

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.134 of 2013
and MP.No.1 of 2013

United India Insurance Co. Ltd.,
D.O.2, I Floor, 104-A,
Peramanur Main Road,
Salem - 7.

... Appellant

Vs.

1. Selvakumar
2.J.Vijayalakshmi (set exparte before trial Court)

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.396 of 2011 dated 04.04.2012 on the file of the Motor Accident Claims Tribunal, I Additional Subordinate Judge, Salem.

For Appellant : Mr.J.Chandran
For Respondents : Mr.V.Kathirvelu for R1.
R2 - Exparte.

J U D G M E N T

This appeal has been filed by the insurance company against the judgment and decree made in MCOP.No.396 of 2011 dated 04.04.2012 on the file of the Motor Accident Claims Tribunal, I Additional Subordinate Judge, Salem.

2. The case of the first respondent/claimant before the Tribunal is as follows :-

On 18.01.2011 at 4.45pm, the claimant went to his friend's house in his motor cycle near Tiruchengode - Namakkal main road, near Kosavampalayam, near Panchami Dhaba Hotel . At that time, the Bus coming in opposite direction from East to West bearing Reg.No.TN28-AK-8118 belonging to the Vijayalakshmi driven by its driver in rash and negligent manner and hit against the claimant vehicle and he was thrown out from the vehicle in a mud portion of the road. Thereby, the claimant sustained grievous head injury, facial injuries, knee fracture, right leg ankle and injuries in right fore arm. He was admitted

in the Government hospital, Tiruchengode and thereafter shifted to London Artho Hospital at Salem and conducted operation in the right side leg and inserted plates. The claimant lost blood vessels in his right fore arm, due to which he is not able to move his right hand and unable to use the right hand. The Doctors advised to take regular physiotherapy and surgery in his right fore arm for loss of blood vessel. At the time of accident the claimant was pursuing 2nd year B.E. and earning a sum of Rs.15,000/- by doing part time job in the BPO. A criminal case was registered against the driver of the bus under Section 279 and 337 IPC in Cr.No.21 of 2011 on the file of the Tiruchengode Rural Police station.

3. The insurance company denied that the accident has not occurred due to rash and negligent driving of the bus driver. It is not acceptable that the claimant is studying and earning a sum of Rs.15,000/-p.m. as a part time worker. The claimant continuing his studies and doing all his routine works as he was performing prior to the accident. The accident took place only on account of the negligence of the claimant and the insurance company is not liable to pay the compensation.

4. In order to prove the case of the claimant, the claimant examined PW1 and PW2 and marked Ex.P1 to Ex.P31. No oral or documentary evidence has been marked on the side of the respondents.

5. Heard both sides and perused the materials available on record.

6. The learned counsel for the appellant/insurance company mainly contended that the accident took place on 18.01.2011 at 4.25pm, on the date of accident, the claimant was pursuing his studies who is a non earning person, hence, the Tribunal ought not to have fixed the monthly income of the claimant at Rs.10,000/-p.m. for calculating the loss of income. The Doctor who issued the Ex.P27/disability certificate had assessed the disability at 55% which is on the higher side. The award of Rs.1,00,000/- granted under the head of future medical expenses cannot be equated for any reasons.

7. The learned counsel for the first respondent/claimant submits that the Ex.P27/disability certificate is 55%, whereas the Tribunal has taken only 45% for calculating the loss of income. He further stated that the claimant was not in a position to carry any heavy things with the help of his right hand. The award for future medical expenses for a sum of Rs.1,00,000/- is not sufficient to meet out the treatment in the

present scenario. The amount fixed for arriving at the loss of income is also reasonable amount, on considering the educational qualification of the claimant.

8. From the available records, it is seen that the tribunal has rightly fixed the compensation under the head of loss of income on the basis of the disability certificate/Ex.P27 issued by the PW2/Doctor, the disability assessed at 55%, the Tribunal has not taken only 45% for assessing the disability factor which is very reasonable. With regard to the income fixed by the Tribunal, it has been considered based on the qualification (i.e, engineering degree) the salary of Rs.10,000/-p.m. has been fixed, the engineering student can easily earn more then the said amount in the open market out of his qualification. The Tribunal has rightly adopted the multiplier factor at 17 (Rs.1,20,000/- x 17 x 45% = Rs.9,18,000/-). The Tribunal has rightly considered the age of the claimant and the educational qualification and awarded a sum of Rs.9,18,000/- under the head of multiplier factor is reasonable one and this Court does not find any quarrel to interfere with the findings of the Tribunal. A sum of Rs.1,00,000/- is a reasonable amount under the head of future medical expenses, as the claimant inserted plates for the fracture, recovering from the fracture injuries, the claimant has to undergo long term medication. The Tribunal has considered the case of the claimant and awarded a compensation on the heads of pain and sufferings, sudden impact of the accident, transportation and attendant charges are reasonable and does not require any interference.

9. In the result, the civil miscellaneous petition stands dismissed by confirming the judgment and decree made in MCOP.No.396 of 2011 dated 04.04.2012 on the file of the Motor Accident Claims Tribunal, I Additional Subordinate Judge, Salem. The judgment of the Tribunal remains unaltered in other aspects. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,

I Additional Subordinate Judge, Salem.

Copy to:

The Section Officer,

VR Section, High Court, Madras.

C.M.A.No.134 of 2013

A.SK(23/09/2020)