

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2019

CORAM

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

C.M.A. Nos. 2775 and 2776 of 2017
and
CMP Nos.15836 and 15838 of 2017

M/s.United India Insurance Co. Ltd.
AKM Tower, First Floor,
No.397-1, Junction Main Road,
Salem

.... Appellant in
both appeals

versus

1. Pradesa

.... 1st respondent
in C.M.A. No.2775
of 2017

1. Geetha

..... 1st respondent
in C.M.A. No.2776
of 2017

2. Manickam

.... Respondents in
both appeals

Prayer in CMA No.2775 of 2017

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 19.12.2016 made in M.C.O.P. No.1036 of 2012 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.2, Salem.

Prayer in CMA No.2776 of 2017

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 19.12.2016 made in M.C.O.P. No.1037 of 2012 on the file of the Motor Accidents claims Tribunal, Special Sub Court No.2, Salem.

For Appellants in both appeals :Mr.S. Arun Kumar

For Respondents in both appeals: Mr.M.R.Thangavel for R1

R2- served - No appearance

COMMON JUDGMENT

(The Judgment of the Court was delivered by Abdul Quddhose, J.)

These appeals have been filed by the Appellant / Insurance Company challenging the common award dated 19.12.2016 passed by the Motor Accidents Claims Tribunal, Special Sub Court II, Salem in M.C.O.P. Nos.1036 and 1037 of 2012 respectively.

2. The first respondent in C.M.A. No.2775 of 2017, by name Pradesa is the claimant in M.C.O.P. No.1036 of 2012 and the first respondent in C.M.A. No.2776 of 2017, by name Geetha is the claimant in M.C.O.P. No.1037 of 2012.

Brief facts leading to the filing of the instant appeals.

3. On 06.03.2012, Pradesa and Geetha, who are the claimants in the respective appeals sustained injuries, as a result of an accident caused by a TVS XL Super Two wheeler bearing Registration No.TN-30-AJ-4105. The accident happened while Pradesa and Geetha were crossing the road when the Two Wheeler (Insured vehicle) coming from Dadagapatty to Annathanapatty Main road, dashed against them which resulted in causing grievous injuries to them. Pradesa and Geetha hereinafter referred to as claimants in the respective appeals, preferred separate claims in M.C.O.P. Nos.1036 and 1037 of 2012 respectively, against the second respondent as well as the Appellant / Insurance Company.

4. Pradesa, the claimant / first Respondent in C.M.A. No.2775 of 2017 made a compensation claim for a sum of Rs.10,65,000/- which was restricted to Rs.10,00,000/- and Geetha, the claimant / first respondent in C.M.A. No.2776 of 2017 made a compensation claim for Rs.3,00,000/- respectively.

5. By a common award dated 19.12.2016, passed in M.C.O.P. Nos.1036 and 1037 of 2012, the Motor Accidents Claims Tribunal, Special Sub Court II, Salem, partly allowed the claim petitions by directing the Appellant / Insurance Company to pay (i) Pradesa, a sum of Rs.31,01,643/- together with interest at 7.5% p.a. from the date of claim petition till the date of realization and (ii) Geetha, a sum of Rs.21,197/- together with interest at 7.5% p.a. from the date of claim petition till the date of realisation respectively.

6. The break-up details of the common award, determined by the Tribunal under the respective M.C.O.P.s are as under :-
M.C.O.P No.1036 of 2012

Heads	Award Amount Rs.
Functional disability (Annual Income + 50% future prospects x 18 Multiplier (Rs.6,500 x 12 + 50% x 18)	21,06,000/-
Pain and suffering	1,00,000/-
Loss of amenities	1,00,000/-
Loss of marital life	75,000/-
Medical Expenses incurred (As per Ex.P13 to 16 and P23 and 31 to 34)	1,69,343/-
Medical charges incurred for Physiotherapy as per Ex.P35	3,46,300/-
Transport charges	25,000/-
Nutrition	50,000/-
Attendant charges (As per Ex.P22 - less extra charges)	1,29,000/-
Damages to clothes	1,000/-
Total	31,01,643/-

M.C.O.P No.1036 of 2012

Heads	Award Amount Rs.
Pain and suffering	10,000/-
Medical expenses (As per Ex.P24 and 26)	3,697/-
Transport charges	2,500/-
Nutrition	2,500/-
Attendant charges	2,000/-
Damages to clothing	500/-
Total	21,197/-

7. Aggrieved over the common award dated 19.12.2016 passed by the Motor Accidents Claims Tribunal, Salem in M.C.O.P. Nos.1036 and 1037 of 2012, these appeals have been filed by the Insurance Company.

