IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 05.03.2020

Judgment Delivered on : 04.06.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.Nos.2129 and 2556 of 2019
and
C.M.P.No.12237 of 2019

The Branch Manager,
Tata AIG General Insurance Company Ltd.,
1st Floor, No.202, 100 Feet Road,
Mudaliarpettai, Puducherry.
..Appellant in C.M.A.No.2129 of 2019

The Authorised Signatory,
Tata AIG General Insurance Company Ltd.,
No.62, 100 Feet Road,
Sundararajan Nagar,
Muthiyalpet, Puducherry. ..Appellant in C.M.A.No.2556 of 2019

Vs.

1. Krishnamoorthy

2. Sathiyamoorthy .. Respondents in C.M.A.No.2129 of 2019

1. Ganesan

2. Sathiyamoorthy .. Respondents in C.M.A.No.2556 of 2019

Civil Miscellaneous Appeal No.2129 of 2019 filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 07.09.2018 passed in M.A.C.T.O.P.No.740 of 2016 on the file of the Motor Accidents Claims Tribunal (Additional Sub-Court), Puducherry.

Civil Miscellaneous Appeal No.2556 of 2019 filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 09.01.2019 passed in M.A.C.T.O.P.No.1050 of 2016 on the file of the Motor Accidents Claims Tribunal (Additional Sub-Court), Puducherry.

For appellants : Mr.K.Vinod in both the C.M.As.
For first respondent : Mr.R.Sreedhar - in C.M.A.No.2129 of 2019
Mr.T.Anantha Sekar - in C.M.A.No.2556 of 2019

JUDGMENT

R.SUBBIAH, J

1. C.MA.No.2129 of 2019:

(i) This appeal has been filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal, in and by award, dated 07.09.2018 made in M.A.C.T.O.P.No.740 of 2016.

(ii) The first respondent herein is the claimant before the Tribunal. It is the case of the claimant that, on 06.06.2016 at about 11.15 p.m., while he was going in a Hero Honda Pleasure motor-cycle bearing Reg.No.PY-01-AL-1262 on the M.G.Road, Muthialpet, Pondicherry towards South to North direction, a Hero Honda Passion Pro bearing Reg.No.PY-01-BH-1960, ridden by one Sathiyamoorthy, having two persons as pillion riders, came from the opposite direction in a rash and negligent manner at high speed and dashed against the two-wheeler, in which the first respondent-claimant was proceeding and thus caused the accident. In the said accident, the claimant sustained grievous injuries on his right leg (knee and foot), right hand, face and multiple injuries all over his body. Hence, he was immediately taken to Government Hospital, Puducherry, where he was informed that he had sustained severe fracture on his right leg, fracture over his right hand of third and fourth metatarsal; for further treatment, he was referred to PIMS, Hospital, Puducherry, from where, for further treatment, he was taken to MIOT Hospital, Chennai, where he was diagnosed for comminuted fracture R Tibia, comminuted displaced fracture of lateral femoral condyle with intra-articular extension right side, patellar fracture right side, comminuted fracture head and proximal fibula right side, displaced fracture neck of 5th metatarsal neck and proximal phalanx little finger right hand. In view of the above fractures sustained by the first respondent-claimant-victim, he is suffering from severe pain on his right leg and is also suffering continuous pain, physical disablement, mental agony, etc., and hence, he made a claim for Rs.60 lakhs as compensation.

(iii) The Insurance Company had denied the claim by filing counter statement.

(iv) In order to prove the claim, on the side of the first respondent-claimant, he was examined as P.W.1, besides one Kalairaj as P.W.2 and Exs.P-1 to Ex.P-32 were marked. On the side of the respondents before the Tribunal, R.W.1 Doctor was examined and no documents were marked.

(v) To prove the disability sustained by the claimant, he was referred to Medical Board and the report of the Medical Board was marked as Ex.C-1. The Medical Board assessed the disability of the claimant at 90% and opined as "compound communited fracture right tibia, fracture right femoral condyle, fracture patella right, fracture fibula, fracture 5th metatarsal, fracture PP right little finger, foot drop". At the time of accident, the claimant-victim was working as Manager of a Petrol Bunk and earning a sum of Rs.22,000/- per month. In order to prove the income of the deceased, the owner of the Petrol Bunk was examined as P.W.2, through whom, Ex.P-25 being photocopy of the ownership of the Petrol Bunk and Ex.P-30 being the Certificate issued by P.W.2, were marked. In Ex.P-30 Certificate, P.W.2 mentioned that for the past three years from 2013 to 05.06.2016, i.e. before the accident, he was working as Manager with monthly salary of Rs.22,000/-.

