IN THE HIGH COURT OF JUDICATURE AT MADRAS

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|---|---|
| Reserved On | 20.08.2020 |
| Pronounced On | 31.08.2020 |

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2458 of 2013
and
M.P.No.1 of 2013

(Through Video Conferencing)

Branch Manager,
The Oriental Insurance Co. Ltd.,
Cochin - 682 024,
Kerala. ... Appellant/2nd Respondent

Vs.

1.R.Valliammal ...1st Respondent/Claimant

2.Susamma Antony ... 2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.1705 of 2009, dated 09.03.2012 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Tiruppur.

For Appellant : M/s.Harini for Mr.N.Vijayaraghavan

For R1 : Mr.Ma.P.Thangavel



J U D G M E N T

The Insurance Company is the appellant in this Civil Miscellaneous Appeal. In this appeal, the appellant Insurance Company has challenged the quantum of compensation awarded to the 1st respondent/claimant vide impugned Judgment and Decree dated 09.03.2012 by the Motor Accidents Claims Tribunal (Principal Subordinate Judge), Tiruppur in M.C.O.P.No.1705 of 2009.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.3,20,000/- by considering the income of the 1st respondent/claimant as Rs.4,500/- and a partial permanent disability at 35%. The Tribunal has also awarded interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit.

3. In this appeal, it is the submission of the learned counsel for the appellant that adoption of multiplier in the impugned Judgment and Decree was incorrect considering the fact that the 1st respondent/claimant was assessed to only 38% and that the Tribunal has itself taken as 35% for the purpose of determining the compensation towards loss of income on account of the disability.

4. I have considered the arguments advanced on behalf of the learned counsel for the appellant and the 1st respondent.

5. The facts of the case are that the 1st respondent/claimant met with an accident on 10.12.2009 at about 20.00 hours (08.00 p.m.). The accident is said to have taken place while the 1st respondent/claimant was purportedly walking on the NH47 main road, near Govt. Elementary School, Avinashi, when a insured lorry of the 2nd respondent insured with the appellant Insurance Company driven in a rash and negligent manner and knocked the 1st respondent/claimant. As a result of the accident, the 1st respondent/claimant suffered injuries.

6. There is no dispute in facts of the case. A notional income of Rs.4,500/- per month was considered by the Tribunal for determining the aforesaid compensation. The 1st respondent/claimant had stated that he was working as a building work (mason) and was earning a sum of Rs.150/- per day. The 1st respondent/claimant stated that as a consequence of the accident, he was unable to do work as a mason. injuries. The nature of injuries suffered by the 1st respondent/claimant as follows:-

i. Right leg fracture.
ii. Injuries to left ear jaw, back, right leg; and
iii. Injuries all over the body.



7. The 1st respondent/claimant had produced the discharge summary vide Ex.P3. Apart from the same, the P.W.3 Physician (Doctor) who treated the 1st respondent/claimant had assessed a partial permanent disability of the 1st respondent/claimant as 38%. The Tribunal has taken the same as 35% for the purpose of awarding compensation towards loss of income due to the partial permanent disability and awarded a sum of Rs.2,83,500/- towards loss of income due to the partial permanent disability.

8. In my view, this approach applying the aforesaid partial permanent disability without reference to the functional disability due to it by the Tribunal was not proper. The Tribunal has to determine the impact of such disability on the earning capacity of the $1^{st}$ respondent/claimant as per the decision of the Hon'ble Supreme Court in Raj Kumar Vs. Ajay Kumar and Another, (2011) 1 SCC 343. Considering the nature of injuries suffered by the $1^{st}$ respondent/claimant, I am of the view that the Tribunal should have assessed the permanent disability as 15% due to the injury for the purpose of awarding compensation towards the loss of earning capacity.

9. At the same time, the adoption of multiplier appears to be correct method even though at an earlier point of time, the Courts were avoiding the same on the percentage of injury at the rate of Rs.1,000/-, Rs.2,000/-, Rs.3,000/- and etc. per percentage on the injuries.

10. In the light of the decision in Raj Kumar's (supra) and in the light of the decision of the Hon'ble Supreme Court in Sanjay Verma Vs. Haryana Roadways, (2014) 3 SCC 210, I am inclined to recompute the compensation as follows:-

| Heads and Calculation | Compensation enhanced by this Court |
|---|---|
| Permanent Disability (15 x 2000) | Rs.30,000/- |

| Heads and Calculation | Compensation enhanced by this Court |
|---|---|
| Loss of earning capacity due to permanent disability:-<br><br># Monthly Income : Rs.4,500/-<br><br># Annual Income before the accident (4500 x 12) : Rs.54,000/-<br><br># Loss of future earning per annum at 15% (54,000 x 15/100) : Rs.8,100/-<br><br>** Future Prospectus at 25% (8,100x25/100) : Rs.2,025/-<br>-----------------<br>: Rs.10,125/-<br>-----------------<br>* Multiplier applicable with reference to the age : 15 (10,125x15) : Rs.1,51,875/- | Rs.1,51,875/- |
| Pain and Sufferings | Rs. 30,000/- |
| Extra Nourishment | Rs. 5,000/- |
| Transport Expenses | Rs. 10,000/- |
| Medical Expenses | Rs. 6,450/- |
| Total | Rs.2,33,325/- rounded off to Rs.2,35,000/- |

# As per the decision in Raj Kumar's case (supra).

* As per the decision inNational Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680.
** As per the decision of the in Sanjay Verma Vs. Haryana Roadways, (2014) 3 SCC 210 and V.Mekala Vs. Malathi and Another, (2014) 11 SCC 178.

11. Therefore, the appellant Insurance Company is directed to deposit the above re-quantified amount of compensation of Rs.2,35,000/- together with interest and proportionate costs,

less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

12. On such deposit, the 1st respondent/claimant is permitted to withdraw the same together with interest and costs, less any amount already withdrawn, by filing suitable application before the Tribunal.

13. If the appellant Insurance Company has deposited any amount in excess of above re-quantified amount of compensation determined by this Court, it is permitted to withdraw the excess amount together with interest accrued thereon, by filing suitable applications before the Tribunal.

14. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To:

The Motor Accidents Claims Tribunal,
Principal Subordinate Judge, Tiruppur.

Copy to

The Section Officer,
VE Section,
High Court, Madras.

+1cc to Mr.Ma.P.Thangavel, Advocate Sr.28620

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srg 21/04/2021