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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No. 1754 of 2020

and

C.M.P. No.12885 of 2020

United India Insurance Company Limited,
Branch Office
D.No.22, B.P.R.Sundharam Iyer Street,
Dharmapuri Town,
Dharmapuri Taluk & District.

...Appellant/2nd Respondent

Vs

1.Kandasamy,
S/o. Kutti @ Govindhan,
Oddapatti Village,
Collectorate Post,
Nallampalli Taluk,
Dharmapuri District.

...1st Respondent / Claimant

2.Gunasekar,
S/o. Ranganathan
residing at No.2/15,
Kamarajar Street,
Kambainallur Post, Harur Taluk,
Dharmapuri District.

...2nd Respondent / 1st Respondent

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the judgment and decree in M.C.O.P. No.388 of 2018, dated 02.03.2020 on the file of the Motor Accident Claims Tribunal, (Special Subordinate Judge), Dharmapuri.

For Appellant : Mr.C.Paranthaman

J U D G M E N T

The insurance company, challenging the award passed by the Tribunal, is before this Court by filing this Civil Miscellaneous Appeal.

2. The case of the claimant before the Tribunal was that on 19.04.2018 at about 07.30 a.m. while he was waiting to cross the road in the Dharmapuri-Salem main road, near business centre bus stop, a two wheeler belong to the 1st respondent, which was



insured with the 2nd respondent came in a rash and negligent manner and dashed against the claimant, in which, he had suffered a fracture in the left hand and lacerated injuries all over the body. Immediately, he was taken to Government Hospital, Dharmapuri, where he had undergone a surgery and suffered permanent disability. Hence, claiming a sum of Rs.7 lakhs, the claimant has filed the claim petition.

3. The appellant insurance company contested the claim petition stating that the accident was taken place due to the negligence of the claimant. The claimant has suddenly crossed the highway from east to west with cycle, and 1st respondent's driver unable to stop the vehicle and dashed the claimant. In the said circumstances, no negligence can be fixed on the driver of 1st respondent vehicle. That apart, the claimant has only suffered minor injury and the compensation claimed by him is highly excessive.

4. Before the tribunal, the claimant himself examined as P.W.1 and marked as many as 9 documents as Ex.P1 to P9. On the side of the respondents, a witness was examined as R.W.1 and two documents have been marked as Ex.R1 and R2. The Trial Court has sent the claimant to the medical board for assessing the disability and disability certificate issued by the medical board was marked as Ex.C1.

5. Considering the materials available on record, the Tribunal has held that the accident was taken place due to the negligent driving of driver of 1st respondent vehicle and on the date of accident, the registration certificate of the 1st respondent vehicle was expired, and no fitness certificate was in existence on the date of accident. Hence, the tribunal has held that it is in violation of the policy condition and fixed the liability on the owner of the vehicle, however, directed the appellant insurance company to pay the compensation and recover the same from the owner of vehicle. So far as quantum of compensation is concerned, the Tribunal has held that the claimant has suffered 10% disability, and it amount to whole body disability at 100%. Hence, applying the multiplier method, awarded a sum of Rs.79,200/- towards disability. In respect of other heads, a sum of Rs.12,000/- towards loss of earning, a sum of Rs.30,000/- towards pain and suffering, a sum of Rs.20,000/- towards extra nourishment expenses, a sum of Rs.10,000/- towards attender charges, a sum of Rs.78,057/- towards medical expenses, a sum of Rs.5000/- towards transport bills and a sum of Rs.1000/- towards loss of clothing were awarded by the Tribunal. Thus, totally a sum of Rs.2,35,257/- towards compensation has been awarded. Challenging the award, the appellant insurance company has filed this Civil Miscellaneous Appeal.