8. Heard Mr.S. Arun Kumar, learned counsel for the Appellant and Mr.M.R. Thangavel, learned counsel for the first respondent. The second respondent remained ex-parte both before the Tribunal as well as before this Court.

9. The Appellant / Insurance Company have challenged the common award on the ground that the entire negligence is on the part of the respective claimants and hence, they are not liable to pay any compensation to them. Further, it is their case that insofar as the claim of Pradesa is concerned, the quantum of compensation assessed by the Tribunal at Rs.31,01,643/- is excessive, as she was suffering from medical ailment (Tokoplasmosis) from her childhood and therefore, her medical condition at the time of giving evidence before the Tribunal cannot be entirely on account of the injuries sustained by her, as a result of the accident. Therefore, according to the Appellant / Insurance Company, the Tribunal ought to have deducted 50% of the award amount payable to her on the ground that the alleged disablement and deficiency is due to a pre-existent cause.

10. It is also the case of the Appellant / Insurance Company that the Tribunal failed to note that after the accident Pradesa has attended her college and due to development in her previous ailment, she has discontinued her studies and hence, the injury sustained by her cannot be a cause of the accident. Further, according to the Appellant, the Tribunal erroneously awarded a sum of Rs.3,46,300/- towards medical charges for Physiotherapy, without any documentary proof.

Discussion :

11. We have perused and examined the impugned award and materials and evidence available on record. Before the Tribunal, the first claimant has filed 42 documents, which were marked as Ex.P1 to P42 and four witnesses were examined, including an eye witness Eswari (PW3) and the Doctor P.Ramakrishnan (PW4). On the side of the Appellant / Insurance Company, two witnesses were examined as RW1 and RW2 and three documents were filed, which were marked as Ex.R1 to Ex.R3. Further, the letter issued by R.T.O., Salem West was marked as a Court Exhibit.

12. On a perusal of records, it is seen that the claimant in M.C.O.P. No.1036 of 2012, Pradesa, was studying BBA(CA) at Sri Ganesh Government Arts College and she discontinued her studies after the accident. Her age at the time of the accident was 19 years which is proved through Ex. A17, Transfer Certificate issued by the College.

13. The claimant in M.C.O.P. No.1036 of 2012, Pradesa made a claim on the ground that she sustained grievous injuries, as a result of the accident. The accident was caused by the Insured vehicle on 06.03.2012, while she was crossing the road along with her Father's Sister Geetha from Annathanapatty to Dadagapatty.

14. It is seen from the claim petition, that the claimant / first respondent in C.M.A. No. 2775 of 2017, Pradesa sustained following injuries :

- a) head injuries;
- b) right leg injury;
- c) left hand injury;
- d) inability on hold head ;
- e) inability to walk;
- f) lips cut injury;
- g) injuries to vital parts of the body and
- h) multiple injuries all over the body

15. The Doctor who examined her, issued disability Certificate (Ex.P29), which discloses that Pradesa had sustained 50% disability, as a result of injuries sustained by her. He has also deposed before the Tribunal that Pradesa was suffering from nervous disorder in the brain at the age of 7 years and she underwent a surgery for the said ailment and she was able to do her routine work before the accident i.e. upto the age of 19 years. Further, he deposed that prior to the accident, Pradesa was able to do her regular work without any assistance and only after the accident she became immobile and was able to walk and do her routine work only with the assistance of the Attender.

16. The treatment report and discharge summary issued by various hospitals reveals that Pradesa underwent treatment, due to grievous injuries sustained by her, after the accident, which were marked as (Exs.P8 to 17). The only contention raised by the Appellant / Insurance Company is that Pradesa was suffering from nervous disorder (Toxoplasmosis), even prior to the accident right from her childhood and therefore, 50% of the award amount will have to be deducted as the disablement and deficiency is due to a pre-existent cause.

17. On perusal of her medical history of Pradesa, it is evident that the claimant in M.C.O.P. No.1036 of 2012 was already suffering from nervous disorder due to some infection in the brain, a surgery was done on her at the age of 7 years. Due to her previous ailment, there is every possibility that the nervous disorder that she suffered would have got aggravated after the accident and this may be also one of the factors for her disability, which made her immobile and invalid.

18. The Tribunal has considered the evidence of the Doctor (PW4) and came to the conclusion that Pradesa has suffered 100% functional disability and has given a finding that she will not be able to walk without any assistance in the near future.

19. Considering all these factors, the Tribunal assessed the monthly notional income of Pradesa at Rs.6500/-. The Tribunal has also applied the right multiplier, as she suffered functional disability at a young age, due to the accident.

The accident having happened on 06.03.2012, we are of the considered view that the said assessment of monthly income at Rs.6,500/- is a correct assessment.

