

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.07.2020

PRONOUNCED ON : 05.08.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Civil Miscellaneous Appeal No.1662 of 2015 and

M.P.No.1 of 2015

(Heard through video conferencing)

M/s.United India Insurance Company Ltd.,
11/2, K.T Complex,
New Scheme Road,
Pollachi.

Appellant/2nd Respondent

Vs

1.L.Vijay Anand,
S/o Lakshmanan,
Periyar Nagar,
Thuraiyur Post & Taluk,
Now residing at
Adaikkampatti Village,
Alathur Taluk,
Perambalur District.

2.P.Suresh,
S/o Paramasivam,
21, Senguttuvan Street,
Pollachi.

Respondents/ Petitioner /1st
Respondent

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 09.01.2015 made in O.P.No.122 of 2014 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Perambalur.

For Appellant
For 1st Respondent
For 2nd Respondent

:Mr.D.Bhaskaran
:Mr.V.Raghupathi
:No Appearance

JUDGMENT

The insurance company is the appellant. The appeal is filed challenging the award passed by the Motor Accidents Claims Tribunal (Principal District Judge), Perambalur, in M.C.O.P.No.122 of 2014 dated 09.01.2015.

2.Brief facts:

L.Vijay Anand, the Driver of the Mahendra Maxx Van sustained multiple injuries and was taken to the Government Hospital, Thuraiyur. After providing first aid, he was shifted to Retna Global hospital, Tiruchy. His right hand upto elbow level was amputated. After treatment for 10 days as inpatient, he was discharged. A case was registered against the Driver of TATA 407 bearing registration No. TN 57 Z 6951 under sections 279 and 338 of IPC in Crime No.758/08 by the Thuraiyur Police.

3.Due to amputation of his right hand, L.Vijay Anand lost his driving skill leading to loss of earning capacity. For loss of income, earning capacity, partial permanent disability, loss of amenities, medical expenses, a consolidated claim of Rs.25,00,000/- was made against the owner of the offending vehicle (TATA 407- TN 57 Z 6951) and its Insurer, the appellant herein.

4. The owner of the offending vehicle remained exparte. The Insurance Company contested the claim petition on the ground that the accident occurred due to the negligence of the claimant. The owner of the Mahendra Maxx van and the Insurer of that vehicle ICICI Lombard Insurance Company are necessary parties. For not impleading them, the claim has to be rejected. The claim petition is filed after delay of 5 years. Whether the claimant has opted to proceed against his employer under the Workmen Compensation Act or; whether he has filed any claim petition under the Motor Vehicles Act claiming compensation against the Insurance Company of his vehicle are not ascertained. In the head on collision, both the vehicles got extensively damaged. Without the contribution of the claimant, the accident would not have occurred. In any event, the claim is excessive and in case any award passed, 50% has to be deducted from total compensation for the contributory negligence of the claimant.

5.Before the Tribunal, on the side of the claimant, 2 witnesses were examined and 9 exhibits were marked. The

Insurance Company produced neither oral evidence nor documentary evidence.

6.The Tribunal rejected the contentions of the Insurance company in toto. It held that the Police has registered case against the TATA 407 Van driver for rash and negligent driving causing grievous hurt to the claimant. In the absence of any proof contrary to this fact, no contribution can be attributed on the claimant. Considering the age (25 years) of the claimant at the time of the accident, his calling/avocation (Driver) and the gravity of the injury (amputation of right hand upto elbow level), the Tribunal has awarded compensation of Rs.18,65,000/- to the claimant.

The break up details of the award passed by the Tribunal is as below:-

Under the Heads	Amount in Rs.
Loss of Earning capacity	Rs 10,36,800/- (Rs. 6000 x 12 x 18 x 80/100)
For artificial hand	Rs 2,50,000/-
Permanent disability 80%	Rs 2,40,000/- (80 x Rs.3000)
Pain and suffering	Rs 50,000/-
Medical Expenses	Rs 62,000/-
Nutrition - Extra nourishment	Rs50,000/-
Transport charges	Rs 20,000/-
Attendant charges	Rs 20,000/-
Loss of comforts and amenities	Rs 50,000/-
Future medical expenses	Rs 50,000/-
Loss of income at the time of treatment	Rs 36,000/- (Rs 6000 x 6 months)
Total	Rs.18,64,800/- (Rounded off to Rs.18,65,000)