(vi) The Medical Board's report Ex.C-1 was marked through R.W.1 Doctor to show that the claimant-victim suffered disability at 90%. Hence, the Tribunal, by fixing a sum of Rs.22,000/- p.m. as his salary, and applying the multiplier 13 as he was aged about 48 years at the time of accident, has arrived at compensation under the head 'future income' at Rs.30,88,800/-. That apart, the Tribunal awarded a sum of Rs.2 lakhs towards pain and suffering; a sum of Rs.14,08,705/- towards medical expenses; a sum of Rs.1,00,000/- towards future medical expenses; a sum of Rs.25,000/- towards rich and nutritious food; a sum of Rs.10,000/- towards attender charges; a sum of Rs.1,22,853/- towards transport expenses and a sum of Rs.2,00,000/- towards loss of expectation of life. In all, the Tribunal awarded a sum of Rs.51,55,358/- as compensation with interest at 7.5% per annum from the date of claim petition till the date of payment. Challenging the same, the present appeal in C.M.A.No.2129 of 2019 has been filed by the Insurance Company.

(vii) The contention of the Insurance Company is that the Tribunal went wrong in taking the percentage assessed by the Medical Board at 90%, as if it is functional disability. The victim was working only as Manager of the Petrol Bunk and after recovery, there will not be any impediment for him to continue as Manager. Under such circumstances, the Tribunal should have fixed lesser percentage of disability and calculated the compensation under the head 'disability'. Instead of doing so, the Tribunal has fixed the disability at 90% and calculated the compensation, which resulted in passing an exorbitant award. Thus, the learned counsel for the Insurance Company prayed that the amounts awarded by the Tribunal have to be re-calculated by way of re-assessment.

(viii) On the other hand, the learned counsel for the first respondent/claimant supported the award by stating that the Medical Board has fixed 90% disability considering the nature of disability suffered by the victim. Further, it is apparent from the evidence on record that the first respondent/claimant cannot continue his avocation. Under such circumstances, the calculation made by the Tribunal cannot be found fault with and thus the learned counsel for the first respondent/claimant prayed for dismissal of the appeal in C.M.A.No.2129 of 2019.

(ix) Keeping in mind the above submissions made on either side, we have carefully perused the entire materials available on record.

(x) We find that, as contended by the learned counsel appearing for the appellant/Insurance Company, the nature of the injuries sustained by the claimant cannot in any way preclude the claimant to continue his avocation as Manager of the Petrol Bunk. Under such circumstances, the Tribunal ought not to have fixed 90% disability, and instead 60% of disability may be fixed and accordingly, the amount has to be re-calculated. By calculating so, the amount towards loss of future income is calculated at Rs.20,59,200/- (22,000 x 12 x 13 x 60%). Since it is a case of injury, the question of awarding compensation under the head "loss of expectation of life" does not arise, and the same is accordingly set aside. Considering the long duration of treatment undergone by the first respondent/claimant, we are of the opinion that a sum of Rs.2 lakhs awarded by the Tribunal towards pain and suffering, has to be enhanced, and accordingly, the same is enhanced to Rs.3 lakhs.

(xi) Further, we find that the Tribunal has not awarded any amount under the head 'loss of amenities'. Considering the same, as the claimant cannot lead normal life as he was doing before the accident, a sum of Rs.1 lakh is hereby awarded towards "loss of amenities". Excepting the above modification, the compensation awarded by the Tribunal under the other heads are hereby confirmed.

(xii) Thus, the compensation amount is awarded as tabulated below:

Sl. No.	Heads under which the amount is awarded	Amount awarded by the Tribunal	Amount awarded by this Court
1	Future income	30,88,800	20,59,200
2	Pain and sufferings	2,00,000	3,00,000
3	Medical expenses	14,08,705	14,08,705
4	Future medical expenses	1,00,000	1,00,000
5	Rich and nutritious food	25,000	25,000
6	Attender charges	10,000	10,000
7	Transport expenses	1,22,853	1,22,853

Sl. No.	Heads under which the amount is awarded	Amount awarded by the Tribunal	Amount awarded by this Court
8	Loss of expectation of life	2,00,000	-
9	Loss of amenities	-	1,00,000
	Total	51,55,358	41,25,758, rounded off to Rs.41,25,800.

