

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2020

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.NO.478 OF 2016
and
CMP.Nos.9623 OF 2019 & 3732 OF 2016

The Divisional Manager,
United India Insurance Co., Ltd.,
1st Floor, 73, C.M.T.H. Road,
Ambattur, Chennai - 53.

... Appellant/2nd Respondent

Vs.

1.S.Pargunan ... 1st Respondent/Claimant

2.T.Rose ... 2nd Respondent/1st Respondent

Prayer:

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 28.01.2015 made in M.C.O.P.No.337 of 2012 on the file of Motor Accidents Claims Tribunal, Subordinate Judges Court, Tiruttani.

For Appellant : Mr.S.Arun Kumar

For Respondents: Mr.R.Raghavendran for R1
No Appearance - R2

JUDGMENT

(Delivered by M.M.SUNDRESH.,J)

This appeal has been preferred by the appellant/Insurance Company challenging the quantum and, therefore, we are not inclined to go into the question of liability.

2. The first respondent/claimant made a claim before the Tribunal for a sum of Rs.25,00,000/- being the injured victim. He is claiming to be a self-employed person earning about Rs.10,000/- per month.

3. Before the Tribunal, the income was sought to be fixed at Rs.50,000/- per month. The claimant also sought for 100% disability. He was also doing self employment by making Aluminium Channel Fitting Work (Aluminium Material Fabrication). He further produced documents to show the income which is inclusive of income tax assessment orders filed for subsequent years after the accident.

4. The Doctor was examined to show the 100% disability. The Tribunal took 75% towards functional disability. Accordingly, the Tribunal fixed Rs.57,60,000/- towards the loss of future earnings apart from awarding the other conventional heads. Challenging the same, the present appeal has been filed.

5. The learned counsel appearing for the appellant submitted that it is absolutely falsehood to say that the first respondent/claimant suffered no functional disability and in any case, there is no loss of income and his business is being run by him after the accident. The additional evidence sought to be marked would clearly show that he is running his business in the very same place and was moving around normally. Much reliance has been made on the C.D. recording in this regard by the learned counsel for appellant. The learned counsel also further played the said recording through his mobile phone before us. He further submitted that the injured/claimant walked normally to this Court when he was asked to appear. The record of the High Court would also vouch for the same. However, he came to the court hall in a wheelchair. Therefore, it is the case where the fraud has been committed on the Court. Pursuant to the order passed by this Court on 09.09.2019, the first respondent/claimant did not appear. However, he asked for the Medical Report. Therefore, the appeal will have to be allowed by admitting the additional evidence sought to be marked.

6. The learned counsel appearing for the first respondent/claimant submitted that he was not called before the Medical Board. The Tribunal considered the relevant materials. It took into consideration all the documents pertaining to the income of the first respondent/claimant and the examination of the Doctor. Thus, the appeal will have to be allowed.

7. This Court, on 09.09.2019, passed the following order:-
"This Court, by order dated 26.04.2019, directed the Dean, Dr.Rajiv Gandhi Government General Hospital, Chennai to form a Medical Team and examine the first respondent/claimant in view of the contentions taken by the Insurance Company that the disability of the first respondent/claimant was assessed wrongly.

2. We are informed by the learned counsel for the appellant that in spite of issuing notice by the Dean, Dr.Rajiv Gandhi Government General Hospital, Chennai, the first respondent/claimant failed to appear for medical examination.

3.We direct the Dean, Dr. Rajiv Gandhi Government General Hospital, Chennai, to form a Medical Board to examine the first respondent/claimant. The notice directing the first respondent/claimant to appear should be issued to the first respondent/claimant giving him at least 10 days time for appearance. The Dean must also send a copy of the notice to M/s.Sarvabhauman Associates, having office address at No.39, Law Chamber, High Court buildings, Chennai - 600 104, so as to enable the counsel for the first respondent/claimant to inform the first respondent/claimant with regard to the date and time of medical examination. Similarly, notice should be issued to Mr.S.Arun Kumar, Advocate, having office address at No.115, New Law Chambers, High Court Buildings, Chennai - 600 104, so as to enable the Insurance Company to produce the document indicates in the order dated 26.04.2019.

