

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.104 of 2014

and

M.P.No.1 of 2014

ICICI Lombard General
Insurance co. Ltd.,
No.84/85, Arihant Plaza,
Walltax Road, Chennai-600 003. ... Appellant/2nd Respondent

Vs.

1.Veeramani ...1st Respondent/Claimant

2. M. Kavitha ...2nd Respondent/1st Respondent

Prayer: This petition is filed Under Section 173 of Motor Vehicles Act 1988 against the Judgment and decree dated 06.06.2012 made in M.C.O.P.No.96 of 2011 on the file of the Motor Accident Claims Tribunal (Additional Sub-Ordinate Judge) at Vriddhachalam.

For Appellant :Mrs.R. Sreevidhya
For R1 : Mr. C.D. Sugumar
For R2 : Ex-parte

JUDGMENT

This appeal has been filed by the appellant/InsuranceCompany against the Judgment and decree dated 06.06.2012 made in M.C.O.P.No.96 of 2011 on the file of the Motor Accident Claims Tribunal, Additional Sub-Ordinate Judge at Vriddhachalam

2.The appellant is the Insurer. The first respondent is the claimant and the second respondent is the owner of the vehicle.

3.The necessary relevant facts are stated hereunder to find out whether the appellant is entitled for relief as prayed in this appeal.

4.The case of the first respondent/claimant is that on 02.07.2010 at about 7.00 p.m when he was riding his bicycle at Virudhachalam Main road, a van bearing Registration No.TN-31-AZ-5990 came in the opposite direction and hit the bicycle of the first respondent. Due to the impact he sustained grievous injuries. Hence, he filed a claim petition against the owner and insurer of the vehicle seeking Rs.4,00,000/- as compensation. The Tribunal after considering the materials available on record awarded Rs.10,31,789/- as compensation with 7.5% p.a from the date of petition till the date of realization.

5. Not being satisfied with the award passed by the Tribunal, the claimant has come up with this appeal.

6.The learned counsel for the appellant/Insurance Company submitted that the injuries sustained by the claimant are simple in nature but the claimant had exaggerated the same as permanent disability in order to claim huge amount as compensation. He would further contend that the claimant had consumed alcohol at the time of accident, hence contributory negligence should be fixed against the rider of the cycle.

7.Per Contra the learned counsel for the first respondent/claimant submitted that the accident occurred due to the inattentive attitude of the driver of the van. He further submitted that the claimant sustained Fracture and injuries in head right forehead, right clavicle, right eyes, right eyebrow, right ear, left eye back head and multiple injuries all over the body and face disfigured. He was a masan and thereby earning Rs.10,000/- per month and due to the fractures sustained in the accident, he was unable to do his work as before the accident. In any event, the compensation awarded by the Tribunal is very low. Hence, he prays to enhance the compensation.

8.Before the Tribunal, on the side of the appellant, three witnesses were examined and 22 documents were marked. On the part of the respondent, only one witness was examined but no documents was produced before the Tribunal.

9.With regard to negligence aspect, Ex.P.1/F.I.R supports the case of the claimant. P.W.1/first respondent/claimant in his evidence stated that the driver of the van is the cause of the accident. There is no eyewitness to the occurrence. Based on the above evidence, the Tribunal concluded that the driver of the van is the tortfeasor for the accident. To controvert the same, no new facts or grounds are forthcoming on the side of the respondent. Hence, the award passed by the Tribunal with regard to negligence aspect, is perfectly valid in the eye of law and does not warrant interference by this Court and the same are confirmed as such.

10. With regard to quantum, in the absence of any occupation and income of the first respondent/injured, the tribunal fixed the notional income of the first respondent/injured as Rs.4,500/-. P.W.2/Dr.Rathina Sabapathy examined the injured and assessed disability at 68% and considering the age of the injured the Tribunal rightly applied the multiplier '18' and arrived Rs.9,72,000/-(Rs.4,500/- x 12 x 18 = Rs.9,72,000/-) as compensation towards disability. Considering the nature of injuries sustained by the first respondent/injured the Tribunal has awarded Rs.34,000/-, Rs.6,000/-Rs.10,200/- and Rs.6,800/- is awarded towards Pain and sufferings, attendant charges, Extra Nourishment and Transport expenses. Considering Ex.P.13/Medical bills Rs.2,789/- was awarded towards Medical expenses. Thus, Rs.10,31,789/- is awarded as total compensation and the same are tabulated hereunder:

Particulars	Amount awarded by the Tribunal
Pain and sufferings	Rs.34,000/-
Attendant charges	Rs.6,000/-
Extra Nourishment	Rs.6,800/-
Medical Bills	Rs.2,789/-
Disability	Rs.9,72,000/-
Extra Nourishment	Rs.10,200/-
Total	Rs.10,31,789/-

11. In view of the above, this Court while re-appreciating the records observed that the claimant was under the influence of alcohol and he was unable to control his cycle. Therefore, 30% contributory negligence is fixed towards the injured and the award amount is quantified to Rs.7,22,253/- after deducting the amount arrived with regard to negligence aspect and the calculation is as follows:

Award amount	: Rs.10,31,789/-
30% deducted towards negligence aspect	: Rs.3,09,536/-
Modified amount	: Rs.7,22,253/-

12. With the above said modification this appeal is partly allowed. The appellant/Insurance Company is directed to deposit the modified amount of Rs.7,22,253/- determined by this Court with interest at the rate of 7.5% p.a from the date of petition till the date of realization, less the amount already deposited if any, within a period of 8 weeks from the date of receipt of a copy of this Order. After making such deposit the claimant/first

respondent is permitted to withdraw the amount after deducting the amount already withdrawn if any, by making proper application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
Additional Sub-Ordinate Judge, Vriddhachalam.

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

+1 cc to Mr.C.D.Sugumar, advocate,sr.13652

+1 cc to M/s.R.Sreevidhya, Advocate,sr.14148.

Vba (co)
krd 28/12

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