IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.10.2020

Coram:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1553 of 2020
and
C.M.P.No.11507 of 2020

M/s.United India Insurance Co. Ltd.,
Branch Office-III, Arjuna Tower,
248/164, Cherry Road,
Salem-636 001. .. Appellant/3rd Respondent

Vs.

1. Ramya, D/o Vedi ..1st Respondent/Petitioner
2. R.Murugesan S/o Ramu ..2nd Respondent/1st Respondent
3. S.Uma, W/o Senthilnathan ..3rd Respondent/2nd Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decree dated 29.04.2019 made in M.C.O.P.No.1477 of 2016 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Coimbatore.

For appellant : Mr.S.Arun Kumar

For respondents: Mr.L.Mouli for R-1
Respondents 2 and 3 -
set ex-parte before the Tribunal

JUDGMENT
(The Judgment of the Court was delivered by R.Subbiah, J)

Challenging the quantum of compensation awarded by the Tribunal, in and by award dated 29.04.2019 in M.C.O.P.No.1477 of 2016 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Coimbatore, the present appeal is filed by the Insurance Company.

2. The first respondent in this appeal is the injured-victim (claimant) in the motor accident that had occurred on 17.08.2015 at about 10 p.m. involving the bus bearing Registration No.TN-30-BA-7889, owned by the third respondent in this appeal and insured with the appellant-Insurance Company.

3. It is the case of the first respondent/claimant that on 17.08.2015 at about 10 p.m., she had travelled as a passenger in Ramavilaas bus bearing Reg.No.TN-30-BA-7889 belonging to the third respondent and insured with the appellant-Insurance Company. While the said bus was proceeding on the Salem-Dharmapuri Main Road, near Nachinampatty Eari, it dashed against the ongoing lorry bearing Reg.No.TN-29-AV-5221, due to rash and negligent driving of the bus by its driver and thus caused the accident. In the said accident, the claimant had sustained multiple injuries all over the body including severe fracture on both the legs. The claimant-injured was 22 years old at the time of the accident. She was a Field Development Officer in Sakthi Agro Centre, Bhavani and was earning Rs.25,000/- per month. Hence, the claimant had made a claim for Rs.1 crore as compensation.

4. The said claim petition of the injured-claimant was resisted by the appellant-Insurance Company by filing counter statement stating that the claim petition is liable to be dismissed for non-joinder of the owner of the lorry as a party to the claim petition and also its insured. Further, the claimant had not produced any document to substantiate her claim in respect of the monthly income. It is also stated that the amount claimed under the different heads are exorbitant and excessive, and thus the appellant/Insurance Company prayed for dismissal of the claim petition.

5. In order to prove the claim, on the side of the injured-victim, the claimant examined herself as P.W.1 and marked Exs.P-1 to P-17. On the side of the Insurance Company, no oral or documentary evidence was adduced. The Tribunal, on an analysis of the oral and documentary evidence, held that the accident had occurred due to the rash and negligent driving of the second respondent herein. By coming to such conclusion, the Tribunal had awarded the compensation amount under the following heads:

Sl.No.	Head under which the Tribunal awarded the compensation	Amount (in Rs.)
1	Future loss of income	60,48,000
2	Medical bills	1,24,248
3	Pain and suffering	15,00,000
4	Loss of amenities	10,00,000
5	Attendant charges	15,00,000
6	Transportation to hospital	10,000
7	Extra-nourishment	10,000

Sl.No.	Head under which the Tribunal awarded the compensation	Amount (in Rs.)
8	Damage to clothes	5,000
	Total	1,01,97,248

The Tribunal awarded the above said compensation with interest at 7.5% per annum from the date of claim petition till the date of its realisation. Aggrieved by the quantum of compensation awarded by the Tribunal as above, the present appeal is preferred by the Insurance Company.

6. Now, it is the submission of the learned counsel appearing for the appellant/Insurance Company that, it is no doubt true that on account of the accident and the nature of injuries sustained by the first respondent/claimant, both the legs of the claimant were amputated. Though the Doctor of the Madras Medical College had assessed the disability suffered by the claimant at 90%, considering the amputation of both the legs, the Tribunal had fixed the disability at 100%. Thereafter, the Tribunal, by fixing the monthly income of the claimant at Rs.28,000/-, arrived at the annual income of the claimant at Rs.3,36,000/- (Rs.28,000/- x 12). Considering the age of the victim being 22 years at the time of accident, the Tribunal adopted the multiplier "18". After adopting multiplier "18", the Tribunal calculated the loss of earning at Rs.60,48,000/- (Rs.3,36,000 x 100% x 18). Assailing the amount arrived at by the Tribunal, the learned counsel appearing for the appellant-Insurance Company further submitted that in order to prove the income of the claimant, absolutely, no documentary evidence was produced by her. In the absence of any documentary evidence, the Tribunal ought not to have fixed the monthly income at Rs.28,000/- and therefore, the calculation made by the Tribunal based on the claimant's monthly income at Rs.28,000/-, is liable to be set aside and consequently, by re-fixing the income notionally at Rs.10,000/-, the amount awarded by the Tribunal under the head "loss of income" had to be reduced.

7. Per contra, the learned counsel appearing for the first respondent/claimant submitted that the victim was aged about 22 years at the time of accident. On account of the injuries sustained by her, both of her legs were amputated. She is unable to carry on her normal avocation without the help of others. Her marital prospects have also been affected. Considering all these aspects, the amounts awarded by the Tribunal cannot be found fault with and thus, the learned counsel appearing for the first respondent/claimant prayed for confirmation of the impugned award of the Tribunal.

