

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.543 of 2016
and
C.M.P.No.4552 of 2016

The Divisional Manager,
The Oriental Insurance Company Limited,
256/115, Prakasam Road,
Oriental House, Broadway,
Chennai - 108. ... Appellant/2nd Respondent

Vs.

1.V.Damodaran ...1st Respondent/Petitioner

2.S.Shanmugasundaram ...2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 18th day of November 2015, made in M.C.O.P.No.1306 of 2014, on the file of Motor Accident Claims Tribunal (Special Sub Court), Cuddalore.

For Appellant : Mr.K.Vinod

For Respondents: R1 - Mr.F.Terry Chella Raja
R2 - Dispense with

J U D G M E N T
सत्यमेव जयते

The civil miscellaneous appeal is filed against the judgment and decree dated 18.11.2015 passed in M.C.O.P.No.1306 of 2014 on the file of Motor Accident Claims Tribunal (Special Sub Court), Cuddalore.

2. The learned counsel appearing on behalf of the appellant / Oriental Insurance Company Limited contended that application of Multiplier by the Tribunal in the present case itself is erroneous. There is no permanent disability as such and there is no loss of income as the claimant is working as a Lab Technician and this apart, the loss of income has also not been established by the claimant before the Tribunal. Thus, application of

Multiplier by fixing the permanent disability of 20% itself is unacceptable and not in commensuration with the nature of injuries sustained by the claimant. The Doctor assessed the partial permanent disability as 45% and therefore, the Tribunal ought not to have applied Multiplier by fixing the permanent disability as 20%. Even after the treatment, the claimant continued to perform his job as Lab Technician and is earning without any loss of income. Therefore, the appeal is to be allowed.

3. The learned counsel appearing on behalf of the respondent/Claimant seriously disputed the contentions by stating that the nature of the injury is serious and caused disability and the claimant, as a Lab Technician, cannot perform his duties by attending the patients in their home, more specifically, to take blood samples or otherwise. Therefore, there is a loss of income and the injuries sustained, resulted disability in walking style and the claimant is not in a position to walk freely and steadily. There is a reduction of flush in the Left Thigh due to the fractures both in the side, movement of the left hip also affected and under these circumstances, the Tribunal is right in awarding compensation by applying the Multiplier method and therefore, the appeal is liable to be dismissed.

4. Considering the documents as well as the evidences produced by the respective parties, the Tribunal decided the issues with reference to the negligence as well as the quantum of compensation.

5. The accident occurred on 24.03.2014 at about 5.30 a.m., at Cuddalore - Chidambaram Main Road near SIPCOT and the claimant was aged about 26 years at the time of accident. Cuddalore Police Station registered the case in Crime No.157/2014 under Sections 279, 337 & 338 IPC and the claim is set out for a total sum of Rs.10,00,000/-.

6. The Tribunal tried the issues and arrived a conclusion that the Tractor Driver was driving the vehicle rashly and negligently, resulted in an accident, more specifically, the Tractor bearing Registration No.TN-31-K-8982, came in a rash and negligent manner and accordingly, the Tribunal formed an opinion that the Tractor Driver has committed an act of negligence. The claimant was riding the Motor Cycle and even during the Cross examination, the appellant/Oriental Insurance Company could not able to rebut the evidence of the claimant. Therefore, the Tribunal arrived a conclusion that the Tractor Driver committed an act of negligence, resulted in the accident.

7. As far as the quantum of compensation is concerned, this Court is of the considered opinion that undoubtedly, the nature of the injuries sustained by the claimants are fracture. Fracture on the left Femur and fracture on left Pelvic and grievous injuries all over the body and head. However, the claimant had taken treatment and thereafter, joined duty and is performing his job as a Lab Technician and no document or evidence had been filed or established before the Tribunal that the claimant sustained loss of income. In other words, the claimant has not established that there was a loss of income on account of the injuries sustained by him during the accident. In the absence of any valid evidence, that there is a loss of income, the Courts are expected to be cautious. If the quantum of compensation is to be considered with reference to the nature as well as the gravity of the injuries sustained by the claimants and as far as the loss of income is concerned, there must be an evidence and in the absence of any evidence, the Tribunal ought not to have fixed the permanent disability as 20% and applied Multiplier and granted compensation, which is undoubtedly on the higher side and excessive.

8. The findings of the Tribunal in this regard reveals that the Doctor assessed 45% partial permanent disability. Undoubtedly, there is a loss of strength in the left leg. However, it is not established by the claimants that there was a loss of income and admittedly, he continued to perform his duty as a Lab Technician after taking treatment. This being the facts and circumstances, this Court is of an opinion that fixing 20% permanent disability is on the higher side and therefore, the percentage of disability deserves to be reviewed.

9. There is a loss of left hip movement and the same is to be considered as disability though the claimant is able to walk speedily.