(xiii) Consequently, C.M.A.No.2129 of 2019 filed by the Insurance Company, is partly allowed and the compensation amount awarded by the Tribunal is reduced from Rs.51,55,358/- to Rs.41,25,800/- (Forty one lakhs twenty five thousand and eight hundred only), with interest at 7.5% per annum from the date of claim petition till the date of payment. In all other aspects, the award of the Tribunal remains unaltered. The appellant/Insurance Company is permitted to withdraw the excess amount, if any already deposited. No costs.

2. C.M.A.No.2556 of 2019:

(i) This appeal is filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal, in and by award, dated 09.01.2019 made in M.A.C.T.O.P.No.1050 of 2016.

(ii) The first respondent herein is the claimant before the Tribunal. It is the case of the claimant that on 06.06.2016 at about 11.15 p.m., while the claimant herein and his friend Ashik Ali, were travelling as pillion riders, with their friend Sathiyamoorthy, who rode the motor-cycle, namely Hero Honda Passion Pro bearing Registration No.PY-01-BH-1960 from North to South direction on the M.G.Road, near Muthialpet Police Station, opposite to Maharaja Textiles, Muthialpet, Puducherry, dashed against the rider Krishnamurthy's motor-cycle, namely Hero Honda Pleasure bearing Registration No.PY-01-AL-1262, which came from South to North direction, and thus caused the accident. In the said accident, the claimant sustained head injury, laceration and multiple abrasion injuries all over the body and became unconscious. Hence, he was taken to JIPMER Hospital on 07.06.2016, where he was admitted as an in-patient and surgery was done for head injury on the same day itself. Thus, the claimant sustained grievous injury, which resulted in permanent disablement, and as a result of which, he is not able to do carry on his normal avocation without the help of others, and hence, he made a claim for Rs.40 lakhs as compensation.

(iii) The Insurance Company had denied the claim by filing counter statement.

(iv) In order to prove the claim, on the side of the first respondent-claimant, he was examined as P.W.1 and Exs.P-1 to Ex.P-10 were marked. On the side of the respondents before the Tribunal, R.W.1 Doctor was examined and no documents were marked. The Medical Board's certificate was marked as Ex.C-1.

(v) To prove the disability sustained by the claimant, he was referred to Medical Board and the report of the Medical Board was marked as Ex.C-1. The Medical Board assessed the disability of the claimant at 90% and opined as "post traumatic sequale". At the time of accident, the claimant-victim was working as Carpenter and Driver in Saudi and was earning Rs.30,000/- per month. In order to prove the income of the deceased, Ex.P-9 xerox copy of Trade Test Certificate of the claimant, issued by Perfect Technical Institute, Chennai, was marked.

(vi) As per the evidence of R.W.1 Doctor, the disability suffered by the claimant is 25%, whereas the Medical Board had assessed the disability of 20% for neuro, 15% for tooth. Hence, the Tribunal, by adding 25% assessed by R.W.1, along with 20% and 15% assessed by the Medical Board for neuro and tooth respectively,fixed the total percentage of disability at 60%. Further, the Tribunal fixed Rs.10,000/- p.m. as notional income. According to the claimant, his age at the time of accident was 28 years, but on verification of Ex.P-10, the photocopy of the Passport of the claimant, the claimant's age was about 27 years at the time of accident. Due to the accident, the claimant could not attend his duty. R.W.1 Doctor deposed that the claimant will not be in a position to do work. Hence, the Tribunal adopted the multiplier 18 and fixed the future income at Rs.12,96,000/- (10,000 x 12 x 18 x 60%). That apart, the Tribunal awarded a sum of Rs.2 lakhs towards pain and suffering; a sum of Rs.1,00,000/- towards future medical expenses; a sum of Rs.25,000/- rich and nutritious food; a sum of Rs.10,000/- towards attender charges; a sum of Rs.10,000/- towards transport expenses and a sum of Rs.1,00,000/- towards loss of expectation of life. In all, the Tribunal awarded a sum of Rs.17,41,000/- as compensation with interest at 7.5% per annum from the date of claim petition till the date of payment. Challenging the same, the present appeal in C.M.A.No.2556 of 2019 has been filed by the Insurance Company.

