



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 10.11.2020	Pronounced on: 20.11.2020
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Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

C.M.A.No.1219 of 2016
& C.M.P.No.9212 of 2016

The Oriental Insurance Company Limited,
Door No.159, Kumaran Road, First Floor,
A.A.Complex, Tiruppur.Appellant/Respondent 3

/versus/

1. N.Anand,Respondent-1/Petitioner
S/o.Narayanan.
2. K.Shankar,Respondent-2/Respondent -1
S/o.Koneri.
3. S.Kokila, Respondents-3/Respondent -2
W/o.K.Shankar.

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying against the decree and judgment dated 14th day of March 2016, made in M.C.O.P.No.533 of 2012, on the file of Motor Accident Claims Tribunal (Court of Chief Judicial Magistrate), Tiruppur.

For Appellant : Mrs.Elveera Ravindran

For R1 : Mr.Ma.Pa. Thangavel.

For R2 & R3 : ex parte

JUDGMENT

(The case has been heard through video conference)

This Appeal is filed by the Insurance Company challenging the award passed by the Tribunal which is excessive and disproportionately high to the nature of injuries sustained by the claimant.

2. The facts of the case is that, on 13.11.2012 at about 10.15 hours when the claimant N.Anand was riding his TVS-50 moped bearing registration No.TN-33-Y-8524 near Nochipalayam Pirivu, Tirupur to Palladam road, a bajaj Mini door van bearing registration No.TN-50-Z-6730 rash and negligently dashed against the claimant and caused grievous injury to him over his head, shoulder and finger. The claimant was taken to Government Hospital, Coimbatore and he was treated as inpatient for 15 days. Even after his discharge, he continue to take treatment as out patient. Due to the accident, which has caused permanent disability the claimant was not able to earn as before. As a painter, he was earning a sum of Rs.9,000/- per month. Since, the injury has impaired his earning capacity, he has to be compensated with a sum of Rs.7,00,000/-.

3. The Insurance Company resisted the claim on the ground that the claimant was solely responsible for the accident. Case has been registered by the police against the respondent for his rash and negligent driving. Further, the age, income and avocation of the claimant are disputed.

4. The Tribunal, after considering the evidence let in by the respective parties, had awarded a sum of Rs.6,34,000/- to the claimant as against the claim of Rs.7,00,000/- and applied multiplier method for the injury caused.

5. In the appeal, the Learned Counsel for the appellant would submit that the tribunal went wrong in holding that the claimant suffers 33% functional disability while the injury to the clavicle is 6% and injury in the left hand is 8%, even according to P.W.3. The disability certificate given by P.W.3 is for 33% inclusive of fractures and other injuries for party of the body and it is not assessment for whole body and certainly not the assessment of functional disability. Therefore, the physical disability has been mechanically taken by the Tribunal for applying the multiplier method. It is also submitted by the Learned Counsel for the appellant that the Tribunal erred in fixing the income of the claimant as Rs.6,000/- per month and in addition another Rs.3,000/- towards future prospects, when the claimant has not produced any document to show his avocation. The award of Rs.20,000/- under various heads like Extra Nourishment, Attender Chargers, Transport, Rs.24,000/- for the loss of income during the treatment period, Rs.50,000/- for pain and sufferings are also challenged in this appeal as excessive.

6. The Learned Counsel appearing for the claimant/respondent would submit that the accident has occurred due to rash and negligent driving of the bajaj mini door van driver. Hence, F.I.R was registered against the 1st respondent K.Shankar, who is the driver of the goods van. The van driver is

the tort-feasor. The Insurance Company which has collected premium from the van owner is liable to pay compensation.

7. As far as the quantum of compensation, the Learned Counsel would submit that the claimant is 37 years old, earning his livelihood as painter. Due to fracture on the clavicle and finger, his skill and earning capacity has reduced substantially. Therefore, the Tribunal is right in applying multiplier method.

8. Heard the Learned Counsel for the appellant/Insurance Company and Learned Counsel for the 1st respondent.

9. The claimant has sustained fracture of his clavicle bone and 4th metacarpal left hand. After inserted rod, the fracture has been corrected and rod has been removed. For the said injury, the doctor has given disability certificate of 33% with break up. For eight different disabilities, he has given specific percentage and arrived 33%. The major injury sustained by the claimant is clavicle bone fracture and 4th metacarpal bone fracture. None of the injuries sustained by the claimant is a scheduled injury. These injuries will not cripple a painter from carrying his avocation. At the most, there may be some restriction but not 33% has assessed by the Tribunal. The said assessment of 33% functional disability for the said injury is perverse on the face of the record.

10. The Tribunal had totally overlooked the evidence and misinterpreted the judgment of the Hon'ble Supreme Court rendered in Raj Kumar -vs- Ajay Kumar Case reported in 2011 (1) SCC 343. The Tribunal has not only excessively fixed 33% functional disability for non-schedule injury which is only a partial permanent disability, it has also given an additional compensation of 50% towards future prospects. When admittedly there is no evidence on behalf of the claimant to prove his skill, avocation or income. He is neither a salaried person nor permanent employer. The salary certificate marked as Ex.P.3 issued by one M/s.Avan Arul Painting Contractor not been testified by the author of the document. Therefore, this Court finds that the award passed by the Tribunal requires interference and to be modified.

11. The doctor, who has assessed the disability has been examined as P.W.3 and disability certificate is marked as Ex.P.4. As per Ex.P.4, the disability certificate, the claimant has suffered (i) Right clavicle fracture and (ii) Fractures 4th Metacarpal left hand. He has assessed the partial permanent disability as 33% which is apparently excessive. He has examined the claimant three years after the accident. Nowhere he has

deposed that the injury has caused 33% functional disability to the claimant. He has not even whispered about the functional disability. While so, the multiplier method adopted by the Tribunal and fixing the functional disability as 33% has to be set aside.

12. The physical disability of 33% assessed by the Doctor and accepted by the Tribunal is modified in the light of the nature of the injury and the avocation of the claimant. This Court is of the view that the functional disability to the claimant will be 11%. Accordingly the compensation is assessed below:-

Sl. Nos	Compensation under various heads	Award passed by this Court
1.	Loss of income (Rs.6,000 + 40% (FP) x12x15x11%	Rs.1,66,320
2.	Loss of income during treatment period (Rs.6,000 x 2)	Rs.12,000/-
3.	Nutrition and Food	Rs.5,000/-
4.	Transportation	Rs.5,000/-
5.	Pain and Sufferings	Rs.25,000/-
6.	Medical expenses	Rs.5,000/-
	Total	Rs.2,18,320/-

13. The award of the Tribunal is modified and reduced to Rs.2,18,320/- from Rs.6,34,000/-. The Insurance Company is directed to deposit the amount to the credit of the M.C.O.P. 533/2012 with 7.5% from the date of numbering the petition till the date of realization, within a period of 12 weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdrawn the same on filing proper application. Accordingly, the Civil Miscellaneous Appeal is Partly-allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bsm

To:

1. The Motor Accident Claims Tribunal
(Court of Chief Judicial Magistrate),
Tiruppur.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.Ma.P.Thangavel, Advocate Sr.37334
+1cc to Mrs.Elveera Ravindran, Advocate Sr.37529

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srg 13/05/2021



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