IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A. No. 2305 of 2018
& Cross Obj. No. 68 of 2018

Shriram General Insurance Co.Ltd
No.66, II Floor, City Centre Complex,
Thirumalai Pillai Road,
T.Nagar, Chennai - 600 017. ... Appellant/2nd Respondent in CMA 2305/18
...1st respondent in Cros. Objection 68/2018

Vs.

M.Anandan ...1st Respondent /Petitioner in CMA 2305/18
...Petitioner/1st Respondent in Cros Obj. 68/18

R.Ruthrappan ... 2nd respondent/ 1st Respondent in CMA 2305/18 & Cros Obj 68/18

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment made in MCOP No. 3525 of 2012, dated 16.02.2018 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

Cross Objection No.68 of 2018 filed under Order 41, Rule 22 of C.P.C. praying to enhance the award amount as claimed in M.C.O.P.No.3525 of 2012, dated 16.02.2018 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant in CMA 2305/18 & For 1st respondent in Cros Obj 68/18	:	Mr.S.Dhakshnamoorthy
For 1st respondent in CMA 2305/18 & for petitioner in Cros Obj 68/18	:	M/s.Vijaya and Anandh
For 2nd respondent in CMA 2305/18 & in Cros Obj 68/18	:	No appearance

COMMON JUDGMENT
(Delivered by KRISHNAN RAMASAMY,J.)

This appeal has been preferred by the appellant/insurer both on the liability as well as on the quantum of the award dated 16.02.2018 in MCOP No. 3525 of 2012 on the file of Motor Accident Claims Tribunal, V Court of Small Causes, Chennai. The first respondent/claimant also filed cross objection challenging the quantum of compensation awarded by the Tribunal.

Brief Facts of the case:

2. On 17 February 2012 at about 2.30 p.m. while the first respondent was coming at Ediyan Sathu Koot Road, Vellore from Addukumpalai to Vellore (South to North Direction), the second respondent's vehicle bearing Registration No.TN 23 AJ 1624(Tata Ace) came from North to South direction negligently and hit the first respondent's vehicle bearing Registration No.TN 23 AU 8390, due to which the 1st respondent/cross objector sustained multiple injuries all over the body. Therefore, the 1st respondent/cross objector filed claim petition against the second respondent being the owner of the said vehicle and the appellant being the insurer to pay the compensation to him along with the interest.

3. Before the Tribunal, the second respondent/owner remained ex-parte. The appellant/insurer filed the counter disputing the liabilities as well as the compensation claimed by the first respondent/claimant. The main contention of the appellant/insurer before the Tribunal was that the accident

occurred due to the rash and negligent driving of the 1st respondent/claimant, the rider of the two-wheeler. The appellant/insurer contended that at the time of accident, the rider of the two-wheeler i.e., the 1st respondent/claimant was under the influence of alcohol. Therefore, it is contended that it is not the Insurance Company which is liable to pay any amount of compensation as claimed by the claimant.

4. On behalf of the first respondent/claimant, 5 witnesses were examined which includes P.W.5, an eye witness to the accident. P.W.3 is the Doctor, who issued the disability certificate. On the side of the first respondent/claimant, Exs. P1 to P36 were marked. On behalf of the appellant/insurer, only one witness was examined i.e., R.W.1 - the Special Investigating Officer. Further, only one document viz., Ex.R1 which is the true copy of the charge sheet was marked through R.W.1.

5. After hearing both sides, the Tribunal awarded a sum of Rs.34,81,200/- as compensation holding that the appellant/insurer is liable to pay the compensation as the second respondent's vehicle was insured with the appellant. Challenging the award of compensation, the present appeal has been filed by the appellant/Insurance Company. Being dissatisfied with the quantum, the first respondent/claimant has filed the cross objection seeking enhancement of compensation.

Liability:

6. The appellant challenged the liability stating that the Tribunal has erred in fixing the entire liability on the appellant Insurance Company. He further contended that the negligence has been wrongly fixed against the driver of the Tata Ace van. It is further submitted that the rider of the two-wheeler rode the vehicle in a rash and negligent manner and was trying to over take the car on the right side of the Tata Ace van, thereby resulting in accident and therefore, entire negligence cannot be fastened on the driver of Tata Ace van. It is submitted that subsequent to the accident, an FIR was lodged, wherein it has been stated that the rider of the two-wheeler rode the vehicle under the influence of alcohol. Therefore, it is contended that without considering all these aspects, the Tribunal wrongly came to the conclusion and fixed the liability against the Insurance Company.

