IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:02.12.2020	Pronounced on:08.12.2020

Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

C.M.A.No.1184 of 2016
and
C.M.P.No.8958 of 2016

Reliance General Insurance Co.Ltd.,
Branch Office, Barathi Street,
Omalur Main Road,
Swarnapuri, Salem District. .. Appellant

/versus/

1.V.Elayaraja
2.G.Muruganandam ..Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 31.07.2015 made in M.C.O.P.No.2351 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Dharmapuri.

For Appellant :Mr.S.Arunkumar
For Respondents:Mr.S.Sathiaseelan for R1
No appearance for R2

JUDGMENT
(The case has been heard through video conference)

This appeal is filed by the Insurance Company, aggrieved by the quantum of compensation awarded to the accident victim.

2.On 29.04.2012 at about 08.00 p.m., while the claimant was riding his two wheeler viz., Hero Honda bearing Reg.No.TN-29-M-4224 along Sengodipuram road at Dharmapuri near Om Sakthi Hospital, a motor cycle viz., Hero Honda Splendor bearing Reg.No.TN-29-F-5004 coming on the opposite direction rash and negligently dashed against the claimant and caused fracture injury and the motor cycle was also badly damaged. The claimant was taken to the Government Medical College Hospital, Dharmapuri and was treated as in-patient for 8 days. Later, he was referred to Coimbatore Ganga Private Hospital. His left foot was operated and nails were fixed. He was working as an Assistant Manager in Hosur TVS Logistics Company and earning a sum of Rs.16,899/- per month. Due to dislocation of left foot, he is unable to stand or work for long time. He has lost his partial earning capacity and permanently. He has incurred huge medical expenses. Hence, compensation of Rs.10,00,000/- with interest sought in the claim petition filed before the Motor Accident Claims Tribunal, Dharmapuri.

3.The Insurance Company in its counter stating that it is the claimant, who rode his motorcycle, without following the traffic rules and dashed against the other motor cycle, due to his rash and negligent driving. After the accident, the owner of the motorcycle bearing Reg.No.TN-29-F-5004 did not inform the Insurance Company about the accident. As per the records available with the Insurance Company, the offending vehicle bearing Reg.No.TN-29-F-5004 is not insured under them besides the claim of compensation being highly excessive and exorbitant. Therefore, they are not liable to pay the compensation.

4.Before the Tribunal, the claimant marked 17 documents to show that the accident occurred due to negligence of the rider of the motorcycle bearing Reg.No.TN-29-F-5004. The First Information Report was registered against the rider of the motorcycle TN 29-F-5004. In the accident, the claimant sustained fracture injury and admitted in Coimbatore Ganga Hospital and he had incurred medical expenses to the tune of Rs.23,000/-. He is a qualified B.Tech. (Mechanical Engineer), Diploma in Mechinist. He is presently serving in TVS Logistics Company. He received an appointment in Dubai Company and was supposed to join the said company. But, due to the accident and permanent disability, he has lost the said foreign job and lost the earning capacity. The Tribunal, on considering the evidence, awarded a sum of Rs.8,05,000/-as compensation.

5.In the appeal, the learned counsel appearing for the Insurance Company/appellant specifically contended that the injury sustained by the claimant is fracture in his left foot and lisfrancs dislocation left foot. This injury will not cause any functional disability. Even if the disability has caused functional disability, the assessment of 45% is excessive. The Tribunal ought not to have taken the physical disability percentage given to apply the multiplier. The disability is not scheduled injury and noway had affected his earning capacity. Even in the cross examination, the claimant admits that he is now employed in Flipkart Company at Bangalore and earning. He has not produced his salary certificate to establish that there is loss of income, due to the injury. Therefore, it has to be inferred that there is no loss of income. When there is no loss of income or earning capacity, for a non-scheduled injury, multiplier need not be applied. As per the guidelines of the Raj Kumar vs Ajay Kumar & Anr reported in CDJ 2010 SC 1153, this is not a fit case to apply multiplier method. Therefore, the learned counsel submitted that the multiplier applied for loss of income has to be withdrawn and for the disability, taking note of the disability percentage given by the Doctor(PW-2) for the part of the body has to be converted to the whole body and appropriate compensation should be awarded.

6.The learned counsel appearing for the 1st respondent submitted that the salary of the claimant, qualification and future prospects have been well established through Exs.P11 to P14. Through Ex.P17 and the evidence of PW-2 (Dr.S.Krishnamoorthy), the claimant has proved that the injury has caused 50% disability. While so, the multiplier method and the disability percentage applied by the Tribunal is fair and proper. While applying the multiplier, the Tribunal failed to take the future prospects. Following the dictum laid by the Hon'ble Supreme Court in [Andhra Pradesh State Road Transport Corporation represented by its General Manager and another v. M.Ramadevi and others reported in (2008) 3 SCC 379], wherein the Court has enhanced the compensation in the absence of cross objection. The learned counsel for the 1st respondent submitted that the future prospects has to be considered and award has to be enhanced though no cross objection or appeal for enhancement preferred by the claimant.

