



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 19.11.2020

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.198 of 2016

M/s.United India Insurance Company Limited,
(Mettur Dam), Rep. by Divisional Office - I,
No.104- A, Peramanur Main Road,
Salem - 636 007.

... Appellant

/versus/

1. Balan,
S/o.Gopal.
2. The Principal (HM),
Raghavendran Matriculation School,
Residing at Mechari,
Mettur Taluk, Salem District.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying against the award and decree dated 26.06.2015 made in M.C.O.P.No.979 of 2010 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.2, Salem.

For Appellant : Mr.S.Arun Kumar

For R1 : Mr.Nirmal Adiya,
for Nithyesh & Vaibhar

For R2 : Mr.V.Sekar

J U D G M E N T

(The case has been heard through video conference)

This appeal is preferred by the Insurance Company aggrieved by the quantum of compensation awarded to the accident victim has excessive.

2. The brief facts of the case is that on 04.01.2010 at about 08.30 hours when the claimant was riding his motor cycle near Sevalunur Thittu, Salem main road, a school van owned by the 2nd respondent rash and negligently hit the claimant, causing him severe injury on the head and all over the body. The



claimant has suffered the following injuries:-

Sutured lacerated wound of 4 cm x ½ cm right eyebrow, sutured wound 6 cm x ½ cm over right knee, Black eye right side lost his sight, CT brain and fracture involving right infero lateral aspect of frontal bone zygomatic arch lateral wall of orbit, inferior aspect temporal bone, lateral wall right maxilla and body of right sphenoid sinus hemorrhage in right ethmoid, maxillary and sphenoidal sinuses pericranial soft tissue swelling in right precepted zygomatic of fronto temp region with air pockets and right sided traumatic optic neuropathy and injuries and abrasions all over the body.

3. He was taken to the hospital and treated for the injury but anyhow he has lost his right eye sight and also suffered fracture involving the bottom bone. He being a Welder by profession, claiming that, he has lost his future due to loss of eye sight, the claim petition was laid before the Motor Accident Claims Tribunal, claiming compensation of Rs.7,00,000/-.

4. The claim petition was resisted and contested by the Insurance Company on the ground that the driver of the offending van had no proper valid driving license and the claimant has no permanent income. However, the Tribunal had rejected the said defence and awarded a sum of Rs.17,60,000/- with 7.5% interest.

5. Aggrieved by the award passed by the Tribunal, the present appeal is filed by the Insurance Company challenging the liability as well as quantum of compensation.

6. In this appeal, it is contended by the Learned Counsel for the Appellant that application of multiplier for non-schedule injury is erroneous, except in respect of loss of vision. The other injuries are compensatable by lump sum besides awarding compensation, application of multiplier for the loss of income, the Tribunal has erred in awarding compensation for loss of income and other heads amounting to duplication.

5. On considering the over all evidence and the findings of the Tribunal, this Court finds that the percentage of permanent disability for applying multiplier in this case has been wrong applied. The disability towards the earning capacity due to loss of eye sight, alone requires an application of multiplier and for remaining injuries which is only partial permanent injury, application of multiplier is unwarranted but the Tribunal has applied multiplier, taking the total disability fixed at 65%, which is on the higher side, even according to the evidence of the Doctor.

6. On considering the medical records, this Court finds



that for loss of vision, the total disability for the purpose of applying multiplier is fixed at 40%. The other injuries which are partial in nature the disability is fixed at 20%. For the total disability the multiplier method is applied and for the other partial permanent disability a sum of Rs.2,000/- is awarded for each percentage.

7. Taking note of the fact that compensation for the future prospects included while computing the loss of income there is no necessity to award another Rs.60,000/- under the head of loss of income, which will be a duplication.

8. In the light of the above discussion, the award has to be modified as below:-

Sl. Nos.	Compensation under various heads	Award passed by this Court
1.	Loss of income (Rs.6,000/- x 40% (FP) x 12 x 18 x 45/100)	Rs.8,16,480/-
2.	Loss of partial permanent disability (Rs.2,000/- x 20%)	Rs.40,000/-
3.	Pain and Sufferings	Rs.1,00,000/-
4.	Medical expenses	Rs.30,400/-
5.	Loss of amenity	Rs.50,000/-
6.	Loss of marriage prospects	Rs.50,000/-
7.	Transportation	Rs.10,000/-
8.	Food and Nutritious	Rs.10,000/-
9.	Attender Charges	Rs.25,000/-
10.	Future Medical expenses	Rs.10,000/-
11.	Loss of expectation of life	Rs.50,000/-
	Total	Rs.11,91,800/-

8. Accordingly, the Civil Miscellaneous Appeal is partly-Allowed. This Court holds that the claimant is entitled for a sum of Rs.11,91,800/- with interest @ 7.5% p.a from the date of petition till the date of realization. The Appellant/Insurance Company is directed to deposit the modified award amount with interest, within a period of 8 weeks from the date of receipt of a copy of this order, less the amount already deposited if any. The Claimant is permitted to withdraw the



award amount, less the amount already withdrawn if any on filing proper application. No costs.

Sd/-

Assistant Registrar(CS-IV)

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Sub Assistant Registrar

bsm

To

1.The Motor Accidents Claims Tribunal,
Special Sub Court No.2, Salem.

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

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.37439

+1cc to Mr.N.Sekar, Advocate, S.R.No.37457

C.M.A.No.198 of 2016

RGN(CO)
CB(01/09/2021)