

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.1989 of 2019

and

CMP.No.7106 of 2019

United India Insurance Co. Ltd.,
No.77, Oriental Complex, A.A. Street,
Salem 636 001
Branch Office Shanmuga Complex
New Idappadi Road,
Sankari Town and Taluka,
Salem District.

... Appellant/2nd Respondent
Vs.

1. Pachamuthu ...1st Respondent/ Petitioner
2. O.Gnanasekaran ... Respondents/1st Respondent

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the decree and judgment dated 09.07.2018 made in MCOP No.546 of 2013 on the file of Motor Accident Claims Tribunal, (Sub Judge Court) Sankagiri.

For Appellant	:	Mr. C. Paranthaman
For Respondent 1	:	Mr. V.Kulanthaivel
For Respondent 2	:	No Appearance

J U D G M E N T

Feeling aggrieved with the award passed by the Motor Accidents Claims Tribunal(Sub Court), Sankari in MCOP No.546 of 2013, dated 09.07.2018, the Insurance Company has filed the present Appeal.

2. The brief facts leading to file the claim petition is as follows :

On 03.10.2013 at about 1.30 p.m., while the first respondent herein was riding his two wheeler bearing Registration No.TN 30 B 1008 (Yamaha Crux) from Ettimuniappan Kovil Road to Kalarampatti, the second respondent herein, who is the owner cum driver of the two wheeler bearing Registration No. TN 54 A 3066, came in a rash and negligent manner and dashed against the first respondent two wheeler, due to which, he sustained serious injuries in his knee and other parts of the leg, he was taken to a private hospital at Salem, then to a Government Hospital at Salem and thereafter admitted at Ganga Hospital, Coimbatore. The first respondent was the agriculturist and weaver and also having milch cow and by selling milk, earning Rs.25,000/- per month. Due to the injuries sustained in the accident, he is not able to continue his avocation as before. Hence, claiming the compensation of Rs.15 lakhs, the first respondent herein had filed the claim petition.

3. The second respondent herein, who is the owner of the offending vehicle, remained exparte and the claim petition was contested by the Appellant/Insurance Company contending that the accident has been taken place due to the negligent act of the first respondent/claimant, that apart, the first respondent/claimant, has not suffered any permanent disability and there is no loss of future income in respect of permanent disability and he does not require any further medical expenses.

4. In order to prove the case, the first respondent/claimant examined himself as P.W.1 and also examined one Jeyakumar, who is said to be an eyewitness to the occurrence, as P.W.2 and also marked as many as 15 exhibits. On behalf of the Insurance Company, one Gunasekaran was examined as R.W.1 and the Final Report filed in the criminal case has been marked as Ex.R.1.

5. The Tribunal, after considering both the oral and documentary evidence, come to the conclusion that it is a contributory negligence, there is 80% negligence on the part of the second respondent and 20 % negligence on the part of the first respondent/claimant. So far as the disability is concerned, the Tribunal has fixed 18% permanent disability relying upon the Disability Certificate issued by the Government Hospital, and it is stated that the Tibia bone has not been fixed properly and he was not able to sit and squat. Considering the age of the claimant at 49 years, Tribunal applied multiplier method applying the multiplier of 13. So far as the monthly income is concerned, the Tribunal has taken the monthly income as Rs.11,000/- and fixed Rs.3,10,000/- for loss of future earning of the respondent on account of disability. So far as the medical expenses is concerned, based on the bill produced by the first respondent/claimant, the tribunal has awarded a sum of Rs.1,51,000/- towards medical expenses, Rs.75,000/- towards pain and sufferings, Rs.5,000/- towards Transportation expenses, Rs.10,000/- for Assistance,

Rs.20,000/- towards nutrition food and Rs. 25,000/- for future medical expenses and also Rs.4000/- for loss of the property and arrived at a total sum of Rs.6,00,000/- as compensation and on fixing the contributory negligence at Rs.80% on the owner of the offending vehicle, the Tribunal awarded a sum of Rs.4,80,000/- as a total compensation payable to the first respondent. Now, challenging the same, the present appeal has been filed.

