IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4870 of 2019
and
C.M.P.No.28036 of 2019

The Manager - Claims,
M/s.IFFCO TOKIO General Insurance Company Limited,
IFFCO Sadan, C-1, District Centre,
Saket, New Delhi - 110 017.

C/o. The Branch Manager,
M/s.Iffco Tokio General Insurance Company Limited,
No.128, IFFCO Bhavan,
4th Floor, Habibullah Road,
T.Nagar, Chennai - 600 017. ... Appellant /2nd Respondent

Vs.

1.Mr.Venkatesh ....Ist Respondent/Petitioner

2.V.Rajesh Kumar ...2nd Respondent/Ist Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.07.2019 made in M.C.O.P.No.401 of 2018 on the file of Motor Accident Claims Tribunal, Additional District Court, Hosur.

For Appellant : Mr.E.Raja Durai
for M/s.M.B.Gopalan Associates

For R1 : Mr.M.Sivakumar
for Mr.C.Prabakaran

R2 : Exparte in the Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 05.07.2019 made in M.C.O.P.No.401 of 2018 on the file of

Motor Accident Claims Tribunal, Additional District Court, Hosur.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.401 of 2018 on the file of Motor Accident Claims Tribunal, Additional District Court, Hosur. The 1st respondent filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 19.12.2017.

3.According to the 1st respondent, while he was riding in his motorcycle on Shoolagiri - Krishnagiri road, Maruti Suzuki Omni Van belonging to the 2nd respondent driven by its driver in a rash and negligent manner, dashed against the 1st respondent and caused the accident. In the accident, he sustained injuries and therefore, he filed the above claim petition.

4.The 2nd respondent remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement and contended that the accident did not occur due to rash and negligent driving by the driver of the van belonging to the 2nd respondent. The 1st respondent did not possess valid driving license at the time of the accident and hence the appellant/Insurance Company is not liable to pay any compensation to the 1st respondent.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1 and marked ten documents as Exs.P1 to 10. No oral and documentary evidence was let in on the side of the appellant.

7.The Tribunal considering the pleadings, oral and documentary evidence let in by the 1st respondent, held that the accident occurred due to rash and negligent driving by the driver of the van belonging to the 2nd respondent and directed the appellant/Insurance Company being insurer of the said van to pay a sum of Rs.15,25,470/- as compensation to the 1st respondent.

8.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in adopting multiplier method to award compensation in the absence of any loss of earning capacity and functional disability. The Tribunal erred in holding that the 1st respondent suffered permanent disability. The Tribunal is not justified in adopting multiplier while awarding compensation towards loss of future earning capacity, without considering the nature of injuries, avocation and period of treatment taken by the 1st respondent, which was only for nine days. In Ex.P6/discharge summary nothing is shown as serious injuries. In addition to that, the Tribunal erred in awarding Rs.3,67,200/- towards future prospects. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

9.Per contra, the learned counsel appearing for the 1st respondent contended that the 1st respondent suffered multiple injuries. He took treatment as in-patient in hospital for nine days and produced Exs.P6 and P10/discharge summaries to prove the nature of injuries sustained by him. The Tribunal referred the 1st respondent to the Medical Board, the Medical Board after examining the 1st respondent and considering the nature of injuries, certified that the 1st respondent suffered 45% disability. The Tribunal accepting the disability certificate issued by the Medical Board and considering the evidence of PW1, adopted multiplier method to award compensation. There is no error in adopting multiplier method by the Tribunal. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

10.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and perused the materials available on record.

11.In the appeal, quantum of compensation awarded by the Tribunal is under challenge. The main contention of the learned counsel appearing for the appellant is that the Tribunal erred in adopting multiplier method to award compensation towards loss of earning capacity and also 40% enhancement granted towards future prospects. From the materials on record, it is seen that for the injuries sustained in the accident, the 1st respondent took treatment in the hospital as in-patient for nine days and marked Ex.P6/discharge summary. The learned counsel appearing for the 1st respondent further contended that the 1st respondent was admitted in the hospital on 19.12.2017 and discharged on 27.12.2017. He was treated for "Right NOF fracture with mid shaft femur fracture". There is no mentioning about the functional disability. The Medical Board assessed the disability of the appellant as 45%. The Tribunal referred the 1st respondent to the Medical Board and the Medical Board after examining the 1st respondent, certified that the 1st respondent suffered 45% disability. There is nothing on record to show that the 1st respondent suffered functional disability and that he could not do the work as he was doing earlier. The 1st respondent has not proved that he suffered functional disability. The Tribunal adopted multiplier method accepting the contention of the learned counsel appearing for the 1st respondent that the 1st respondent is unable to earn as he was earning earlier and his income is reduced. The multiplier method adopted by the Tribunal is not correct. Unless acceptable evidence is placed before the Tribunal to prove that the 1st respondent suffered functional disability and could not do the work as he was doing earlier, the Tribunal cannot adopt multiplier method to award compensation towards loss of earning capacity.