7. The learned counsel appearing for the first respondent/claimant would contend that the Tribunal has rightly fixed the negligence on the part of the driver of the lorry. In

order to prove his claim, the first respondent/claimant examined five witnesses and marked thirty six documents. The first respondent/claimant has also examined P.W.5-eye witness to the accident, who has categorically deposed that the accident occurred due to the rash and negligent driving of the driver of the Tata Ace van. He would submit that to rebut the same, the appellant/insurance company has not examined any witnesses.

8. With respect to the lodging of FIR, the learned counsel contended that the FIR is not an encyclopaedia to believe as such without proving the same. In the present case, the criminal court, after conducting the full fledged trial, came to the finding that the charges against the accused were not proved. Therefore, the accused was acquitted. Hence, the learned counsel contended that after taking note of all these aspects only, the Tribunal fixed the entire negligence on the part of the driver of the vehicle bearing Registration No.TN-23-AJ 1624.

9. This Court, heard the learned counsel appearing on either side and also perused the documents, more particularly, the rough sketch. The Tribunal has fixed the entire negligence on the part of the driver of the Tata Ace van. The first respondent/claimant examined five witnesses and P.W.5 is the eye witness. In his evidence, P.W.5 - eye witness categorically deposed that the accident occurred due to the rash and negligent driving of the driver of Tata Ace van. To dispute this statement, the appellant/Insurance Company has not produced any documents. Further in the FIR, the name of the rider of the two-wheeler has been mentioned stating that at the time of riding, he was under the influence of alcohol. However, the criminal court after full fledged trial concluded that the charges against the accused who is none other than the first respondent/claimant herein were not proved. So under those circumstances only, the Tribunal has refused to accept the FIR. Further as stated above, it is not an encyclopaedia to accept the FIR as it is.

10. The appellant contended that the rough sketch - Ex.P2 was marked through P.W.1. However, P.W.1 was not the author of the rough sketch. During the course of the examination of P.W.1, he admitted that he was not the author of the rough sketch but some other officer. The Tribunal came to the conclusion that the contents of the rough sketch cannot be relied upon without examining the author. Upon considering the oral and documentary evidence adduced by both parties, this Court does not find any infirmity on the finding arrived at by the Tribunal with regard to fixation of the negligence as well as the liability on the driver of the Tata Ace van and the appellant/insurer.

Quantum:

11. The appellant/Insurance Company challenged the quantum of compensation mainly with regard to the fixation of disability. The Tribunal, fixed the functional disability as 80%. The appellant contended that as per Ex.P31, P.W.3, who is the Doctor has assessed the disability as 90% for the injuries sustained by the claimant/first respondent. By virtue of Ex.P12, the Civil Assistant Surgeon, Government Hospital, Pernaumbut, Vellore, assessed the disability as 80%. The injuries sustained by the first respondent/claimant herein are amputation of left leg below the knee and right leg Ilemiarthoplasty.

12. After considering all these aspects, the Tribunal came to the conclusion that the functional disability would be 80% and treated the entire functional disability as loss to the appellant. The appellant would contend that though the Doctor has fixed 80% disability and issued the certificate, the first respondent/claimant has not lost his entire earnings during his life time and therefore, there is no need for fixing 80% disability. Further, he contended that the claimant himself invited the accident under the influence of the alcohol. Therefore, it is contended that the functional disability requires reconsideration as there was no permanent disability.

13. The first respondent/claimant would contend that due to the accident, his left knee was amputated and he cannot perform any work during his lifetime. Further, the learned counsel contended that even the functional disability is at 80%, the Tribunal ought to have taken 100% and therefore, the first respondent/claimant has filed the cross objection. The learned counsel appearing for the first respondent/cross objector/claimant stated that the functional disability is required to be fixed at 100%.

14. We have gone through the award passed by the Tribunal and heard the arguments of the learned counsel on either side.

15. In the present case, the injuries sustained by the first respondent/claimant were very severe and it is not clear on a perusal of Ex.P12 that who had issued the disability certificate and the Doctor who treated the first respondent. Even assuming that the certificate issued by the Doctor is true, nothing has been mentioned about the functional disability of the claimant during his life time. Therefore, this Court is of the view that the functional disability fixed by the Tribunal is on the higher side and requires reconsideration.