7.The Learned counsel for the appellant submitted that, the belated filing of claim petition after 5 years raises doubt, 'whether the claimant after exercising his option under Workmen Compensation Act had approached the Motor Accident Claims Tribunal. Further, in the accident involving two motor vehicles, the non joinder of the owner of the claimant's vehicle and his insurer is bad for non joinder of necessary parties. Even otherwise, the claimant has sustained the injury due to the head on collision of two vehicles. Without the negligence of the claimant, the accident would not have occurred. Hence, for his contribution to the accident, the award should have been reduced by 50% and in any case, the award of Rs.18,64,800/- is excessive.

8.The learned counsel for the appellant emphasised that duplication of claim under different heads for same injury is impermissible. After awarding Rs.10,36,800/- as compensation under the heading 'loss of income' by applying multiplier (18) and percentage of permanent partial disability (80%), further compensation of Rs 2,40,000/- for 80% Permanent disability is duplication of claim. The disability percentage of 80% for amputation of right hand upto elbow is high and contrary to the guidelines and schedule of Workmen's Compensation Act. Without proof for purchase of artificial limb, the Tribunal has awarded Rs.2,50,000/- under this head merely based on the estimation slip. Hence, the excessive award to the tune of Rs.10 lakhs has to be set aside.

9.The learned counsel appearing for the claimant/respondent would submit that no other claim under the Motor Vehicles Act or under the Workmen Compensation Act filed by the injured claimant before any of the Forum. The claimant has filed a sworn affidavit to that effect.

10.As far as the merit of the case is concerned, the Police investigation has culminated in filing final report against the TATA 407 Van Driver who drove the vehicle rashly and negligently thereby caused the accident. Therefore, there is no need to implead the owner and insurer of the Mahendra Maxi van. They are not necessary parties and the claim petition does not suffer non founder of necessary parties.

11.The claimant being a heavy vehicle Driver by profession, lost his right hand in the accident. The Doctor - PW-2 taking note of the amputation of right hand upto elbow level, had assessed the disability as 80 %. The Tribunal has taken note of the functional disability and had fixed the disability as 80% and based on his age had rightly applied the multiplier 18. Hence, the compensation awarded by the Tribunal is just and fair. It requires no interference.

12.Heard the learned counsel for the appellant and the learned counsel for the 1st respondent. On considering the oral submission and perusal of the records, holds as under:-

(a)The Tribunal after considering the F.I.R., and the evidence of PW-1 had rightly held that the violator is the Driver of the TATA 407 Van and the claimant is the victim of the rash

and negligent driving of the Driver of the said TATA 407 Van. Therefore, the driver of the TATA van and the insurer alone are the necessary parties and none else. There is no legal error in not impleading the others in the claim petition.

(b) For the 'loss of income', the Tribunal has resorted to the multiplier formula. It has also awarded Rs.36,000/- (Rs.6000 x 6 months) for the loss of income during the treatment period. The permanent disability component has been considered while applying the multiplier for loss of income. While so, another sum of Rs.2,40,000/- for permanent disability is ex facie a duplication. But for this duplication, there is no other error in the compensation awarded by the Tribunal under other heads. Therefore, except Rs.2,40,000/- awarded by the Tribunal for permanent disability, the compensation awarded under rest of the heads are confirmed.

13. In the result, the award of the Tribunal is reduced from Rs.18,65,000/- to Rs.16,25,000/-. In all other aspects, the award passed by the Tribunal is confirmed. The appellant herein is directed to deposit the award amount of Rs.16,25,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, within a period of eight weeks from today to enable the claimant to withdraw the same by filing appropriate petition before the Tribunal. Accordingly, the appeal is partly allowed. No order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

jbm
To

The Motor Accidents Claims Tribunal
(Principal District Judge),
Perambalur.

Copy to: The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.V.Raghupathi, Advocate SR.No. 26063

C.M.A.No.1662 of 2015

A.SK(21.01.2021)