10. Thigh Fracture resulted in disability. For all these reasons, this Court is inclined to fix 15% disability for the purpose of calculating the amount of compensation under the head of loss of income. Thus, the quantum of compensation fixed for loss of income is to be modified as Rs.3,97,800/- (Rs.13,000/- *12*17*15%) [Rupees Three Lakh Ninety Seven Thousand and Eight Hundred only]

11. After granting compensation for the loss of income by applying the Multiplier, the Tribunal further granted a sum of Rs.1,00,000/- for disability, which cannot be granted at all. Once the Multiplier method is applied and the quantum of compensation is arrived, then separate compensations for disability cannot be granted at all. Therefore, the amount of Rs.1,00,000/- is also to be set aside.

12. In view of the reasons stated above, the quantum of compensation of a sum of Rs.7,68,741/- granted by the Tribunal is modified as hereunder:

Disability and Loss of income

(Rs.13,000/-*12*17*15%) : 3,97,800/-

Loss of Pain and Suffering : 10,000/-

For Transportation Charges : 10,000/-

For Extra nourishment : 5,000/-

For Future Medical Expenses : 30,000/-

Total : 4,52,800/-

13. Thus, the respondents/claimants are entitled to get the total compensation of a sum of Rs.4,52,800/- (Rupees Four Lakh Fifty Two Thousand and Eight Hundred only).

14. Accordingly, the judgment and decree dated 18.11.2015 passed in M.C.O.P.No.1306 of 2014 is set aside and the quantum of compensation stands modified. Consequently, the Civil Miscellaneous Appeal in C.M.A.No.543 of 2016 stands allowed.

15. The appellant / Oriental Insurance Company is directed to deposit the entire award amount with accrued interest within a period of twelve weeks from the date of receipt of a copy of this judgment, if not already deposited. If already deposited, then the respondents/claimants are permitted to withdraw the modified compensation awarded by this Court along with the interest at the rate of 7.5% per annum from the date of filing of the claim petition by filing an appropriate application before the Tribunal and the payments are to be made through RTGS. The balance amount, if any, shall be reimbursed to the appellant.

16. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

Kak

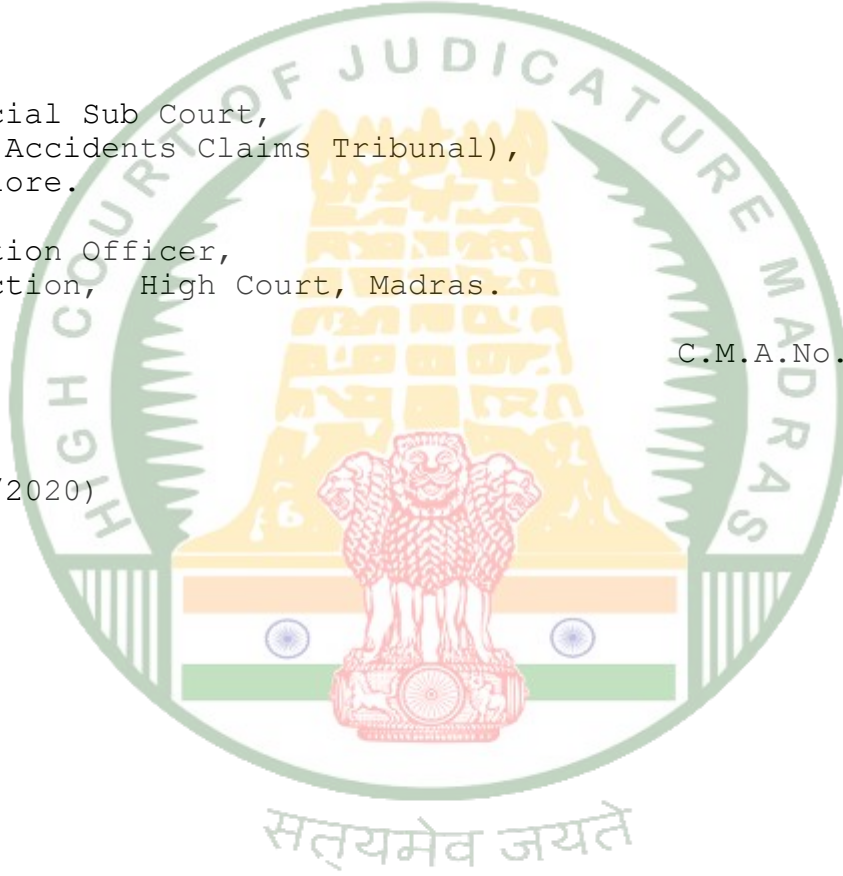
To

1.The Special Sub Court,
(Motor Accidents Claims Tribunal),
Cuddalore.

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

C.M.A.No.543 of 2016

RLD (CO)
GMY (23/11/2020)



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