IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.11.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.2301 of 2019

Duraisamy ... Appellant / claimant

..vs..

1. Palanisamy
2. The Oriental Insurance Co. Ltd.,
   Kumar Complex, 1st Floor,
   146 West Car Street,
   Tiruchengode ... Respondents / Insured & Insurer

Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree, dated 15.11.2018 made in M.C.O.P.No.299 of 2010 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Sankari.

For Appellant : Mr. C.Paraneedharan
For Respondents: Mr. J.Chandran, for R-2

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the appellant / claimant, as against the award dated 15.11.2018 passed by the Motor Accident Claims Tribunal, Subordinate Court, Sankari, in MCOP No.299 of 2010.

2. According to the appellant / claimant, on 20.12.2009 when he was proceeding near 1st U Turn from the top of Tiruchengodu Arthanareeswara Temple, in Yamaha motorcycle bearing Registration No.TN34-B-3285, the Pulsor motorcycle bearing Registration No.TN34-J-5558 which was ridden by its driver from the same direction dashed on the claimant, due to which the claimant sustained multiple injuries and took treatment in the Ganga Hospital, Coimbatore. The claimant filed a claim petition before the Tribunal claiming a sum of Rs.5,00,000/- as total compensation as against the respondents / Insured and Insurer of the Pulsor Motorcycle.

3. The Tribunal, after elaborate trial, has held that the accident had happened only due to the rash and negligent driving of the driver of the Pulsor motorcycle, owned by the first respondent and insured with the second respondent / Insurance Company (Insured) and accordingly, fastened the

liability on the second respondent herein and arrived at the total compensation of Rs.3,50,000/-. Branding the award as disproportionate and lesser, the claimant / appellant has preferred this Appeal seeking enhancement of the compensation awarded by the Tribunal.

4. Heard the learned counsel for the appellant / claimant and the learned counsel for the second respondent / Insurance Company. Despite ordering notice, the first respondent is not served till now. Hence, the Appeal itself is taken up for final disposal, since the disposal of this case will not in any way affect his rights.

5. The learned counsel for the appellant / claimant submitted that the Tribunal has erred in awarding lesser compensation under the heads 'loss of income during treatment period' and 'future medical expenses'. He further submitted that till the date of filing of the Appeal, the claimant was visiting the hospital for periodical medical checkup and hence the amount awarded towards pain and suffering and mental agony needs significant increase. He also submitted that the ultimate award of Rs.3,50,000/- under various heads is very meager and hence the award of the Tribunal suffers from legal infirmities.

6. Per contra, the learned counsel for the second respondent / Insurance Company has submitted that when it is the duty of the claimant to prove that the rider of the Pulsor motorcycle was in possession of a valid driving licence and the motorcycle was also insured with the Insurer on the date of the accident, contrary to the same the Tribunal has simply accepted the documentary evidence produced on the side of the claimant and has fastened the liability on the Insurer based on the coverage of Insurance Policy, which is not justified; in any event, the compensation awarded by the Tribunal is highly exorbitant and needs reduction; the quantum arrived at does not commensurate with the injuries sustained by the claimant.

7. This Court has considered the said submissions made by the learned counsel for the claimant / appellant and Insurance Company / second respondent and perused the materials available on record.

8. It is not in dispute that the claimant / appellant met with an accident on 20.12.2009 at 07.00 am. He was aged 60 at the time of accident and the claimant claimed that he earned a sum of Rs.7,000/- per month by doing handloom business. To prove the said factum, the appellant / claimant has adduced evidence before the Tribunal. But on the contrary, the Insurer has neither produced any evidence nor produced documents to disprove the claim made by the claimant. Hence, in the absence of any proof therefor, the Tribunal has fastened the liability on the Insurer, based on the documents

produced by the claimant, which in the opinion of this Court, is justified. Further, the Tribunal has arrived at the total compensation at Rs.3,50,000/-, the breakup details of which reads thus:-

Heads	Amount / INR
Loss of income (Rs.9,000/- x 12 x 9)	1,95,000.00
Medical expenses	23,000.00
Pain and suffering	50,000.00
Transportation expenses	5,000.00
Extra nourishment	20,000.00
Attendant charges	5,000.00
Simple injuries	50,000.00
Damage to clothes	2,000.00
Total	3,50,000.00

9. This Court is of the opinion that the Tribunal has measured the compensation based on the genuine attempt of restoring the dignity of the claimant. In this case, a perusal of Ex.P-10-Medical bill and summaries of medical treatment would clearly establish the crush injury of right foot with traumatic amputation of Great Toe at IP Joint level and compound communited fracture on III Toe PPX and other injuries to the claimant. Placing reliance on the same, the Tribunal has awarded compensation towards Medical expenses, pain and suffering, Attendant charges, Extra nourishment and Damages to clothes. Also, the Tribunal, by relying upon the decision reported in the case of National Insurance Co. Ltd. v,. Madhu and others (CMA No.695/2018) and by taking into consideration that the weaving is an expert's work and it is very difficult to get a weaver for job not less than Rs.10,000/- per month, has taken the monthly income of the claimant at Rs.9,000/-, adopted the multiplier of 9 and arrived at the loss of income at Rs.1,95,000/- for 20% disability. The methodology adopted by the Tribunal cannot be found fault with, since the same is based upon the Division Bench decision of this Court, referred to supra.

10. In fact, the Tribunal, apart from granting loss of income by adopting multiplier method has granted compensation under the head 'simple injury' also. Since the Tribunal has not awarded any compensation under the head 'future medical expenses', this Court is not disturbing the amount awarded under the head 'simple injury' as it would offset the same.

11. In the result, the Civil Miscellaneous Appeal filed by the appellant / claimant is dismissed, by confirming the findings on negligence and quantum rendered by the Tribunal.

12. The second respondent / Insurance company is directed to deposit the entire compensation amount, along with interest and costs, as awarded by the Tribunal, less the amount already deposited, if any, 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 deposited amount to the Savings Bank Accounts of the claimant / injured / appellant herein, within one week thereafter, through RTGS. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

srk

To
1.The Judge,
Motor Accident Claims Tribunal, Subordinate Court, Sankari.

2. The Section Officer, V.R.Section,
Madras High Court, Chennai 104

C.M.A.No.2301 of 2019

A.SK(07/08/2020)