

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 05.10.2020

Pronounced on: 07.10.2020

Coram::

The Honourable Dr.Justice G.Jayachandran

C.M.A.No.2573 of 2016
& C.M.P.No.18436 of 2016

The Branch Manager,
Oriental Insurance Company Limited,
Lodge President Complex, Thanjavur Road,
No.33-C/10, Tiruvarur Town & Munisifi Taluk. ... Appellant

/versus/

1. T. Tamilmani, aged 28, S/o.Dharmasagayam,
Thennanchar Village, Mappillaikuppam,
Salipperi Post, Nannilam Taluk, Tiruvarur.
2. N.Aruldoss, S/o.Natarajan,
No.4-3/4A, GMC Nagar,
Keezhakavathudi, Tiruvarur Taluk and Munisifi. ... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 9th day of April, 2015, made in M.C.O.P.No.119 of 2014 on the file of the Motor Accident Claims Tribunal (Court of Chief Judicial Magistrate), Tiruvarur.

For Appellant : Mr.K.Vinod
for Mrs.Elveera Ravindran

For R1 : Mr.M.Thamizhavel
For R2 : No appearance

J U D G M E N T

(The case has been heard through video conference)

This Appeal is filed by the insurance company aggrieved by the quantum of compensation awarded to the claimant in the Motor Accident Claim Petition.

2. The facts of the case is that, on 31.08.2014, while the claimant was travelling in his Hero Honda Splendor + motorcycle bearing registration No.TN-50-K-1904 on Thiruvavur - Mayiladuthurai main road near Senthamangalam J.M.Kalayana Mandapam, a TATA ACE load van suddenly came from the J.M.Kalayana Mandapam to connect the road, without noticing the two wheeler of the claimant rash and negligently hit vehicle. In the said accident, the claimant sustained fracture on both his hands. He was admitted in the hospital for treatment. Surgery was conducted for his fracture. A criminal case was registered against the TATA ACE van driver by Thiruvavur Taluk Police Station, for his rash and negligent driving, causing grievous hurt. The injury has caused loss of income, Loss of earning capacity, permanent disability and medical expenses. Hence, compensation for a sum of Rs.20,00,000/- sought under the claim petition.

3. The Insurance Company has filed counter, wherein, it is contended that the claimant was riding the two wheeler without proper Driving License. There was no fault on the part of the TATA ACE driver for causing the accident. The claimant has to prove his age, qualification and income. Hence, there is no loss of income or disability causing loss of earning capacity.

4. Before the Tribunal, the claimant has examined two witnesses and marked 14 Exhibits. On behalf of the Insurance Company 1 witness was examined and 2 Exhibits were marked.

5. P.W.2, the Doctor, after examining the x-ray report of the claimant had assessed 42% partial permanent disability. The Tribunal has notionally fixed the income of the claimant at Rs.6,000/- per month and the permanent disability as 31%. The Tribunal has awarded a sum of Rs.4,86,413/- compensation as below:-

1. For 31 % of Permanent Disability	Rs.93,000/-
2. Loss of Income towards 31% of permanent disability	Rs.93,000/-
3. Medical Expenses	Rs.1,23,493/-
4. Pain and sufferings	Rs.50,000/-
5. Transportation	Rs.5,000/-
6. Extra Nourishment	Rs.10,000/-
7. Loss of future happiness	Rs.1,00,000/-
8. Damage to vehicles	Rs.11,920/-
Total	Rs.4,86,413/-

6. In this appeal, the quantum of compensation is challenged by the insurer on the ground that the Tribunal has erred in awarding a huge sum of Rs.4,86,413/- without considering the facts that the driver of the TATA ACE van had no Driving License. The disability percentage mentioned by the Doctor is excessive and without any basis. When there is no functional disability, the Tribunal ought not to have awarded a sum of Rs.93,000/- towards the loss of income. The award of compensation under other heads like pain and sufferings, future happiness and disability are challenged under this appeal.

7. The Learned Counsel appearing for the claimant would submit that at the time of accident, the claimant was 28 years old. He was working as Home Guard and also an agriculturist. Due to the injury, he has lost the earning capacity

and therefore, the Tribunal has rightly awarded the compensation for disability as well as loss of earning capacity, though the injury was a non-scheduled injury.

8. Heard the rival submissions.

9. The claimant has sustained fracture of his left and right radial ulna and plates fixed. The fracture in the forearm has been assessed by the doctor and certified as 42% disability. The Tribunal has erred in holding that 42% disability for whole of the body instead of the part of the body. The Tribunal presuming that it is common to boost the disability, has reduced 42% of disability certified by the Doctor into 31% of disability for commutation. The said assumption and presumption has lead to awarding excessively.

10. In *Raj Kumar Vs. Ajay Kumar and another* reported in *CDJ 2010 SC 1153*, the Hon'ble Supreme Court has clearly explained under what circumstances compensation for the loss of future earning capacity can be awarded in case of non-scheduled injury. The evidence available before us in this case does not fit any of the category illustrated by the Hon'ble Supreme Court in *Raj Kumar case*.

11. In the instant case, the Tribunal ought not to have awarded loss of future income. It should have restricted awarding compensation for the loss of income during the treatment period. Likewise, the Tribunal has gone to the extend of awarding Rs.1,00,000/- for loss of enjoyment and incapacity to cohabit with wife. It is not pleaded or proved that the injury caused to his forearm will incur incapacity to cohabit.

12. Hence, this Court is of the view that the Tribunal has awarded excess compensation in respect of loss of income, pain and sufferings, loss of enjoyment. Hence, the award of the Tribunal has to be modified as below:-

1. For Permanent Disability (Rs.3,000 x 31)	Rs.93,000/-
2. Loss of Income (Rs.6,000 x 4) during treatment period	Rs.24,000/-
3. Medical Expenses	Rs.1,23,493/-
4. Pain and sufferings	Rs.25,000/-
5. Loss of amenity	Rs.25,000/-
6. Transportation	Rs.5,000/-
7. Extra Nourishment	Rs.10,000/-
8. Damage to vehicles	Rs.11,920/-
Total	Rs.3,17,413

13. The Learned Counsel appearing for the appellant/insurance Company has stated that pursuant to the interim order passed by this Court in C.M.P.No.18436 of 2016 on 24.11.2016, the entire award amount with interest has been deposited by the Insurance Company. The claimants have already withdrawn 50% of the award amount. If it is so, the appellant/Insurance Company is permitted to withdraw the balance amount lying in the deposit, less the amount payable to the claimants as per the modified award. The Tribunal direction to pay and recover stands confirmed.

14. Accordingly, the *Civil Miscellaneous Appeal is partly-allowed*.
No costs. Consequently, connected Miscellaneous Petition is closed.

07.10.2020

Index : Yes/No.
Speaking order/Non-speaking order
bsm

To,

1. The Motor Accident Claims Tribunal (Court of Chief Judicial Magistrate),
Tiruvarur.
2. The Section Officer, V.R.Section, High Court, Madras.

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& C.M.P.No.18436 of 2016

Dr.G.Jayachandran,J.

bsm



Pre-delivery Judgment in
C.M.A.No.2573 of 2016
& C.M.P.No.18436 of 2016

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