IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1907 of 2014

United India Insurance Company Limited,
Divisional Office,
No.2, Dr.Sankaran Road,
Namakkal. .. Appellant/2nd Respondent

vs.

1. Velusamy ..1st Respondent/Petitioner

2. V.Mani ..IInd Respondent/Ist Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 31.12.2013 made in M.C.O.P.No.410 of 2013 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate Court, Perambalur.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.T.Dharani

J U D G M E N T

The United India Insurance Company Limited, the second respondent in MCOP.No.410 of 2013 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Perambalur has filed the present appeal questioning the quantum of compensation awarded by the Tribunal. The 1st respondent / claimant filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.15,00,000/- for the injuries sustained by him in a road accident on 24.04.2013.

2. The case of the claimant is that on 24.04.2013, he was riding his motorcycle bearing Registration No.TN-39-AV-91995 with his daughter Deepa @ Nagavalli and his brother's daughter Nivedha as pillion riders on Palladam - Chettipalayam Road and at about 10.30 a.m., a speeding lorry bearing Registration No.TN-29-6696 hit the motorcycle, as a result of which, all of them were thrown out and sustained grievous injuries. According to the claimant, the accident took place due to the rash and negligent driving of the driver of the lorry bearing Registration No.TN-29-6696, belonging to the

second respondent and that since the said lorry was insured with the present appellant, the owner and the insurer are jointly and severally liable to pay compensation.

3. The learned Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Perambalur, after analysing the evidence on record, awarded a compensation of Rs.8,32,295/- together with interest at the rate of 7.5% per annum. Aggrieved over the orders passed by the Tribunal, the United India Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.D.Bhaskaran, learned counsel appearing for the appellant contended that when doctor Selvaraj (PW2) had assessed the partial permanent disability as 60%, the Tribunal took 57% as whole body disability, adopted multiplier method and awarded Rs.4,10,400/- for loss of earning capacity. He further contended that even in a case of amputation, whole body disability cannot exceed 50% and that exorbitant amounts were awarded under other heads and therefore, he prayed for scaling down the compensation.

5. The learned counsel for the claimant contended that the Tribunal, after considering the discharge summary and other medical bills had awarded just compensation and therefore, the same need not be disturbed at this stage.

6. In the instant case, a perusal of the discharge summaries Ex.P9 and Ex.P10 shows that the claimant had sustained a fracture of right tibia with malunion. The contention of the claimant is that he was engaged in the business of buying and selling bed sheets, earning a sum of Rs.10,000/- per month. In the decision in Rajkumar vs. Ajaykumar & Another in Civil Appeal No.8981 of 2010, it is held that, where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of 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 held that in most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability would be different from the percentage of permanent disability. In view of the above decision, multiplier method is warranted in the present case.

7. Doctor Selvaraj (PW2) had assessed the partial permanent disability as 60%. However the break-up of assessment of percentage is not found in the certificate. As already observed, the claimant has sustained a fracture of tibia and therefore, 25% is taken up as whole body disability. Since no income proof is adduced, notional income is fixed at Rs.4,000/- per month. It is contended that the claimant was

aged 40 years, but in the medical records, it is mentioned as 42 years and therefore, the proper multiplier to be adopted in the instant case is 14 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Loss of earning capacity:
= Rs.4,000 x 12 x 14 x 25/100
= Rs.1,68,000/-

A perusal of the medical bills shows that a sum of Rs.2,68,894/- was spent by the claimant and the Tribunal has awarded an exorbitant sum of Rs.3,08,895/-, without actually looking into the bills filed by the claimant. In the facts and circumstances of the present case, a sum of Rs.8,32,295/- awarded by the Tribunal is not commensurate with the nature of injuries sustained by the claimant. The manner in which the Tribunal has decided upon the quantum of compensation suffers from logical reasoning. Arbitrariness is glaringly visible in the instant case. This court totally disapproves the decision of the Tribunal and deprecates such practice.

8. The award passed by this Court under various heads is extracted hereunder:

S. No.	Head	Amount granted
1.	Loss of earning capacity	Rs.1,68,000/-
2.	Pain and Suffering	Rs.20,000/-
3.	Transportation	Rs.15,000/-
4.	Extra Nourishment	Rs.10,000/-
5.	Attender's charges	Rs.5,000/-
6.	Medical Bills	Rs.2,68,894/-
7.	Damage to clothes	Rs.500/-
8	Loss of income	Rs.12,000/- (Rs.4,000 x 3)
Total		Rs.4,99,394/-

9. Thus the quantum of compensation awarded by the Tribunal is scaled down from Rs.8,32,295/- to Rs.4,99,394/- which would carry interest at the rate of 7.5% per annum.

10. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is scaled down from Rs.8,32,295/- to Rs.4,99,394/-.

(iii) The appellant / United India Insurance Company Limited is directed to deposit the compensation awarded by this court i.e., Rs.4,99,394/- (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.410 of 2013 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate Court, Perambalur 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) The appellant / United India Insurance Company Limited is entitled to withdraw the excess amount paid by them over and above the amount awarded by this Court.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

ssn

To

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate Court,
Perambalur.

Copy To
The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.D.Bhaskaran, Advocate SR.No.92414

CMA.No.1907 of 2014

BS(CO)
GMY(11/06/2020)