

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.3533 of 2019
and CMP No.20635 of 2019

M/s Reliance General Insurance Co Ltd.,
Plot No.2504, Rai's Tower,
2nd Avenue, 2nd Floor,
Anna Nagar, Chennai - 40 ... Appellant/2nd Respondent

vs.

1. Vijayakumar ...1st Respondent/Petitioner
2. G. Boopathy ...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 23.10.2018 made in MCOP No.154 of 2013 on the file of Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr.S. Arun Kumar

For Respondents : Mr.K. Varadha Kamaraj

JUDGMENT

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

This appeal has been filed by the Insurance Company challenging the award dated 23.10.2018 passed by the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai. in MCOP.No.154 of 2013.
Brief facts leading to the filing of the instant appeal:

2. The first respondent sustained injuries on 01.04.2012, as a result of an accident caused by a Van bearing Registration No.TN-73-X-7850, owned by the second respondent and insured with the appellant. The accident had occurred when the first respondent was riding a motorcycle bearing Registration

No.TN-73-X-7850 at a place near Pambai Canal towards Arakkonam to Kancheepuram Road, at that time, a Van bearing Registration No.TN-21-AB-1549 coming from opposite direction, dashed against the first respondent's motorcycle and as a result of the same, he sustained multiple injuries.

3. The first respondent preferred a claim petition before the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai in MCOOP No.154 of 2013, seeking a compensation of Rs.10,00,000/- for the injuries sustained by him, as a result of the accident caused by the insured van.

4. The Tribunal, by its Award dated 23.10.2018 passed in MCOP No.154 of 2013, directed the appellant/Insurance Company to pay the first respondent a sum of Rs.31,48,100/- together with interest at 7.5% per annum from the date of numbering the petition i.e., from 7.01.2013 till the date of deposit for the injuries sustained by the first respondent. Aggrieved by the quantum of compensation awarded by the Tribunal, the Insurance Company has filed the present appeal.

5. Heard Mr.S. Arun Kumar, learned counsel appearing for the Insurance Company and Mr.K. Varadha Kamarajar, learned counsel appearing for the claimants.

Discussion:

6. The Insurance Company has challenged the Award on the ground that the Tribunal failed to take note of the fact that the first respondent also contributed to the accident and they have also challenged the Award questioning the quantum of compensation awarded by the Tribunal. According to the appellant, the compensation awarded by the Tribunal is excessive and the assessment of disability of the first respondent, as a result of the accident, is erroneous. It is also their case that the assessment of monthly notional income of the first respondent at Rs.15,000/- is erroneous and the Tribunal ought not to have applied the multiplier method for assessing the compensation as the first respondent was only a student.

7. The appellant Insurance Company has also challenged the Award on the ground that the Tribunal has erred in awarding excessive compensation towards transportation, pain and suffering, attender charges and loss of amenities.

8. Before the Tribunal, the first respondent/claimant has filed 12 documents, which were marked as Ex.P.1 to P.12 and he himself was examined as a witness (P.W.1). On the side of the Insurance Company, two documents have been marked as Exs.R.1 and R.2 and one witness was examined, who was its Officer.

9. The First Information Report was registered only against the driver of the insured van, bearing Registration No.TN-21-AB-1549 . The First Information Report does not reveal that three persons were travelling into motorcycle. The oral evidence of P.W.1 corroborates the contents of the first information report. No contra evidence has been produced by the appellant Insurance Company to establish that three persons were travelling in the motorcycle. The Tribunal has considered the oral and documentary evidence and only thereafter, has come to the conclusion that only due to rash and negligent driving by the driver of the insured van, the accident had occurred which resulted in the first respondent sustaining injuries. We, therefore, confirm the adverse finding of negligence only against the driver of the insured van.

10. The first respondent has claimed in his claim petition that he sustained the following injuries:-

1. Fracture of 2nd and 3rd Metacarpal Right hand
2. Fracture both bone forearm right
3. Grade III B Compound fracture shaft of femur
4. Fracture Both bone Right leg, undergone would debridement & External fixation knee spanning K Wire fixation for forearm, SSG done Ex fix & cost applied.

11. The discharge summaries issued by Rajiv Gandhi Government General Hospital under Exs.P.2 to P.4 would reveal that that the first respondent was admitted as inpatient from 01.04.2012 to 10.05.2012 for #2, 3rd Metacarpal, #BB Forearm ®, Grade III B CPD ® SOF #, # BB Leg(R), from 16.08.2012 to 03.10.2012 for "4 months old # ® SOF # BB leg, # BB Forearm,, K wire fixation,, Bridging plate for ® SOF and pain and deformity in ® eg." Thereafter from 15.11.2012 to 08.12.2012 for " 4 months old # BB Forearm(R), ORIF and ABCP Bone grafting and for fixation of # BB ® forearm." He also took conservative treatment on 17.06.2012, 28.06.2012, 15.07.2012 and 26.07.2012.

12. The photographs of the first respondent after accident (Ex.P.6) also reveals the physical condition of the first respondent externally after the accident. The Medical Board of Rajiv Gandhi Government General Hospital has also issued the disability certificate fixing the disability of the first respondent at 70%. P.W.1 has also deposed that after the accident, he is unable to do his day-to-day work as before.

13. As seen from the discharge summaries issued by the Rajiv Gandhi Government General Hospital and the disability certificate issued by the Medical Board, it can be inferred that the first respondent has sustained grievous injuries and has lost mobility because of the accident. The first respondent would certainly require the assistance of an attender for his day-today activities, as a result of the injuries sustained by him.