20. In view of the above findings, the contention of the Appellant / Insurance Company that the previous ailment of Pradesa is also a contributory factor for the present disability finds force. However, we cannot accept the stand of the Appellant / Insurance Company that due to Pradesa's previous medical ailment, 50% out of the total disability compensation assessed by the Tribunal will have to be reduced.

21. We are of the considered view that 100% functional disability assessed by the Tribunal for the injuries sustained by Pradesa will have to be reduced to 75%, which will be a reasonable and just deduction, as the previous ailment suffered by her also contributed to her disability. Accordingly, the amount awarded under the head Functional disability is re-assessed by this Court. However, the amount awarded under various other heads remains unaltered and also the interest awarded by the Tribunal at 7.5% p.a. from the date of claim petition till the date of realization is confirmed.

22. For the foregoing reasons, the award passed by the Tribunal is modified from Rs.31,01,643/- to Rs.25,75,143/- and the same is detailed hereunder :

Heads	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.
Functional disability * (Annual Income + 50% future prospects x 18 Multiplier (Rs.6,500 x 12 + 50% x 18) # (Annual Income + 50% future prospects x 18 Multiplier (Rs.6,500 x 12 + 50% x 18 x 75%))	21,06,000/- *	15,79,500/- #
Pain and suffering	1,00,000/-	1,00,000/-
Loss of amenities	1,00,000/-	1,00,000/-
Loss of marital life	75,000/-	75,000/-
Medical Expenses incurred (As per Ex.P13 to 16 and P23 and 31 to 34)	1,69,343/-	1,69,343/-

Heads	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.
Medical charges incurred for Physiotherapy as per Ex.P35	3,46,300/-	3,46,300/-
Transport charges	25,000/-	25,000/-
Nutrition	50,000/-	50,000/-
Attendant charges (As per Ex.P22 - less extra charges)	1,29,000/-	1,29,000/-
Damages to clothes	1,000/-	1,000/-
Total	31,01,643/-	25,75,143/-

23. Insofar as the claim of Geetha, the claimant in M.C.O.P. No.1037 of 2012 is concerned, the Appellant / Insurance Company has not challenged the award passed by the Tribunal. We, therefore confirm the award passed by the Tribunal in respect of the claimant / first respondent in C.M.A. No.2776 of 2017 for a sum of Rs.21,197/- together with interest at 7.5% p.a. from the date of claim petition till the date of realisation.

24. As regards the direction of the Tribunal permitting the Appellant / Insurance Company to pay the compensation to the first respondent in the respective appeals and after such payment, recover the same from the second respondent is concerned, we are confirming the said finding.

25. In both the appeals, the appellants have challenged the award on the ground that the Tribunal has not granted in favour of the Appellant / Insurance Company to recover the compensation paid to the respective claimants and to recover the same in the same execution proceedings from the second respondent / insurer

26. We have perused and examined the common award. Even though the Tribunal has granted pay and recovery to the Appellant / Insurance Company, since the impugned award does not specifically state that the Appellant / Insurance Company is entitled to recover the amount in the same Execution Proceedings, we make it clear that the Appellant / Insurance Company on payment of the award amount to the respective claimants shall be entitled to recover the amount from the second respondent (Insurer) in the same Execution Proceedings.

27. In the result, C.M.A No.2775 of 2017 is partly allowed to the extent indicated above and C.M.A. No.2776 of 2017 is disposed of with the aforesaid directions. No costs. Consequently, connected miscellaneous petitions are closed.

28. The Appellant / Insurance Company is directed to deposit the entire award amount i.e. Rs.25,75,143/- to the claimant / first respondent in C.M.A. No.2775 of 2017 and Rs.21,197/- to the claimant / first respondent in C.M.A. No.2776 of 2017, together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation together with costs, less the amount, if any, already deposit to the credit of M.C.O.P. No.1036 of 2012 on the file of the Motor Accident Claims Tribunal Special Sub Court II, Salem, 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 directly to the bank account of the claimant / first respondent in C.M.A. No.2775 of 2017 and Rs.21,197/- to the claimant / first respondent in C.M.A. No.2776 of 2017, through RTGS respectively, within a period of two weeks thereafter.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

vsi2

To :

- 1) The Special Sub Judge,
(Motor Accidents Claims Tribunal),
Salem.
- 2) The Section Officer,
V.R. section,
High Court, Madras - 104.

+1cc to Mr.S. Arun Kumar, Advocate SR.No.79819

+1cc to Mr.M.R.Thangavel, Advocate SR.No.79741

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C.M.A. No 2775 of 2017
and
C.M.A. No.2776 of 2017

PA (CO)
GMY (17/08/2020)