6. The learned counsel for the appellant would contend that the Tribunal mechanically applied the multiplier method even though there is no evidence that the first respondent/claimant is suffering permanent disability. There is also no evidence to establish that the claimant is suffering lack of ability to perform his normal activity and there is also no evidence that the first respondent/claimant is doing milk business and the Tribunal has wrongly fixed the monthly income of the first respondent/claimant at Rs.11000/- without any evidence whatsoever. According to the petitioner, the Tribunal ought not to have applied the multiplier method in awarding the compensation.

7. Per contra, the learned counsel appearing for the first respondent/claimant would submit that evidence is available to show that the claimant is an agriculturist and also doing milk business. Due to the injuries suffered in the accident, the first respondent/claimant is not able to carry out his normal avocation and even in the Certificate issued by the Government Hospital, it is mentioned that he is suffering 18% permanent disability. Since the first respondent suffered permanent disability, the Tribunal rightly applied the multiplier method and awarded compensation and there is no reason to interfere with the same. So far as the monthly income of the first respondent is concerned, the Tribunal has rightly come to the conclusion and fixed the monthly income as Rs.11000/-. According to the learned counsel, the Tribunal considered the materials and passed award and there is no reason to interfere with the same.

8. I have considered the rival submissions and perused the materials available on records carefully.

9. In the instant appeal, the quantum of compensation awarded by tribunal was in question. So far as the monthly income of the first respondent/claimant is concerned, the claimant contended that he was an agriculturist and also doing weaving work; Apart from that, he was also having milch cattles and doing milk business and earning Rs.25,000/- per month. Tribunal has fixed the monthly income at Rs.9000/- per month with regard to weaving work without any evidence whatsoever. So far as the milk business is concerned, even though there is no evidence to show that the claimant is having milch cows and selling milk, only on assumption, the Tribunal has fixed the

monthly income at Rs.2000/- for the same and arrived at a total monthly income at Rs.11,000/-. The monthly income of the first respondent/claimant has been fixed only on assumption, without any evidence whatsoever. However, considering the facts and circumstances that he was doing agricultural work, I am of the view that fixing the monthly income of the claimants as Rs.7,500/- will be just and equitable.

10. So far as applying of the multiplier method is concerned, as per Ex.P.14 Wound Certificate issued by the Omalur Government Hospital, the permanent disability of the first respondent/claimant is fixed at 18%. It is also mentioned in Ex.P.14 that the claimant suffered by fracture in the tibia bone and after the accident, there is a severe pain in the bone and he was not able to sit properly and he is also still having pain and require future medical treatment. Considering the fact that the first respondent/claimant is suffering permanent disability and due to which, he is also not able to perform his duties, the Tribunal has rightly applied the multiplier method and therefore, I find no illegality in the same. Hence, the loss of earning capacity of the claimant is modified to Rs.2,10,600/- (Rs.7500 x 12 x 13 x 18%) .

11. So far as the Medical Expenses is concerned, the Tribunal has rightly awarded a sum of Rs.1,51,000/- towards medical expenses based on the medical bills and there is no reason to interfere in it. So far as the other heads are concerned, the Tribunal has rightly granted compensation and there is no illegality in it and there is no reason to interfere with the same.

12. Considering all the above circumstances, the award passed by the Tribunal modified as follows :-

Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court	Award confirmed or reduced
1	Loss of Earning Capacity	3,10,000	2,10,600	reduced
2	Medical Expenses	1,51,000	1,51,000	confirmed
3	Pain and sufferings	75,000	75,000	confirmed
4	Transportation Expenses	5,000	5,000	confirmed
5	Cost of Attender	10,000	10,000	confirmed

Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court	Award confirmed or reduced
6	Nutrition Food	20,000	20,000	confirmed
7	Future Medical Expenses	25,000	25,000	confirmed
8	Loss of property	4,000	4,000	confirmed
	Total	6,00,000	5,00,600	reduced

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,00,000/- is hereby reduced to Rs.5,00,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Now it is represented that the Insurance Company has deposited the entire award amount as ordered by the Tribunal. As this Court has reduced the compensation, the Insurance Company is permitted to withdraw the balance amount. The first respondent/claimant is entitled to withdraw modified award amount along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

mrp
To

The Motor Accidents Claims Tribunal,
Subordinate Judge,
Sankagiri @ Sankari, Salem District.

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

+1cc to Mr.Kulanthai vel , Advocate SR.No. 33722
+1cc to Mr.Paranthaman, Advocate SR.No. 33821

C.M.A.No.1989 of 2019

A.SK(28.04.2021)