(vii) The contention of the Insurance Company is that the Tribunal ought not to have fixed the disability at 60%. Though as per Ex.C-1 report of the Medical Board, the claimant's disability is assessed at 90%, the Tribunal should have adopted combined formula and fixed the disability only at 25% based on the evidence of R.W.1. Further, after recovery, there will not be any impediment for him to continue his work. Under such circumstances, the Tribunal should have fixed lesser percentage of disability and calculated the compensation under the head 'future income'. Instead of doing so, the Tribunal has fixed the disability at 60% and calculated the compensation, which resulted in passing exorbitant award. Thus, the learned counsel for the Insurance Company prays that the amounts awarded by the Tribunal have to be re-calculated by way of re-assessment.

(viii) On the other hand, the learned counsel for the first respondent/claimant supported the award stating that the first respondent/claimant cannot continue his avocation as he was doing. Under such circumstances, the calculation made by the Tribunal cannot be found fault with and the learned counsel for the first respondent/claimant prayed for dismissal of the appeal in C.M.A.No.2556 of 2019.

(ix) Keeping in mind the above submissions made on either side, we have carefully perused the entire materials available on record.

(x) On a perusal of the award, it would show that on account of the accident, the claimant had suffered head injury, laceration and multiple aberration injuries all over the body. He was admitted to JIPMER for treatment of head injury, where he had undergone surgery. In order to assess the disability, he was referred to Medical Board and the report of the Medical Board was marked as Ex.C-1, which would show that the disability suffered by the victim/claimant was 90%. He was working as Carpenter and Driver in Saudi and earning a sum of Rs.30,000/- p.m. In order to prove the income, he marked Ex.P-9 which is the photocopy of Trade Test Certificate issued by Perfect Technical Institute, Chennai. But inspite of the same, the Tribunal has taken Rs.10,000/- as notional monthly income and thereafter, by considering the age of the victim being 27 years at the time of accident, based on Ex.P-10 which is the photocopy of the Passport of the claimant, thereby the Tribunal adopted multiplier '18' and fixed the disability at 60% and has arrived at Rs.12,96,000/- under the head "future income". Thereafter, the Tribunal awarded various amounts under the relevant heads as mentioned supra. Thus, the Tribunal awarded a total compensation of Rs.17,41,000/-.

(xi) It is the main submission of the learned counsel for the appellant/Insurance Company that the Tribunal fixed 60% disability, which is on the higher side and thus, he submitted that multiplier '18' applied is also on the higher side. '17' is the correct multiplier to be adopted in this case, based on which, the amount has to be re-calculated under the head 'future income'. So far as the percentage of disability is concerned, we are of the opinion that considering the nature of injuries sustained and the disability suffered by the victim, 60% of percentage of disability fixed by the Tribunal cannot be found fault with. Therefore, we are not inclined to reduce the same. However, 17 multiplier has only to be adopted, instead of 18 multiplier as adopted by the Tribunal to arrive at a just and fair compensation.

(xii) If calculation is made by adopting 17 as multiplier, the future loss of income is arrived at Rs.12,24,000/- (10,000 x 12 x 17 x 60%). Further, the amount awarded under the head 'loss of expectation' is liable to be set aside, because this is only a case of injury, and as such, the question of awarding compensation under the head "loss of expectation of life" does not arise and hence, the same is hereby set aside. The amounts awarded by the Tribunal under the other heads are confirmed. In all other aspects, the award of the Tribunal shall remain unaltered. Accordingly, the compensation is tabulated hereunder:

Sl. No.	Head under which the amount is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Future income	12,96,000	12,24,000
2	Pain and sufferings	2,00,000	2,00,000
3	Medical expenses	-	-
4	Future medical expenses	1,00,000	1,00,000
5	Rich and nutritious food	25,000	25,000
6	Attender charges	10,000	10,000
7	Transport expenses	10,000	10,000
8	Loss of expectation of life	1,00,000	-
		17,41,000	15,69,000

(xiii) Accordingly, the appeal in C.M.A.No.2556 of 2019 filed by the Insurance Company is partly allowed. No costs. The amount awarded by the Tribunal is reduced from Rs.17,41,000/- to Rs.15,69,000/- with interest at 7.5% per annum from the date of claim petition till the date of payment. The excess amount, if any deposited by the appellant/Insurance Company, shall be withdrawn by the appellant. In other respects, the impugned award of the Tribunal remains unaltered. Consequently, C.M.P. is closed.

-s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

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To
1. The Presiding Officer,
Motor Accidents Claims Tribunal,
Additional Sub-Court, Puducherry.

2.The Section Officer, V.R. Section,
High Court, Madras.

C.M.A.Nos.2129 and 2556 of 2019

SSV(CO)
SP(22/04/2021)