

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.364 of 2014

and

M.P.No.1 of 2014

The Branch Manager,
M/s. Oriental Insurance Company Limited,
Micro Office, 81-C, 1st Floor,
K.R.C. Complex, Chennai Salai,
Krishnagiri - 635 001. Appellant/2nd Respondent

Vs.

1.Katturaja1st Respondent/Petitioner

2.The Correcpondent,
Nalanda Matric Higher Secondary School,
Periyamuthur Village, Kanagamutlu Post,
Krishnagiri Taluk & District. 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 17.06.2013 passed in M.C.O.P.No.1403 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

For Appellant : Mr.J.Chandran
For R1 : Mr.Mukund R.Pandiyar
For R2 : No appearance

J U D G M E N T

The appellant is the second respondent in M.C.O.P.No.1403 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri. The first respondent filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.10,00,000/- for the injuries sustained by him in a road accident on 23.08.2010.

2.The case of the claimant is that on 23.08.2010, he was riding his Hero Honda motorcycle bearing Registration No. TN 24

H 1696 on Bargur - Jagadevi Road and when he was nearing a temple, a speeding bus belonging to the second respondent bearing Registration No. TN 24 H 2787 hit him as a result of which, he fell down and sustained injuries. According to the claimant, the rash and negligent driving of the driver of the bus belonging to the second respondent was the cause of the accident and that since the said bus was insured with the present appellant, the owner and the insurer are jointly and severally liable to pay compensation.

3.The second respondent / owner of the bus remained absent before the Tribunal and therefore, set ex-parte. The appellant / Oriental Insurance Company Limited, contested the claim petition. The learned Special Subordinate Judge / Motor Accident Claims Tribunal, Krishnagiri, after analysing the evidence on record, awarded a compensation of Rs.5,77,200/- together with interest at the rate of 6% per annum to the claimant. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellant / Oriental Insurance Company Limited, has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4.Mr.J.Chandran, learned counsel appearing for the appellant / Oriental Insurance Company Limited, contended that the Tribunal without considering the injuries sustained by the claimant has awarded exorbitant amount of Rs.5,77,200/- to him and the same should be scaled down.

5.Per contra, Mr.Mukund R.Pandiyan, learned counsel appearing for the first respondent / claimant contended that the Tribunal after considering all the aspects of the case has awarded just compensation of Rs.5,77,200/- and the same cannot be disturbed at this stage.

6.No appearance on behalf of the second respondent.

7.A perusal of the discharge summary (Ex.P2) shows that the claimant has sustained the following injuries:

- (i) Left knee patellar tendon tear.
- (ii) Avulsion injury over left knee.

The following treatments were also given to the claimant:

(i) Patellar tendon reconstruction with semitendinosis tendon and above knee POP slab application was done on 24.08.2010.

(ii) Wound debridement, gastrocnemius (medical head) muscle flap and SSG over the defect of knee on left leg on 24.08.2010.

(iii) Wound debridement, local transportation flap and SSG on 30.08.2010."

Dr.Devendiran (P.W.2) has assessed partial permanent disability as 40% and the Tribunal after reducing the same to 30%, adopted multiplier method and awarded a sum of Rs.3,67,200/- towards loss of earning capacity. It is pertinent to point out that the permanent disability of 40% assessed by Dr.Devendiran (P.W.2) cannot be in respect of whole body and therefore 10% alone can be taken in respect of whole body disability. In the decision in Rajkumar vs Ajaykumar and Another reported in 2011 (1) SCC 343 it has been held that where the claimant suffers permanent disability as a result of injuries, the assessment of compensation under the head loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. In the instant case, the claimant was aged 26 years on the date of accident and he was a Mason by profession. The specific contention of the claimant is that he was earning a sum of Rs.6,000/- per month. The proper multiplier to be adopted is '17'. Considering the nature of injuries, 10% is taken up for calculating loss of earning capacity and the calculation towards loss of earning capacity is as follows:

$$\text{Rs.6,000/-} \times 12 \times 17 \times 10/100 = \text{Rs.1,22,400/-}$$

The claimant could not have been in a position to attend to his routine work atleast for three months and therefore a sum of Rs.18,000/- (Rs.6,000/- X 3 months) is awarded towards loss of income. The claimant produced medical bills to a tune of Rs.70,363/- and the same is awarded towards medical expenses. The various amounts the claimant is entitled to compensation is extracted hereunder:

S.No.	Head	Amount granted by this Court
1.	Loss of earning capacity	Rs.1,22,400/-
2.	Medical expenses	Rs.70,363/-
3.	Loss of income	Rs.18,000/-
4.	Pain and sufferings	Rs.20,000/-
5.	Extra nourishment	Rs.10,000/-
6.	Transportation	Rs.5,000/-
7.	Attender's charges	Rs.2,000/-
8.	Damage to clothes	Rs.500/-
Total		Rs.2,48,263/-

8. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

(ii) The compensation awarded by the Tribunal is scaled down from Rs.5,77,200/- to Rs.2,48,263/-.

(iii) The appellant / Oriental Insurance Company Limited is directed to deposit the compensation amount i.e., Rs.2,48,263/- 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.1403 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri, (less the amount already deposited by them) within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the appellant / Oriental Insurance Company Limited, the claimant / first respondent is at liberty to withdraw the same after following due process of law.

(v) The appellant / Oriental Insurance Company Limited is at liberty to withdraw the excess amount paid by them over and above the amount awarded by this Court.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

Copy to
The Section Officer,
VR Section,
High Court, Madras-600 104.

+1cc to Mr.J.Chandran, Advocate Sr.92324
+1cc to Mr.Mukund R.Pandiyan, Advocate Sr.91762

C.M.A.No.364 of 2014

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srg 28/07/2020