14. The first respondent is a student and studying Diploma in Mechanical Engineering in Cholan Polytechnic, Enjambakkam at the time of accident. A letter from the Principal of the said Educational Institution which is marked as Ex.P.7 will confirm that the first respondent was a student at the time of accident. As a student after completing his education, he will not be able to get all jobs pertaining to his qualification due to the grievous injuries sustained by him. Therefore, the Tribunal has rightly applied the multiplier method in assessing the compensation payable to the first respondent due to his loss of earning capacity. Even though the disability certificate shows the disability of the first respondent at 70%, the Tribunal has reduced on its own the disability to 60%.

15. The first respondent has not filed any documentary evidence regarding his academic excellence. Excepting for filing a letter from the Principal of Cholan Polytechnic, Enjambakkam to show that the first respondent was studying Mechanical Engineering in the said institution, no other certificates/mark sheets revealing his academic excellence has been filed. However, the Tribunal arrived the notional monthly income of the first respondent at Rs.15,000/-, which, in our considered view, is excessive. According to us, since the first respondent has not produced any documentary evidence in support of his academic excellence and after considering the year of the accident, we arrive at the notional monthly income of the first respondent at the time of accident as Rs.12,000/- and not Rs.15,000/-, as fixed by the Tribunal, which is an erroneous finding.

16. The Tribunal has rightly added 40% towards loss of future prospects to the first respondent, which is in accordance with settled principles of law.

17. The compensation awarded by the Tribunal under the heads of Transportation and Nourishment, attender charges, pain and suffering and trauma, loss of amenities and medical expenses are correct and is in accordance with the settled principles of law. The Medical expenses of Rs.20,000/-, awarded by the Tribunal, is also supported by medical bills, which were marked

as Ex.P.12 before the Tribunal. Except for the erroneous assessment of monthly income of the first respondent, the impugned award under all other aspects does not suffer any infirmity.

18. In view of the re-fixation of monthly income of the first respondent at Rs.12,000/-, compensation towards loss of earning capacity is arrived at Rs.14,51,520/- in the following manner instead of RS.27,21,600/- awarded by the Tribunal.

the award is modified by this Court in the following manner:

Heads	Awarded by the Tribunal	Awarded by this Court
Towards transportation and nourishing food	Rs.50,000/-	Rs.50,000/-
Attender charges	Rs.56,500/-	Rs.56,500/-
Medical expenses	Rs.20,000/-	Rs.20,000/-
Loss of earning power	27,21,600	Rs,14,51,520/-
Damage for pain, suffering and Trauma	Rs.2,00,000/-	Rs.2,00,000/-
Loss of amenities	Rs.1,00,000/-	Rs.1,00,000/-
Total	Rs.31,48,100/-	Rs.18,78,020/-

Conclusion:

19. In the result, the appeal stands partly allowed. The Appellant Insurance Company is directed to deposit the entire award amount as awarded by the this Court along with interest and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.154 of 2013 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 amount lying to the credit of MCOP.No.154 of 2013 to the claimant through RTGS within a period of four weeks thereafter and the claimant is permitted to withdraw the amount.. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

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

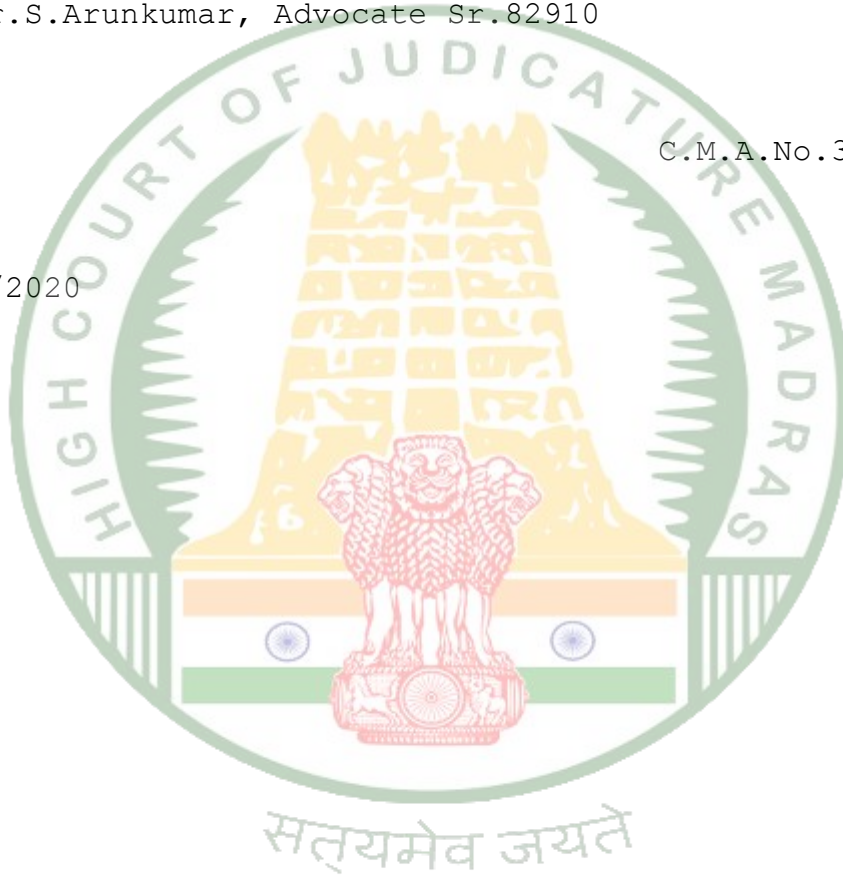
2.The Section Officer,
VR Section, High Court,
Chennai.

+lcc to Mr.K.Varadakamaraj, Advocate Sr.82558

+lcc to Mr.S.Arunkumar, Advocate Sr.82910

C.M.A.No.3533 of 2019

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