with interest at the rate of 7.5% per annum from the date of numbering of the claim petition i.e., from 20.04.2010 till the date of realisation with costs.

5. Aggrieved by the award dated 12.07.2018 passed in MCOP.No.1480 of 2010, the insurance company has filed this appeal.

6. Heard Mr.S.Arun Kumar, learned counsel appearing for the Appellant, Mr.A.V.Jayganesh, learned counsel appearing for the first respondent and Mr.V.C.Selvasekaran, learned counsel appearing for the second respondent.

Discussion:

7. The Appellant insurance company has not challenged the adverse finding of negligence by the Tribunal on the driver of the insured lorry. Therefore, the finding of the Tribunal that the driver of the insured lorry was responsible for the cause of the accident has attained finality.

8. The Appellant insurance company has challenged the award on the ground that the quantum of compensation assessed by the Tribunal is excessive. It is their case that the Tribunal has assessed without any basis that the first respondent would have earned a monthly income of Rs.11,000/- and according to them, the Tribunal has also erroneously added 30% towards loss of Future Prospects under the impugned award. Further according

to them, the compensation awarded by the Tribunal under various heads is excessive and not in accordance with law.

9. This Court has perused and examined the impugned award as well as the evidence and materials available on record.

10. Before the Tribunal, the first respondent/claimant has filed 17 documents which were marked as Ex.P1 to Ex.P17 and two witnesses were examined on his side viz., PW1 and PW2. On the side of the Appellant, neither any witness was examined nor any document filed.

11. It is the case of the first respondent before the Tribunal as seen from the claim petition that due to the accident, he has sustained the following injuries: (a) Amputation of Right Hand, (b) Upper 3rd of Humorous (Below Shoulder), (c) Injury Over Right Shoulder, (d) Operation done and (e) Multiple injuries all over the body.

12. To prove the disability caused to the first respondent, the first respondent has examined Dr.K.J.Mathiazhagan as PW2. The doctor has issued Ex.P19/Disability Certificate and he has fixed the total permanent disability of the first respondent at 85%. Ex.P6 is the X-ray of the first respondent and Ex.P18 is the photograph of the first respondent taken at the time of assessing the disability. In the disability certificate (Ex.P19), it is seen that the injuries sustained by the first respondent as "Crush Injury Right Upper Limb". Only after considering the injuries, PW2 has assessed the disability of the first respondent at 85%.

13. The Government of Tamil Nadu has also issued National Identity Card and pass book with disability certificate for the first respondent. Ex.P9 is the disability certificate of ortho surgeon of Rajiv Gandhi Government General Hospital, Chennai and the said ortho surgeon has also assessed the disability at 85%.

14. After the accident, the first respondent was taken to the Government Stanley Hospital and then, he was shifted to Padmini Nursing Home, Chetpet where he took treatment as inpatient from 03.02.2010 to 11.02.2010. Surgery was done to him on 04.02.2010 and his right hand was amputated. Then, he took further treatment in Hande Hospital from 11.02.2010 to 24.02.2010. Again another surgery was done on 17.02.2010. Further, the first respondent took treatment in Right Hospital as inpatient from 08.03.2010 to 22.03.2010. There also a surgery was done on him on 09.03.2010. The Discharge summaries /Ex.P3, Ex.P4 & Ex.P5 issued by the respective hospitals clearly proved that the first respondent sustained grievous injuries due to the accident.

15. The Tribunal has considered the oral and documentary evidence and only thereafter, has come to the right conclusion that the first respondent has sustained 85% permanent disability as a result of the injuries sustained by him due to the accident.

16. The first respondent was a proprietor in M/s.Madeena Transport and he was also driving his lorries and he also claimed that he was earning a monthly income of Rs.25,000/-. Ex.P11 is the copy of the Registered Declaration filed by the first respondent for the proprietorship concern "M/s.Madeena Transport". Ex.P12 of the copy of the insurance policy issued in the name of the first respondent for two lorries bearing registration No.TN04 C 9369 and TN09 E 9756 for the period from 17.08.2012 to 16.08.2013 and from 09.07.2012 to 08.07.2013 respectively. Ex.P13 is the driving license of the first respondent. The first respondent has stated in his oral license that he owned seven lorries and driving one of his lorry and he was also running a Transport business and earning Rs.25,000/- per month. He has also deposed that after the accident, he could not drive his lorry and hence, he has sold his lorries. The copy of the insurance policy for two of his lorries were also filed as Exhibits. The Tribunal after considering the same has given a finding that the first respondent is the owner of the lorries bearing registration Nos.TN04-C-9369 and TN09-E-9756.