8. Keeping in mind the submissions made by the learned counsel on both sides, we have carefully perused the entire materials available on record.

9. Considering the nature of injuries sustained by the victim, including the fact that her both legs were amputated, we are of the opinion that 100% disability fixed by the Tribunal cannot be said to be wrong. At the same time, the learned counsel appearing for the appellant/Insurance Company submitted that the victim-claimant has not produced any document to support her income. The Tribunal has fixed the monthly income of the claimant at Rs.28,000/- on its own accord. In our considered opinion, in the absence of any documentary evidence, the Tribunal ought not to have fixed the said sum of Rs.28,000/-. Therefore, the amount awarded by the Tribunal under the head "loss of income" had to be re-assessed.

10. Considering the facts and circumstances of the case, we are of the view that by fixing a notional sum of Rs.15,000/- as the monthly income of the claimant, the calculation could be made under the head "loss of income" to arrive at a just, fair and proper compensation. Accordingly, if Rs.15,000/- is fixed as the monthly income of the claimant, and if 40% of the same is added towards future prospects, the loss of monthly income works out to Rs.21,000/- (Rs.15,000 + 40% of 15,000). The annual loss of income comes to Rs.2,52,000/- (Rs.21,000 x 12). The age of the claimant being 22 years at the time of accident, if multiplier "18" is adopted, the actual loss of income works out to Rs.45,36,000/- (2,52,000 x 18). Hence, the amount of Rs.60,48,000/- awarded by the Tribunal under the head "loss of income" is hereby reduced to Rs.45,36,000/-.

11. Further, we find that the amount of Rs.15,00,000/- awarded by the Tribunal under the head "pain and suffering" appears to be on the higher side and hence, the same is reduced to Rs.7,50,000/-.

12. Further, the amount awarded by the Tribunal under the head "loss of amenities" at Rs.10 lakhs, also appears to be not just and proper, and the same is hereby reduced to Rs.5 lakhs.

13. It is seen that the Tribunal had not awarded any amount towards the loss of marriage prospects of the claimant, and accordingly, a sum of Rs.3 lakhs is awarded under that head.

14. Similarly, the amount awarded by the Tribunal at Rs.10,000/- under the head "transportation charges" appears to be inadequate, and taking into account the amputation of both the legs suffered by the claimant, for which, she would have

gone to hospital many a times and moreover, taking into consideration the nature of injuries suffered by the claimant, more particularly, the amputation of both the legs, we are of the opinion that throughout her life, she has to use a vehicle for her movement, and hence, it is appropriate to award Rs.4 lakhs as transportation charges. Accordingly, a sum of Rs.4 lakhs is awarded under that head.

15. Further, the sum of Rs.15 lakhs awarded by the Tribunal under the head "attendant charges" being higher and not according to the nature of treatment underwent by her, the same needs proper reduction, which accordingly is reduced to Rs.5 lakhs.

16. Furthermore, Rs.10,000/- awarded by the Tribunal for extra-nourishment is hereby enhanced to Rs.80,000/- taking into account her loss of nourishment due to hospitalisation and due to the nature of injuries sustained by her and also the amputation.

17. The amount of Rs.1,24,248/- awarded by the Tribunal under the head "medical expenses" being based on medical bills, is hereby confirmed.

18. The amount of Rs.5,000/- awarded by the Tribunal towards damages to clothing, is hereby confirmed.

19. Thus, the comparative statement of the amounts awarded by the Tribunal and this Court is as below:

Sl. No.	Heads under which the compensation amounts are awarded	Amounts awarded by the Tribunal (in Rs.)	Amounts awarded by this Court (in Rs).
1	Future loss of income	60,48,000	45,36,000
2	Medical expenses	1,24,248	1,24,248
3	Pain and suffering	15,00,000	7,50,000
4	Loss of amenities	10,00,000	5,00,000
5	Loss of marriage prospects	-	3,00,000
6	Attender charges	15,00,000	5,00,000
7	Transportation charges	10,000	4,00,000
8	Extra-nourishment	10,000	80,000
9	Damage to clothing	5,000	5,000
	Total	1,01,97,248	71,95,248/- (rounded off) to Rs.72,00,000

Thus, the total compensation awarded by the Tribunal at Rs.1,01,97,248/- is hereby reduced to Rs.72,00,000/- (Rupees seventy two lakhs only). The above amount of Rs.72,00,000/- awarded by this Court as total compensation, shall carry interest @ 7.5% per annum form the date of claim petition till the date of deposit.

20. Accordingly, the appeal filed by the Insurance Company is partly allowed. The appellant/Insurance Company is directed to deposit the above amount of Rs.72,00,000/- with interest and costs as awarded by the Tribunal, within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount, if any already deposited by them. On such deposit of the amount by the appellant/Insurance Company, the first respondent/claimant is permitted to withdraw the same before the Tribunal by filing appropriate application in accordance with law, after deducting the amount if any already withdrawn by them.

Consequently, C.M.P. is closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
1. The Presiding Officer,
Motor Accidents Claims Tribunal,
Special Sub-Court, Coimbatore.

2. The Section Officer,
V.R. Section, High Court, Madras.

+1 Cc to Mr.S.Arun Kumar, Advocate sr 34610.
+1 Cc to Mr.L.Mouli, Advocate sr 34480.

C.M.A.No.1553 of 2020

AD(CO)
SP(04/11/2020)