IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.795 of 2011 and M.P.No.1 of 2011
(Through Video Conferencing)

United India Insurance Co., Ltd.,
Represented by its Branch Manager,
Branch Office, 89/1, 2nd floor,
11th Cross, Sampige Road,
Malleshwaram,
Bangalore 560 003. .. Appellant/2nd Respondent

.vs.

1.R.Chinnapaiyan @ Cyinnapaiyappa

2.M/s.Soverign Developers (P) Ltd.,
No.45/1, 4th Cross, Malleshwaram,
Bangalore, Karnataka State 560 003.
(R2 was Exparte before the Tribunal)
.. Respondents /Respondent

Prayer.: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 16.04.2010 made in M.C.O.P.No.470 of 2008 on the file of the Motor Accident Claims Tribunal (Additional Subordinate Judge) Krishnagiri.

For Appellant : Mr. S.Arunkumar
For Respondent : R2-Exparte
R1- No Appearance

J U D G M E N T

There is no representation on behalf of the contesting 1st respondent. The 2nd respondent was set exparte before the Tribunal. Since no adverse orders are proposed to be passed against 1st respondent who is the contesting party in this Civil Miscellaneous Appeal, it is taken up for final hearing and disposal.

2. The Insurance company is the appellant. It is aggrieved by the impugned fair and decretal order dated 16.04.2010 passed by the Motor Accidents Claims Tribunal, (Additional Subordinate

Judge) Krishnagiri in M.C.O.P No.470 of 2008 (hereinafter referred to as the Tribunal)

3. The first respondent was the claimant who met with an accident which is said to have been taken place on 22.11.2007 at about 1.45 p.m. While the 1st respondent was riding in a Bajaj CT 100 motorcycle from Hosur to Krishnagiri, a Tipper lorry bearing Reg.No.KA-04-B-7116 belonging to the 2nd respondent and insured with the appellant-Insurance Company, allegedly driven by its driver in a rash and negligent manner at a high speed hit the 1st respondent, as a result of which, the 1st respondent fell down on the right side front wheel of the Tipper lorry which ran over his right leg. The 1st respondent thus sustained grievous injuries.

4. The Tribunal, after considering the oral and documentary evidence on record has awarded a sum of Rs.5,72,625/- as compensation with interest at the rate of 6% per annum, from the date of the claim petition till the date of deposit, to the 1st respondent-claimant . The break up of the compensation awarded by the Tribunal are summarised below:-

S.No	Heads	Amount awarded by the Tribunal
1	Loss of future earning power (Rs. 1800X12x15=Rs.3,24,000)	Rs.3,24,000.00
2	Permanent Disability	Rs. 60,000.00
3	Pain and suffering	Rs. 25,000.00
4	Partial loss of earning power	Rs. 18,000.00
5	Transport to hospital and Extra Nourishment	Rs. 10,000.00
6	Medical Expenses	Rs. 55,116.22
7	Expenses for fixing artificial	Rs. 75,000.00
8	Attender Charges	Rs. 7,500.00
Total		Rs.5,72,616.22 rounded off to Rs.5,72,625/-

5. Aggrieved by the impugned order, the Appellant-Insurance Company has filed the present appeal.

6. The learned counsel for the appellant-Insurance Company submitted that the FIR was delayed and therefore raises a serious question regarding the alleged accident and the injuries

alleged to have been suffered by the 1st respondent-claimant

7. The Tribunal applied the multiplier method to award a sum of Rs.5,72,625/- as compensation. The impugned fair order of the Tribunal has been questioned by the appellant-insurance Company on the ground that it erred in resorting the multiplier method for awarding the aforeaid compensation and that there was a delay in filing of the FIR by two days.

8. Heard the counsel for the appellant and also perused the material evidence available on record.

9. The law on the subject in no longer res-integra. The Hon'ble Supreme Court has clarified the legal position. In Ravi v. Badrinarayan, (2011) 4 SCC 693 : (2011) 2 SCC (Crl) 751: (2011) 2 SCC (Civ) 426 at page 698, "It is well settled that delay in lodging the FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the police station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the police station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim." Therefore, mere delay in filing of the FIR cannot defeat the rights of an accident victim straight away unless there are evidence to the contrary to sustain the objection of the appellant insurance company. It is not open for the appellant to merely contend that the alleged accident did not take place merely on the ground that there was a delay in the filing of the FIR.

10. It is noticed that the delay in filing the FIR vide Ex.P.1 has explained by the first respondent /claimant as he was under hospitalisation after the accident and therefore it cannot be stated that the claim petition filed before the claims Tribunal was not bonafide.

11. As far as the multiplier for the injuries suffered by the first respondent/claimant is concerned, it is noticed that when the aforesaid order was passed by the Tribunal, the Courts were not applying multiplier for permanent partial disablement. However, it is noticed that the Hon'ble Supreme Court has itself recognised the aforesaid method for determination of compensation of the Hon'ble Supreme Court reported in Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343.

12. In para Nos.12 and 13, the Hon'ble Supreme Court in Raj

Kumar v.AjayKumar, (2011) 1 SCC 343 has explained the modalities for determining the compensation. These paragraphs are reproduced below:-

"12.Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:-

(i) whether the disablement is permanent or temporary;(ii) if the disablement is permanent, whether it ispermanent total disablement or permanent partial disablement;

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or

(ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and

functions, which he was earlier carrying on, or
(iii)whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood."

13. Considering the above, in my view, the impugned award of the Tribunal is well reasoned and requires no interference. I am inclined to dismiss the present Civil Miscellaneous Appeal.

14. The appellant/Insurance Company is therefore directed to deposit the award amount of Rs.5,72,625/- along with interest at the rate of 6% p.a. from the date of petition till the date of deposit and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent/claimant is permitted to withdraw the award amount along with proportionate interest and costs, less the amount if any, already withdrawn.

15. Accordingly, this civil miscellaneous appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkd
To
The Motor Accidents Claims Tribunal,
Additional Subordinate Judge)
Krishnagiri.

Copy to
The Section Officer,
VR Section,
High Court Madras.

C.M.A.No.795 of 2011
and M.P.No.1 of 2011

VGII(CO)
RMP(07/04/2021)