4.The Dean, Dr.Rajiv Gandhi Government General Hospital, Chennai is directed to send a copy of the report of the Medical Examination to this Court positively by 15.10.2019."

8. Pursuant to the said order, the Medical Board issued notices. The records produced by the Medical Board would suggest that obviously the first respondent/claimant did not want to appear. Number of occasions, he has been asked to appear. Therefore, the Medical Board was not in a position to assess him. Curiously, he sought for the Report of the Medical Board which was also rejected. Therefore, the contention of the learned counsel appearing for the first respondent/claimant, in this regard, cannot be countenanced.

9. The Report of the Insurance Claim Investigator and the C.D. filed along with that has not been opposed by the appellant. In fact, no counter affidavit has been filed in C.M.P.No. 9623 of 2019.

10. We have also seen the C.D. recording through the mobile phone of the learned counsel appearing for the appellant. We are quite convinced that the first respondent/claimant is hale and

healthy and doing his business. Therefore, there is no business loss as such and he is moving around though the fact remains that he did suffer injury and underwent surgery. This is a clear case where the fraud has been played upon the Court. The counsel has been changed on three occasions by the first respondent/claimant. Even this counsel has not appeared on the last occasion - 28.01.2020 and, therefore, we have passed the following order:-

"Despite several opportunities given both by the Regional Medical Board and by us, the respondent appears to be not interested in pursuing the matter further. However, we do not wish to pass orders on merits today though the learned counsel appearing for the appellant refreshes the mind of this Court the reason for sending the claimant to the Medical Board was that the video clipping shown before this Court that he was able to walk around while he was brought in the wheelchair inside the Court. The Tribunal has also assessed 100% disability.

Post the matter 'for orders' on 30.01.2010."

11. Thus, we have no hesitation in holding that the Tribunal was absolutely wrong in assessing the functional disability at 75%. The Doctor is nothing but a stock witness. However, taking note of the fact that the claimant/first respondent did suffer injury and underwent surgery, though the medical bills are on the higher side, we would like to take them as such, apart from granting a sum of Rs.3,00,000/- towards the permanent disability and a further sum of Rs.54,000/- towards the loss of amenities. Though the amounts awarded by the Tribunal under other conventional heads at Rs.1,00,000/- towards pain and suffering, Rs.25,000/- each towards extra nourishment and transportation, Rs.75,000/- towards future medical expenses and attendant charges and Rs.4,21,000/- towards medical bills are higher, we are inclined to confirm the same.

12. Thus, we are awarding a total sum of Rs.10,00,000/- as compensation to the first respondent/claimant with the interest at 7.5% from the date of filing of the petition till the date of realization. We arrive at the same by taking sympathetic and reasonable view, though we do not approve the conduct of the first respondent/claimant.

13. The appellant/Insurance Company is directed to deposit the compensation amount as awarded by this Court along with proportionate interest, less the amount, if any, already deposited to the credit of M.C.O.P.No.337 of 2012 on the file of

Motor Accidents Claims Tribunal (Subordinate Judge), Tiruttani within a period of six weeks from the date of receipt of a copy of the judgment.

14. We also direct the Tribunal to transfer the amount deposited by way of RTGS to the bank account of the claimant within a period of three weeks from the date of deposit of the amount. On such transfer, the claimant is entitled to withdraw the same.

15. In view of the above, the Civil Miscellaneous Appeal stands allowed in part. No Costs. Consequently, connected C.M.P.No.9623 of 2019 stands ordered and C.M.P.No.3732 of 2016 stands closed.

Sd/-

Assistant Registrar(MDU)

//True Copy//

Sub Assistant Registrar

ssm

To

The Motor Accidents Claims Tribunal,
Subordinate Court, Tiruttani.

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.8679

+1cc to Mr.M.Raja, Advocate, S.R.No.8336

C.M.A.No.478 of 2016
and

CMP.Nos.9623 OF 2019 & 3732 OF 2016

NRL(CO)
CS/15/12/2020

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