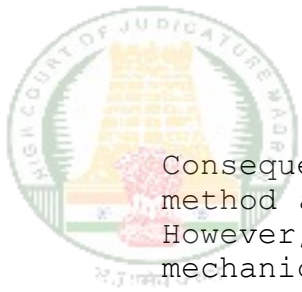


6. Mr.C.Paranthaman, learned counsel appearing for appellant would vehemently contend that the claimant has only suffered a fracture in the right fibula and after the treatment, he is only having a pain and difficulty in squatting, walking and crossed legs, which is not a permanent disability. He would further submit that he is able to continue his avocation and there is no need to award future loss of income. The medical board has also assessed the disability at 10% only. Hence, the Tribunal has mechanically applied the multiplier method. According to the learned counsel, the Tribunal has awarded excess compensation on other heads also.

7. Per contra, the learned counsel appearing for claimant would submit that the claimant was aged about 55 years and due to the injury suffered in the accident, he was not able to perform his duties as before. Considering the same, the Tribunal has rightly applied the multiplier method and awarded only a minimum compensation and there is no reason to re-assess the same.

8. I have heard and considered the submissions of learned counsel appearing for appellant and perused the records.

9. The accident was taken place in the year 2018, the claimant was 55 years old and he is working as a mason and getting the monthly income of Rs.18,000/-. The claimant said to have suffered a fracture in the right fibula and undergone a surgery, and the medical board assessed the disability at 10% of partial permanent disability. After treatment, the claimant said to have a difficulty in squatting/walking, diffuse tenderness at the fracture site. Even though the medical board assessed the disability at 10%, the Tribunal has taken it as whole body disability of 100% without any reasons whatsoever and applied the multiplier method. That apart, disability suffered by the claimant do not prevents the claimant from continuing his avocation. A permanent disability refers to a person, inability to perform his routine avocation or his employment related activities due to the injuries suffered as a result of accident. The partial disability refers to a person, inability to perform all the duties that he can perform before the accident and even though he is able to engage in some gainful activities. Whereas, a temporary disability refers to an incapacity suffered by a claimant on account of the injuries suffered in the road accident, which would still exist at the end of period of treatment In the instant case, the claimant has only suffered a minor fracture and after treatment, he has recovered fully even as per the certificate issued by the medical board, and he is only having difficulty in squatting. Hence, the petitioner has only suffered a temporary disability, and there is no need to award any compensation for the loss of future earning.



Consequently, there is no necessity to apply the multiplier method and awarding compensation for the loss of future earning. However, without considering the same, the Tribunal has mechanically applied the multiplier method.

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10. Considering the fact that for the injury suffered by the claimant, and consequential minor disabilities, the petitioner is entitled to have some compensation. As the Medical Board assessed the disability at 10%, awarded a sum of Rs.4000/- towards each percentage of disability, the claimant is entitled to a sum of Rs.40,000/- towards disability. From the materials available on record, it could be seen that the claimant was admitted in the hospital and undergone a surgery and bedridden for a long period, towards loss of earning, he is entitled for some amount. Since the claimant is a mason, and the accident was taken place in the year 2018, he would definitely earn a sum of Rs.12,000/- and even assuming, he was bedridden for four months, he is entitled to get a sum of Rs.48,000/- instead of Rs.12,000/- awarded by the Tribunal. Towards attender charges, he is entitled to get a sum of Rs.15,000/- instead of Rs.10,000/-. Hence, the total compensation comes to Rs.2,32,057, however, the Tribunal has awarded a sum of Rs.2,35,257/- and the difference is only very minimum. In the above circumstances, considering the fact that the quantum of compensation awarded by the Tribunal is almost same as that decided as above, this Court does not want to interfere with the quantum of compensation awarded by the Tribunal. Therefore, this Civil Miscellaneous Appeal is liable to be dismissed.

11. In the result, this Civil Miscellaneous Appeal stands dismissed. The entire compensation as calculated by the Tribunal, shall be deposited by the appellant/Insurance Company after deducting the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, it is for the claimants to move a petition before the Tribunal for withdrawing the said amount as apportioned by the Tribunal. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-V)

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Sub Assistant Registrar

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To

The Special Subordinate Judge,
The Motor Accidents Claims Tribunal,
Dharmapuri.

Copy To:

The Section Officer,
V.R.Section,
High Court, Madras-104.

+1cc to Mr.C.Paranthaman, Advocate SR.No.38727

C.M.A.No.1754 of 2020

SV(CO)
RVM(11/08/2021)