

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.256 of 2015

and

M.P.No.1 of 2015

Royal Sundaram Alliance Insurance Co.Ltd.,
Sundaram Towers, No.15 & 16, Whites
Road, Chennai - 600 014

.. Appellant/3rd Respondent

Vs.

1.Abutahir
2.Kannan
3.Chithiran
4.Santhappan

5.The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam Division-2) Limited,
Railway Station New Road,
Periya Milagupalarai, Trichy.

.. Respondents/Petitioners,
Respondents 1,2,4 & 5

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 14th day of March 2014, made in M.C.O.P.No.1159 of 2011, on the file of Motor Accident Claims Tribunal (Sub Court), Tiruppur.

For Appellant : Mr. Ela Veera Ravindran

For Respondents: For R1 - No appearance

R2 to R4 - Exparte

For R5 - Mr.D.Venkatachalam

WEB COPY

J U D G M E N T

The civil miscellaneous appeal is filed against the judgment and decree dated 14.03.2014 passed in M.C.O.P.No.1159 of 2011.

2. The learned counsel for the appellant mainly contended that the award of compensation by the Tribunal is exorbitant in view of the fact that the claimant has not established any permanent disability, warranting grant of award by applying Multiplier method.

3. It is contended that the disability is partial and admittedly, the claimant is a third party passenger traveling in the 5th respondent/Transport Corporation, while the accident took place and therefore, the award of compensation is excess and not in commensuration with the nature of the injuries sustained by the claimant.

4. The accident took place on 31.08.2011 at about 3.05 PM and the accident took place near Ramasamy Kovil Privu, Trichy To Kovai Main Road. The Avinashi Palayam Police Station registered FIR in Crime No.644/2011 under Sections 279, 337 of IPC and admittedly, it is a head on collision and the evidences recorded by the Tribunal reveals that the Lorry Driver was negligent and he was driving the Lorry without any driving license. Thus, the documents as well as the evidences placed before the Tribunal revealed that the Lorry Driver was driving the vehicle without Driving license and head on collision occurred on account of his negligence. Thus, the FIR itself was rejected by the Police against the Driver of the Lorry and the Driver of the 5th respondent Transport Corporation was not arrayed as an accused in the criminal case.

5. This being the admitted facts, this Court has to consider, whether the Tribunal has calculated the compensation with reference to the injuries sustained by the claimant.

6. The Tribunal examined the witnesses and found that there was a serious fracture in the right shoulder, which caused partial permanent disability, which was assessed as 80%. As per the evidence, the claimant could not establish that he was a cloth merchant and his monthly income was taken as Rs.5,000/- and accordingly, the Multiplier was adopted by the Tribunal.

7. Perusal of the findings of the Tribunal reveals that the accident occurred on account of the head on collision. The Lorry Driver was not possessing a valid Driving License at the time of accident and the claimant was a third party passenger traveling in the 5th respondent/Transport Corporation Bus and the claimant sustained partial permanent disability of 80% and as per the evidences available, the trial Court fixed the monthly salary of the claimant as Rs.5,000/- and the age of the claimant at the time of accident was 38 years and accordingly, the Multiplier-15 was applied and a total compensation assessed as Rs.7,20,000/-.

8. This Court is of the considered opinion that the learned counsel for the appellant mainly contended that application of Multiplier itself is improper by the Tribunal. Such a contention was even disputed by the claimants before the Tribunal. Though the claimant has not appeared before this Court, the findings of the Tribunal reveals that the Multiplier was mainly applied on the ground that the claimant sustained partial permanent disability of 80% and he was a cloth merchant and doing his business in the platforms and therefore, the usage of hand is of paramount importance for running the business and under those circumstances, this Court do not find any perversity or infirmity as such in the matter of applying the Multiplier or calculating the compensation with reference to the provisions of the Motor Vehicles Act and in accordance with the principles laid down. However, in the other heads, the Tribunal awarded a sum of Rs.1,00,000/- for Pain and Suffering and thereafter, for Mental Agony, the Tribunal awarded a sum of Rs.1,00,000/-. For traveling, a sum of Rs.25,000/- was awarded and for Nutritious food, another sum of Rs.25,000/- was awarded. A sum of Rs.34,300/- was awarded towards medical expenses and the salary for the attendant charges was granted as Rs.15,000/-.

9. This Court is of an opinion that once the Tribunal granted a sum of Rs.1,00,000/- to the Pain and Suffering, then further amount of Rs.1,00,000/- under the head of mental agony may not be required. When an amount of Rs.1,00,000/- is granted towards Pain and Suffering as there is no complete permanent disability as such and the partial permanent disability is assessed, this Court is of an opinion that the amount of Rs.1,00,000/- granted on the head of Mental Agony may not be necessary and this Court is inclined to modify the said head alone. This apart, once the Multiplier method is adopted and the compensation is calculated comprehensively with reference to the other heads, the Courts must be cautious in awarding compensation.

10. In the present case, admittedly, it is an injury and a fracture. Of course, the partial permanent disability was assessed as 80%. However, awarding of compensation under both the heads of Pain and Suffering and Mental Agony is improper. Accordingly, this Court is inclined to interfere with the compensation awarded under the head of Mental Agony i.e., Rs.1,00,000/-. With reference to all other heads, the Tribunal has considered the evidence and accordingly, granted the compensation, which is to be construed as a just compensation, within the meaning of the Act and there is no infirmity as such.

11. Accordingly, the judgment and decree dated 14.03.2014 passed in M.C.O.P.No.1159/2011 is confirmed in all respects

except Rs.1,00,000/- granted under the head of Mental Agony. Deducting the said amount of Rs.1,00,000/-, the balance amount is to be settled in favour of the claimant within a period of three months from the date of receipt of a copy of this judgment.

12. The learned counsel for the appellant made a submission that the appellant had already deposited the entire award amount of Rs.14,37,446/-. The appellant is permitted to withdraw Rs.1,00,000/-, which is now reduced along with the proportionate interest accrued by filing an appropriate application before the Tribunal. The balance amount with accrued interest is to be settled in favour of the 1st respondent claimant at the earliest possible.

13. The 1st respondent/Claimant shall be permitted to withdraw the said amount by filing an appropriate application and the payments are to be made only through RTGS.

14. With this modification, the Civil Miscellaneous Appeal stands allowed in Part. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Kak
To

1.The Sub Court,
(Motor Accidents Claims Tribunal),
Tiruppur.

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

+1 CC to M/s. Elveera Ravindran, Advocate sr 18398.

C.M.A.No.256 of 2015

SP(24/08/2020)