16. As per Ex.P31, P.W.3-Doctor assessed the disability as 90% and issued the certificate and as per Ex.P12, the disability was assessed at 80%. Therefore, there is no certainty in the fixation of the disability assessed by the Doctors. There appears to be a functional disability and not permanent disability. The Doctor also not mentioned anything about the functional disability and it was the Tribunal which came to the conclusion based on the nature of injuries sustained and fixed the functional disability as 80%. P.W.1, the claimant, deposed that he cannot work due to the injuries sustained by him.

17. In the present case, the concern of P.W.1, who is the claimant herein that due to the amputation of the left leg below the knee, no doubt, he cannot carry on his normal work, but he cannot say that he cannot do any work during his life time. Artificial legs can be fixed and he can carry on his normal work. Therefore, the conclusion of the Tribunal that the claimant lost his entire income to the extent of the disability fixed by the Tribunal to the extent of 80% is not sustainable. We do not accept the contention of the claimant/first respondent that he lost his entire life and able to work only 50 to 60% of his ability. Therefore, we are of the view that the functional disability should be fixed only to an extent of 60%. Though we feel that 60% is also on the higher side, considering the fact that the first respondent/claimant lost his left leg and in view of the nature of the injuries, we are inclined to fix the functional disability at 60% instead of 80% fixed by the Tribunal.

18. The Tribunal fixed the notional income of the claimant at Rs.10,000/- and added 40% towards future prospects as per the recent pronouncement in National Insurance Company Limited v. Pranay Sethi, reported in (2017) 16 SCC 680. The claimant was 36 years old and, therefore, the multiplier '15' was adopted, which, in our considered view, is just and fair and requires no interference.

19. Based on the 60% functional disability as fixed by this Court, the loss of income would be as follows:-

(10000 + 4000) x 12 x 15 x 60% = 15,12,000/-

20. Though the learned counsel appearing for the appellant/Insurance Company would fairly contend that challenging the quantum of compensation with respect to the other heads, they have restricted their arguments with respect to the fixation of functional disability of the first respondent/claimant, the first respondent/claimant in his cross

objection stated that the Tribunal has awarded a sum of Rs.12,000/- only towards loss of income for a period of six months and Rs.80,000/- towards the pain and suffering and also awarded a sum of Rs.2,00,000/- for the maintenance of artificial leg. Having regard to the facts and circumstances of the case, we are of the view that there is no need for any further reconsideration with respect to the fixation of artificial leg in future. As far as the other conventional heads, the compensation awarded for loss of income for a period of six months at Rs.12,000/- and for pain and suffering at Rs.80,000/- require no interference. Therefore, the compensation awarded under the conventional heads - the loss of income, maintenance of artificial leg and pain and suffering stand confirmed. In totality, we are of the view that the compensation awarded under the other conventional heads is just and fair and requires no interference. Hence, the amounts awarded under the other conventional heads by the Tribunal stand confirmed.

21. Thus, the award passed by the Tribunal is reduced as under:-

Loss of Earning Capacity	: Rs.	15,20,000/-
Compensation continuing permanent disability, if any	: Rs.	2,40,000/-
Pain and Sufferings	: Rs.	80,000/-
Loss of Income	: Rs.	12,000/-
Transportation	: Rs.	57,600/-
Extra-nourishment	: Rs.	30,000/-
Medical Expenses	: Rs.	6,45,600/-
Loss of Marital Life	: Rs.	2,00,000/-
For Maintaining artificial leg	: Rs.	2,00,000/-
Total	: Rs.	29,85,200/-

22. In the result, the appeal of the appellant/insurer is partly allowed and the cross objection filed by the first respondent/claimant is dismissed. This Court directs the appellant/Insurance Company to deposit the entire amount as awarded in this judgment along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation, less the amount, if any, already deposited, within

a period of eight weeks from the date of receipt of a copy of this judgment.

23. This Court also directs the Tribunal to transfer the entire award amount to the claimant directly by way of RTGS within three weeks from the date of deposit of the award by the Insurance Company with interest accrued. No costs. Consequently, connected C.M.P.No. 17610 of 2018 is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

ssm
To:

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

2.The Section Officer
VR Section
High Court, Madras

+1 cc to M/s.Vijaya & Ananth Advocate sr100241
+1 cc to Mr.S.Dhakshnamoorthy Advocate sr100256

C.M.A.No. 2305 of 2018
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