12.The Tribunal merely relying on the arguments of the learned counsel appearing for the 1st respondent, has adopted multiplier method in awarding compensation for 45% disability towards loss of earning capacity without any basis. Similarly, the Tribunal has not justified in awarding Rs.3,67,200/- towards future prospects to the 1st respondent. The 1st respondent is entitled to compensation towards disability only on percentage method. The multiplier method adopted by the Tribunal and the amount granted towards future prospects are erroneous and the same are set aside. The amount awarded on percentage basis was periodically enhanced. This Court by the judgment reported in "2013(2) TNMAC 583" in the matter of "National Insurance Co. Ltd., Vs. G.Ramesh" granted Rs.3,000/- per percentage for the accident occurred in the year 2009 enhancing from Rs.2,000/- per percentage taking into account the cost of living at that time. Due to passage of time, a sum of Rs.3,000/- per percentage of disability awarded in the year 2013 for the accident of the year 2009 is to be enhanced. Taking into consideration the raise in cost of living, it will be reasonable to award a sum of Rs.4,000/- per percentage for the accident of the year 2014 & 2015 and Rs.5,000/- per percentage for the accident from the year 2016 onwards towards disability certified by the qualified Doctor or Medical Board.

13.In the present case, the 1st respondent has suffered 45% disability as certified by the Medical Board. The accident has occurred on 19.12.2017. A sum of Rs.5,000/- per percentage of disability is granted and the 1st respondent is entitled to a sum of Rs.2,25,000/- (Rs.5,000/- x 45) for 45% of disability. According to the 1st respondent, he was earning a sum of Rs.25,000/- per month by running tea shop-cum-xerox shop. The 1st respondent failed to prove the said contention. In the absence of any material evidence with regard to the avocation and income of the 1st respondent, the Tribunal fixed monthly income of the 1st respondent at Rs.10,000/-. The accident is of the year 2017 and the monthly income fixed by the Tribunal is not meagre. Due to the injuries, the 1st respondent would not have attended his work atleast for a period of six months. Therefore, the 1st respondent is entitled to a sum of Rs.60,000/- (Rs.10,000/- X 6) towards loss of income for six months. The amounts awarded by the Tribunal under other heads are just and reasonable and hence the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of earning capacity	9,18,000	-	Set aside
2.	Transport to Hospital	10,000	10,000	Confirmed
3.	Nutrition charges	10,000	10,000	Confirmed
4.	Attender charges	10,000	10,000	Confirmed
5.	Pain and suffering	25,000	25,000	Confirmed
6.	Discomfort, frustration and loss of social enjoyment	10,000	10,000	Confirmed
7.	Medical bills	1,55,270	1,55,270	Confirmed
8.	Future medical expenses	20,000	20,000	Confirmed
9.	Future prospects	3,67,200	-	Set aside
10.	Loss of income	-	60,000	Granted
11.	Disability	-	2,25,000	Granted
	Total	Rs.15,25,470/-	Rs.5,25,270/-	Reduced by Rs.10,00,200/-

14.With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.15,25,470/- awarded by the Tribunal is hereby reduced to Rs.5,25,270/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the modified award amount together with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the first respondent is permitted to withdraw the modified award amount along with interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.401 of 2018, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District Judge,
Motor Accident Claims Tribunal
Hosur.

2.The Section Officer
VR Section
High Court
Madras.

+1cc to Mr.M.B.Gopalan and Associates Sr.2818
+1cc to Mr.C.Prabakaran, Advocate Sr.2445

C.M.A.No.4870 of 2019
and
C.M.P.No.28036 of 2019

BS(CO)
srg 25/02/2020