

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1820 of 2015

M/s.New India Assurance Co.Ltd.,
Represented by its Manager,
Bye-pass Road,
Dharmapuri.

.. Appellant/2nd Respondent

Vs.

1.Mr.R.Selvam

..1st Respondent/Petitioner

2.Mr.Anthony Alexandar

..2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.361 of 2014 on 27.11.2014 on the file of the Learned Motor Accident Claims Tribunal (Special Subordinate - Judge) at Dharmapuri District.

For Appellant : Mr.J.Chandran

For Respondents : R1 & R2 - Not ready in Notice

JUDGMENT

The civil miscellaneous appeal is filed against the judgment and decree dated 27.11.2014 passed in M.C.O.P.No.361 of 2014.

2.The accident occurred on 14.07.2011 at about 6.30 p.m at Dharmapuri town in Dharmapuri to Salem Main Road in front of Madurabai Marriage Hall about 1 k.m South of Dharmapuri Police Station. The case was registered by the Dharmapuri Police Station in Crime No.1438/2011 under Sections 279, 337 of I.P.C.

3.The claimant/respondent sustained head injury Haemorrhagic contusion right frontal region, SAH, B/L High fronto parietal to be subdural hemorrhage and their hemispheric tissue, undisplaced fracture involving right frontal bone extending high parietal bone to left parietal bone, fracture of left clavicle, injury to neck, injury to Pelvis, Multiple injuries all over the body and he was admitted in the hospital and had taken treatment. The claim petition was filed for a total compensation of Rs.20,00,000/-. The Tribunal adjudicated the issues with reference to the documents as well as the evidences produced by the respective parties. With reference to the liability, the Tribunal arrived a conclusion that the Insurance company is liable to pay compensation and this Court do not find any infirmity as such. As far as the

coverage of all is concerned, that was also in force and accordingly, the Tribunal held that the Insurance Company is liable to pay the compensation to the victim/claimant. With reference to the quantum of compensation to be awarded in commensuration with the nature of the injuries, the Tribunal has found that the disability was assessed as 25% by the Doctor. When the disability was assessed as 25% and there is no loss of income established by the claimant, in view of the fact that he was a Government servant and even after the accident and recovering from the injuries, he was working with the Government and drawing the same salary and there was no reduction of salary and further, secured promotion also, the Tribunal has committed an error in fixing the compensation towards loss of income.

4. The learned counsel appearing on behalf of the appellant/Insurance company made a submission that the Tribunal itself found that after few months from the date of accident, the claimant continued in Government service and was receiving the same salary and there was no reduction of salary. This apart, the claimant, in his evidence, has stated that he lost his promotional opportunity and salary hike. However, the said statement was not substantiated with any document. In the event of not granting promotion and there is no revision of salary, the claimant ought to have produced some records from the Government or some certificates at least from the Pay Disbursing officer. In the absence of any such document, the Tribunal has committed an error in arriving a conclusion that there is a loss of future income and in this case, the claimant being a Government servant, there was no loss of future income and this apart, the Government servants are entitled for medical claim under the Government medical scheme also. These factors were not considered by the Tribunal. Contrarily, the Tribunal, in respect of 25% of disability, applied the Multiplier and granted the compensation of Rs.4,03,533/- towards the disability and loss of future income. Such an award is unjust and not in consonance with the principles to be followed for arriving a fair compensation.

5. Perusal of the findings, undoubtedly, the claimant sustained some grievous injury. P.W.2 Doctor was examined, the Doctor who deposed before the Court was not the Doctor, who treated the claimant. The Doctor has given disability certificate as 50% disability. However, the Tribunal, considering the nature of the injury sustained as well as the other factors and arrived a conclusion that the disability is to be fixed as 25%. Thus, the Tribunal has taken into consideration 25% disability and applied Multiplier and granted compensation.

6. The learned counsel appearing on behalf of the appellant mainly disputed the findings of the Tribunal by stating that in

a case of 25%, disability, where the claimant is a Government servant and there is no loss of future income or otherwise and there is a medical reimbursement scheme is available for Government servants, then the Tribunal ought not to have applied Multiplier, but would have granted compensation on percentage basis. Even in case of application of Multiplier, the same 25% arrived by the Tribunal should not have been taken at all. For all these reasons, the learned counsel for the appellant is of an opinion that the claimant is not entitled for the compensation of Rs.4,03,533/- for the disability of 25%.

7. This Court is of the considered opinion that the Tribunal itself has committed an error and this can be noticed with reference to paragraph 19 of the judgment as well as paragraph 25 of the judgment. In paragraph 19, during the discussion, the Tribunal after considering the facts and circumstances, in clear terms, arrived a conclusion that the disability is to be assessed as 25%. However, while calculating the compensation in Paragraph 25, it is stated that the permanent disability is 50% itself is an error committed by the Tribunal.

8. For all these reasons, this Court is inclined to modify the compensation granted under the head of disability. The disability compensation is to be fixed as Rs.75,000/- [25*3000=75,000]

9. In respect of the compensation granted under various other heads, the modification is required and the same is to be confirmed. Accordingly, this Court is inclined to reschedule the compensation as detailed hereunder:

(a) Compensation for Permanent Disability (25*3000)	:	75,000/-
(b) Pain and Sufferings	:	50,000/-
(c) Loss of Income for 4 months	:	20,000/-
(d) Medical Expenses	:	2,82,000/-
(e) Transport Expenses	:	13,000/-
(f) Extra Nourishment	:	10,000/-
(g) Mental Agony	:	25,000/-
(h) disability to dis figuration of face	:	25,000/-
Total		----- : 5,00,000/- -----

10. The total compensation payable to the respondent/claimant is a sum of Rs.5,00,000/- (Rupees Five Lakhs only).

11. The learned counsel appearing on behalf of the appellant made a submission that the award amount had already been deposited. The claimant is entitled to withdraw the award amount of Rs.5,00,000/- (Rupees Five Lakhs only) with accrued interest by filing an application, if not already withdrawn. The balance amount, if any, in the deposit is to be reimbursed to the appellant/Insurance company and the appellant is permitted to withdraw the said amount by filing an appropriate application with accrued interest.

12. With this modification, the judgment and decree dated 27.11.2014 passed in M.C.O.P.No.361 of 2014 is quashed and the Civil Miscellaneous Appeal in C.M.A.No.1820 of 2015 stands allowed. No costs.

Sd/-

Assistant Registrar (CS II)

//True Copy//

Sub Assistant Registrar

To

The Special Subordinate - Judge,
(Motor Accidents Claims Tribunal),
Dharmapuri.

Copy to : The Section Officer, V.R Section,
High Court, Madras.

+1cc to Mr.J.Chandran, Advocate SR.NO..20188

AKM/07.04.21/4P- 4C/

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