IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.09.2020
CORAM:
THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE
C.M.A.No.2304 of 2014
and M.P.No.1 of 2014

The United India Insurance Co. Ltd.,
Branch Office,
KBS Motors Building,
No.36, Katpadi Road,
Gandhi Nagar, Vellore ? 632 105.
...Appellant/2nd respondent

vs.

1.R.N.Saravanan ..1st Respondent/Petitioner
2.Mr.D.Palani
3.Rajamannan
...Respondents2 & 3/
Respondents 1 & 3

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.1295 of 2007, dated 30.04.2012 on the file of Motor Accident Claims Tribunal, Additional District Judge, Krishnagiri.

For Appellant : Mr.E.Rajadurai
for M/s.N.Vijayaraghavan

For Respondents : Mr.Mukund R.Pandiyan for R1
(in SR stage)

Mr.C.Anbu for R2
R3 - Exparte

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the Appellant Insurance Company challenging the Award dated 30.04.2012 passed by the Motor Accident Claims Tribunal Additional District Judge, Krishnagiri in M.C.O.P.No.1295 of 2007.

2.Heard Mr.E.Rajadurai, learned counsel for the Appellant, Mr.Mukund R.Pandiyan, learned counsel for the first respondent and Mr.C.Anbu, learned counsel for the second respondent.

3.The Motor Accident Claims Tribunal under the impugned Award has directed the Appellant Insurance Company as well as the third respondent jointly and severally to pay the first respondent a compensation of Rs.3,30,400/- together with interest and cost for the injuries sustained by him as a result of an accident on 21.02.2007 caused by a vehicle insured with the Appellant.

4.The details of the compensation awarded by the Tribunal under the impugned Award are as follows:

Loss of earning	-	Rs.2,90,400/-
Pain and suffering	-	Rs.20,000/-
Partial and permanent disability	-	Rs.10,000/-
Transportation	-	Rs.5,000/-
Extra nourishment	-	Rs.5,000/-
Total		Rs.3,30,400/-

5.The Appellant Insurance Company has raised the following grounds:

(a)They are not liable to compensate the claim since the Qualis Car which was proceeding in front of the insured vehicle was alone responsible for the cause of the accident.

(b)The quantum of compensation awarded by the Tribunal is excessive.

(c)According to them, the Tribunal has erroneously adopted the multiplier method for assessing the compensation towards loss of earning to the first respondent/claimant.

6.Before the Tribunal, the first respondent/claimant has filed 8 documents which were marked as Exs.P1 to P8 and two witnesses were examined on his side namely, the first respondent/claimant himself as PW1 and the Doctor who examined him as PW2. On the side of the Appellant Insurance Company, five documents were filed which was marked as Exs.R1 to R5 and one witness was examined as RW1.

7.Insofar as the first contention raised by the Appellant Insurance Company questioning its liability is concerned, the same has been duly considered and rejected by the Tribunal under the impugned Award for the following reasons:

(a)FIR(Ex.P1) has been registered only against the driver of the lorry insured with the Appellant. A consistent stand has been taken by the first respondent/claimant as seen from his pleadings in the claim petition as well as from the oral evidence adduced by him that the sole cause for the accident was the driver of the insured lorry. Excepting for their allegations as found in their counter statement, the Appellant has not adduced any oral evidence to disprove the contents of the first respondent/claimant. No eyewitness to the accident has also been examined by the Appellant Insurance Company before the Tribunal. The Tribunal has taken into consideration all these factors and on preponderance of probabilities has held that the driver of the insured vehicle was solely responsible for the cause of the accident. This Court does not find any infirmity in the findings of the Tribunal and hence the first contention raised by the Appellant questioning its liability is rejected by this Court.

8.Insofar as the second contention raised by the Appellant Insurance Company that the Tribunal has erroneously adopted the multiplier method for assessing the compensation towards loss of earning is concerned, this Court is in agreement with the said contention for the following reasons:

(a)The first respondent/claimant has sustained only left humerus fracture as a result of the accident caused by the lorry insured with the Appellant. Excepting for filing of wound certificate (Ex.P2), no other document has been filed with regard to hospitalisation of the first respondent/claimant. The discharge summary issued by the hospital has also not been filed.

9.This being the case, the Tribunal without any basis has erroneously adopted the multiplier method for assessing the compensation towards loss of earning. Instead the Tribunal ought to have assessed the disability compensation only based on percentage basis. The Doctor (PW2) who examined the first respondent/claimant has assessed the disability of the first respondent/claimant at 45% as per his disability certificate (Ex.P8). The Tribunal has reduced the same to 40%. This Court is in agreement with the said assessment. However, as observed earlier, the Tribunal ought not to have adopted the multiplier method for the purpose of assessing the disability compensation. Therefore, this Court assesses the disability on percentage basis. The accident happened in the year 2007. After giving due consideration to the year of the accident, the disability compensation is assessed by this Court at Rs.80,000/- for the 40% disability calculated at Rs.2,000/- per percentage of disability.

10.The first respondent/claimant in his claim petition filed before the Tribunal has pleaded that he was doing granite business and was earning Rs.10,000/- per month at the time of the accident. Due to the injuries sustained by him, he would have been unable to do his regular business for atleast a period of six months. The Tribunal under the impugned Award has assessed the notional monthly income of the first respondent/claimant at Rs.5,500/-. This Court after giving due consideration to the year of the accident is in agreement with the said finding. Accordingly, this Court awards a compensation of Rs.33,000/- to the first respondent/claimant towards loss of income for a period of six months calculated at Rs.5,500/- per month.

11.The Tribunal under the impugned Award has awarded a compensation of Rs.20,000/- towards pain and suffering, Rs.5,000/- towards transportation and another sum of Rs.5,000/- towards extra nourishment which is a just compensation and it is confirmed by this Court. However, the Tribunal has failed to Award any compensation to the first respondent/claimant towards attender charges and loss of amenities which he is legally entitled to as per the settled practice. After giving due consideration to the nature of the injuries sustained by the first respondent/claimant and his avocation, this Court awards a sum of Rs.5,000/- as compensation towards attender charges and another sum of Rs.15,000/- as compensation towards loss of amenities.

12.For the foregoing reasons, the compensation awarded by the Tribunal is reduced from Rs.3,30,400/- to Rs.1,63,000/- by this Court in the following manner:

Loss of earning (Rs.5,500 x 6 months)	-	Rs.33,000/-
Pain and suffering	-	Rs.20,000/-
Partial and permanent disability (40% x Rs.2,000)	-	Rs.80,000/-
Transportation	-	Rs.5,000/-
Extra nourishment	-	Rs.5,000/-
Attender charges	-	Rs.5,000/-
Loss of amenities	-	Rs.15,000/-
Total		Rs.1,63,000/-

13.In the result, the appeal is partly allowed. The Appellant Insurance Company and the third respondent jointly and severally are directed to deposit the modified award amount of Rs.1,63,000/- together with interest at the rate of 6% p.a. per annum from the date of claim till the date of realisation, after deducting the amount already deposited if any, to the credit of M.C.O.P.No.1295 of 2007, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Krishnagiri, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest lying to the credit of M.C.O.P.No.1295 of 2007 to the bank account of the first respondent/claimant, through RTGS, within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

pam
To
1.The Additional District Judge,
The Motor Accident Claims Tribunal,
Krishnagiri.

2.The Section Officer,
Vernacular Section,
Madras High Court.

C.M.A.No.2304 of 2014

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