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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.NO.2201 OF 2015

M/s.Royal Sundaram Alliance Insurance Company Ltd.,
Sundaram Towers,
No.45 & 46, Whites Road,
Chennai-600 014.

...

Appellant/
3rd Respondent

/versus/

1.Y.Sasikumar

... 1st Respondent/
Petitioner

2.Rengasamy

3.M.Palanisamy

...2 & 3 Respondents/
1 & 2 Respondents

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree in M.C.O.P.No.2493 of 2013 dated 01.04.2015 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Krishnagiri.

For Appellant : Ms.Harini
for M/s.M.B.Gopalan

For Respondents : Mr.Mukund R.Pandian for R1
: Ex-parte for R2 and R3

J U D G M E N T

(The case has been heard through video conference)

This appeal is preferred by the Insurance Company against the award passed by the Tribunal fixing the liability on the Insurance Company to pay the compensation of Rs.6,53,400/- along with interest at the rate of 7.5%.

2. Heard the learned counsel for the appellant and the learned counsel for the claimant.



3. The claimant who is the 1st respondent herein while driving his two wheeler along the Salem road at Krishnagiri was hit by a lorry loaded with cement. In the accident, he sustained multiple injuries and he was admitted in the hospital for around 35 days. He sustained open fracture both bone left forearm with open fracture left humerus with vascular injury. At the time of accident, he was working as Branch Manager in Universal Mobile Sales at Krishnagiri, earning a sum of Rs.7,000/- per month and he was a B.Sc graduate. Petition was filed claiming Rs.10,00,000/- as compensation.

4. The Insurance Company resisted the claim on two grounds. Regarding the liability, the Insurance Company contended that the claimant was the tort-feasor and FIR was registered against him and was facing criminal trial for rash and negligent driving. He while crossing the road rash and negligently without noticing the lorry passing on the main road and hit the lorry and invited the accident. The First Information Report speaks about the manner in which the claimant rash and negligently driven his vehicle. Since the claimant is the tort-feasor, the Insurer Company is not liable to pay compensation. Further the quantum of compensation claimed by the claimant is excessive disbursed to the injury suffered.

5. The Tribunal, though the FIR and final report were filed by the Insurance Company to buttress the point that the claimant was the tort-feasor, has rejected the said contention and has held that if the lorry driver who was the fault and caused the accident and therefore the Insurance Company is liable to indemnify. Regarding the quantum of compensation taking note of the nature of the injury, the Tribunal has applied the multiplier though the injury is not a scheduled injury and has fixed the disability at 45% and arrived at Rs.6,53,400/-.

6. In this appeal, the learned counsel appearing for the appellant would contend that the Tribunal erred in disbelieving the FIR and final report fixing the negligence on the claimant. When there is no contra evidence, the content of FIR and investigation report which presume to be done in accordance with law ought to have been accepted. Further the application of multiplier method for the injury which was caused only a partial disability. The Tribunal wants to apply of multiplier which is applicable the disability in total and the injury is once referred in the schedule. Further the learned counsel would also submit that in any event fixation of 45% disability for the injury sustained by the claimant which has



only causes difficulty to sit and squat as before, which is no impairment in his earning capacity is highly exaggerated.

7. The learned counsel for the claimant would submit that though the injuries sustained are not scheduled injury, due to the injury the claimant has lost his job and he is not able to function and perform to earn par with his competent.

8. Heard the rival contention of the learned counsels.

9. First Information Report is against the claimant. The accident register report and the discharge summary indicates that he sustained fracture injury in the accident and he was treated for nearly 35 days. Since he has not produced any documents to show his earning capacity, the Tribunal has taken his monthly income as Rs.6,000/- and has applied multiplier for the disability. PW-2-doctor had fixed the disability at 45%. Considering the nature of the injury which is fracture on the left forearm , left humerus with vascular injury, but with difficulty to lift heavy materials and difficulty in sit and squat. At the most will cause positively at 25% of his functional disability and not 45% has assessed by the doctor and accepted by the Tribunal.

10. As far as the liability is concerned, since the Tribunal has on facts accepted the ocular evidence of PW-1 and PW-2, though it is contrary to Ex.P-1 FIR, when there are two views available and the Tribunal accepted one view favouring the claimant and when there is no evidence to show the criminal Court has convicted the claimant/tort-feasor for his rash and negligent driving. This Court opposed the view of the Tribunal fixing the liability on the Insurance Company.

11. Accordingly, the award of compensation is modified as below:

Award under various heads	Modified award of this Court
Loss of earning capacity (Rs.6000x12x25%x16)	Rs.2,88,000/-
Loss of income during the treatment period (Rs.6000x5)	Rs.30,000/-
Pain and Suffering	Rs.50,000/-



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Award under various heads	Modified award of this Court
For transportation	Rs.20,000/-
Attender charge	Rs.10,000/-
Loss of amenities	Rs.25,000/-
Total	Rs.4,23,000/-

12. The said award amount shall be paid with interest at the rate of 7.5% from the date of petition till the date of deposit. The Insurance Company is directed to deposit the amount as awarded by this Court. On such deposit, the respondent/claimant shall be entitled to withdraw the same on filing appropriate petition.

13. The learned counsel for the appellant submits that in compliance with the order passed by this Court in M.P.No.1 of 2015 dated 30.09.2015 a sum of Rs.4,00,000/- has already been deposited in the M.C.O.P., account. In such case the difference if any shall be deposited within a period of six weeks from the date of receipt of a copy of this judgment.

14. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Special Subordinate Court,
Krishnagiri.

+1cc to M/S Mukund R Pandiyan, Advocate, SR.No.36833

C.M.A.No.2201 of 2015

CA(CO)
PM(01/09/2021)