7.The learned counsel also relied upon the judgment rendered by the Hon'ble Division Bench of this Court reported in 2019(2) TNMAC 293 (DB) [Chinnathamani and others v. Amman Granties and another], wherein the Court has insisted, while fixing the income of the claimant, the consumer price index issued by the Central Board of Direct Taxes every year, has to be taken note and when applying the multiplier mentioned in the II schedule of the Act, the consumer price index and cost inflation index have to be applied and in such formula is applied, the claimant is entitled for higher compensation.

8.Ex.P17 disability certificate is given by PW-2 on clinical examination of the claimant and on scrutinizing the medical records the physical disability is assessed as 50%. There is no working sheet annexed to the disability certificate to find, how the disability has been arrived. It is also not stated whether the said disability is for the part of the body or whole body. The Doctor, who gave the disability certificate Ex.P17, was examined as PW-2. In the cross examination, he admits that he clinically examined the claimant in the year 2013 and it is not aware of the present physical condition. He also admits that when he was discharged from the Kovai Medical Hospital, he was fully cured and comfortable.

9.The disability summary is Ex.P4 indicates that the claimant, who suffered Lisfrancs dislocation left foot was treated with closed reduction and cancellous screw and K-wire. He was admitted on 07.05.2012 and discharged on 10.05.2020. He was asked to come for review after six weeks. There is no further evidence to show that the claimant took any further treatment for the said injury. The admission of the claimant (PW-1) that the injury status may change and his certificate is given to two years ago, may not be appropriate at present. PW-1 the claimant in his cross examination admits that presently he is working as System Operator in Flipkart at Bangalore. He also admits that due to the accident he has not given his consent to the offer letter received from Dubai Company.

10.Be that as it may. On the date of the accident, the claimant has proved that he was employed in TVS Logistics Service Limited, Hosur and earning his gross was around Rs.16,000/- per month. At the time of giving evidence on 01.04.2015, he was employed in Filpkart Company at Bangalore. There is no evidence to show that due to injury, he has lost his earning capacity or chance of employment. In the absence of his present salary certificate, which he had not marked to substantiate his claim, the assessment of the Tribunal that 50% of the disability assessed by the Doctor two years ago has caused 45% functional disability to the claimant is baseless and not proper. Therefore, this Court finds force in the submission of the learned counsel appearing for the appellant/Insurance Company. The Tribunal ought not to have taken the percentage of physical disability given by the Doctor PW-2 on his face value without proper working sheet. More so, when PW-2-Doctor himself has admitted that the physical condition of the claimant could have changed in two years.

11.In the said circumstances, this Court is of the view that the award of the Tribunal requires interference and modification. As per Ex.P14, the basic pay of the claimant is Rs.4670-00. HRA is Rs.1,635-00. Additionally, he has been paid Rs.2,000-00 as conveyance. Rs.4,595-00 has been paid as Special allowance and Rs.3000-00 has been paid for other allowance. The Tribunal has rightly taken the basic and HRS for fixing monthly income of the claimant. The other allowance which are payable on actual performance, not otherwise. However, after taking Rs.7500/- as monthly income, the Tribunal failed to add the future prospects. Therefore, a sum of Rs.9,375/-(i.e. Rs.7500+25% (Rs.1875)=Rs.9375/-) is taken as monthly income of the claimant. 1/3rd of the physical disability of 45% is taken as functional disability and multiplier '16' is adopted for arriving the loss of earning capacity. (i.e. 9375X12x16x15/100=Rs.2,70,000/-).

12.The break up details of the award is below:-

Sl. No.	Particulars	Award of the Tribunal (Rs.)	Modified award of this Court (Rs.)	Enhanced/ Reduced/ Confirmed/
1.	Disability	6,48,000-00	2,70,000-00 9375X12x16x15/100	Reduced
2.	Pain and suffering	40,000-00	40,000-00	Confirmed
3.	Loss of earning capacity during the treatment period	30,000-00	30,000-00	Confirmed
4.	Medical expenses	23,000-00	23,000-00	Confirmed
5.	Transport charges	19,000-00	19,000-00	Confirmed
6.	Nutritious and Loss of estate	10,000-00	10,000-00	Confirmed
7.	Mental agony	25,000-00	25,000-00	Confirmed
8.	Attender charges	10,000-00	10,000-00	Confirmed
	Total	8,05,000-00	4,27,000-00	Reduced

13.The award of the Tribunal is accordingly modified and scaled down from Rs.8,05,000-00 to Rs.4,27,000-00 with interest at the rate of Rs.7.5% p.a from the date of petition (i.e. On 21.08.2012) till the date of realisation.

14.The learned counsel appearing for the appellant/Insurance Company submitted that as per the interim order of this Court in C.M.P.No.8958 of 2016, 50% of the award amount with proportionate accured interest with costs has already been deposited.

15.In view of the above submission, the appellant/Insurance Company is directed to deposit the modified award amount with interest, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant/1st respondent is permitted to withdraw the award amount with interest, (less the amount already withdrawn by him), on filing appropriate petition before the Tribunal.

16.In the result, this Civil Miscellaneous Appeal is partly allowed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To:-
The Special Subordinate Judge,
The Motor Accident Claims Tribunal,
Special Sub Court, Dharmapuri.

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

+1cc to Mr.S.Arunkumar, Sr no.39889

C.M.A.No.1184 of 2016
and
C.M.P.No.8958 of 2016

SV(CO)
RMP(12/05/2021)