17. However, the Tribunal did not accept the contention of the first respondent that he was earning a monthly income of Rs.25,000/- at the time of the accident as he did not provide sufficient documentary evidence to that effect. The Tribunal therefore fixed the notional monthly income of the first respondent at the time of the accident at Rs.11,000/-.

18. The Tribunal after considering the grievous injuries sustained by the first respondent and his inability to work as a driver in future has applied multiplier method after assessing the compensation. The age of the first respondent is proved through his driving license (Ex.P13) and his date of birth is 06.02.1977 and hence, on the date of the accident i.e., on 03.02.2010, he has completed 32 years, 11 months and 28 days. The Tribunal has therefore fixed the age of the first respondent at 33 years.

19. The Tribunal has also rightly added 40% towards loss of future prospects following the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Co., Ltd., vs. Pranay Sethi and others reported in 2017 (16) SCC 680. Accordingly the Tribunal has assessed the loss of earning for the first respondent at Rs.29,56,800/- as detailed below:

Monthly income	:	Rs.11,000/-
Add: 40% Future Prospects	:	Rs. 4,000/-
Total	:	Rs.15,400/-
15,400 x 12 x 16 x 100%	= 29,56,800/-	

20. The Tribunal has awarded a sum of Rs.50,000/- towards pain and suffering, Rs.30,000/- towards Extra nourishment, Rs.15,000/- towards Transport to Hospital, Rs.1,000/- towards damages to clothes.

21. The Tribunal has calculated the Attender charges as Rs.11,400/- on the basis that the first respondent was admitted in the hospital as inpatient for 38 days and during the said period, the first respondent would have required assistance of attender.

22. Ex.P7 series is the medical bills to the tune of Rs.1,87,554/- and it has been issued only during treatment period and the Tribunal has rightly accepted the said sum towards reimbursement of medical expenses.

23. Ex.P10 is the quotation from Endolite India Limited for the cost of fitment of Endolite above elbow Prosthetic system. But the first respondent has examined the Doctor regarding the cost of fitment of the same. However, in view of his amputation and considering the nature of injuries sustained by the first respondent, the Tribunal has rightly awarded a sum of Rs.80,000/- for fixing artificial limb under the head of future medical expenses.

24. The Tribunal has also rightly awarded a sum of Rs.14,000/- towards loss of income for the period of 38 days when he was an inpatient in the hospital and the said sum was calculated on the basis that the first respondent would have earned Rs.11,000/- per month.

25. The Tribunal has also awarded a sum of Rs.50,000/- to the first respondent towards loss of amenities,due to the loss of his right hand. Taking into consideration that he will have to face lot of difficulties in his day to day life.

26. The Tribunal under the impugned award has awarded the compensation to the first respondent in the following manner

Sl. No.	Heads	Amount (Rs.)
1	Loss of earnings	29,56,800.00
2	Pain and suffering	50,000.00

Sl. No.	Heads	Amount (Rs.)
3	Extra nourishment	30,000.00
4	Transport to Hospital	15,000.00
5	Damages to clothes	1,000.00
6	Medical expenses	1,87,554.02
7	Future Medical Expenses	80,000.00
8	Loss of income	14,000.00
9	Loss of Amenities	50,000.00
10	Attender Charges	11,400.00
	Total	33,95,754.01
	Rounded off	33,95,754.00

Conclusion:

27. For the foregoing reasons, this court does not find any infirmity in the impugned order. Accordingly, the appeal shall stand dismissed. However, the rate of interest fixed by the Tribunal at the rate of 7.5% per annum is confirmed. The Appellant Insurance Company is directed to deposit the entire award amount i.e., Rs.33,95,754 together with interest and costs after deducting the amount, if any already deposited, to the credit of MCOP.No1480 of 2010 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount together with accrued interest to the first respondent through RTGS within a period of four weeks thereafter. No costs. Consequently connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
VI Court of Small Causes, Chennai.

2.The Section Officer,
VR Section, High Court,
Chennai.

+1 CC to Mr.S.Arun Kumar, Advocate sr 82446.

PA(CO)
SP(09/06/2020)