IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2020

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.4733 of 2019
& Cross Objection No.11 of 2020

HDFC ERGO General Insurance Company Ltd.,
New No.528, Old No.559, II Floor,
Anna Salai, Teynampet,
Chennai - 600 018. ... Appellant/2nd Respondent in CMA 4733/19
...1st respondent/2nd Respondent in Cros.Obj 11/20

Vs.

Selvakumaran @ Kumaran ... 1st respondent/Petitioner in CMA 4733/19
... Cross Objector/1st Respondent in Cros Obj 11/20

Sankararaman ... 2nd respondent/1st Respondent in CMA 4733/19 and Cros Obj 11/20

Common Prayer : Appeal filed under Section 173 of the Motor Vehicles Act, 1988 and cross objection filed under Order 41 Rule 22 of CPC against the award and decree dated 31.01.2019 made in M.C.O.P.No.2126 of 2015 on the file of the Motor Accidents Claims Tribunal (Principal Sub-ordinate Judge), Cuddalore.

For Appellant in CMA 4733/19 & 1st respondent in Cross Objection No.11/2020 : Mr.Somasundaar N.

For 1st respondent in CMA 4733/19 & For Cross Objector in Cross Objection No.11/2020 : Ms.Ramya V.Rao

COMMON JUDGMENT
(Delivered by M.M.SUNDRESH,J)

This appeal is preferred by the appellant/Insurance Company challenging the liability and quantum. The first respondent/claimant has also filed cross objection claiming higher amount.

2. The accident occurred on 19.04.2015 when the two-wheeler of the claimant dashed against the Tractor and Trailer insured with the appellant. The claimant was aged about 39 years at the time of accident. He was doing the job of Mason apart from being Sculptor in the temples. Though income of Rs.20,000/- has been claimed, the Tribunal fixed the same at Rs.7,500/-. He suffered multiple fractures and underwent surgeries. He lost his right eye vision completely apart from Type III-B open compound and communited fracture of right leg. There is loss of right foot with specific reference to 4th and 5th toes. There is a specific fracture on the right foot on the 2nd and 3rd toes. There was further Le-Fort Type-I fracture and multiple fracture of nose with disfigurement was found. Resultantly, the right leg was reduced by 8 cms. Considering the above, the Medical Board assessed the disability with 48% loss of eye vision and 18% as other injuries. The Tribunal assessed the functional disability at 95% and fixed the future prospects at 50%. Accordingly, a sum of Rs.24,04,750/- has been awarded as compensation including the loss of income for a period of one year. Challenging the same, the present appeal has been filed. The liability is challenged on the ground that the insured has committed fundamental breach in carrying the Sugarcane in the Tractor and Trailer. On the question of quantum, it is submitted that for loss of income, higher amount ought not to have been added apart from awarding higher amount towards permanent disability and future medical expenses.

3. When the matter is taken up for hearing, the learned counsel appearing for the appellant/Insurance Company submitted that at best, the claim shall be calculated as under as per the memo filed:-

	Award by the Tribunal	High Court
1.Permanent Disability	Rs.12,82,500	Rs.12,96,000
2.Future Prospects	Rs 6,41,250	Rs.5,18,400
3. Pain and Suffering	Rs.1,00,000	Rs.1,00,000

	Award by the Tribunal	High Court
4.Loss of Amenities and enjoyment of life	Rs.1,00,000	Rs.1,00,000
5.Transportation	Rs.25,000	Rs.25,000
6.Attender Charges	Rs.35,000	Rs.35,000
7.Extra Nourishment	Rs.30,000	Rs.30,000
8.Damage to clothes	Rs. 1,000	Rs. 1,000
9.Loss of Income for 1 year	Rs.90,000	---
10.Future Medical Expenses	Rs.1,00,000	Rs.1,00,000
Total	Rs.24,04,750	Rs.22,05,400

4. Whereas, the learned counsel appearing for the first respondent/claimant has given the following calculation:-

	Award by the Tribunal	High Court
1.Permanent Disability	Rs.19,23,750	Rs.19,65,000
2. Pain and Suffering	Rs. 1,00,000	Rs. 1,00,000
3.Extra Nourishment	Rs. 30,000	Rs. 30,000
4.Transportation	Rs. 25,000	Rs. 25,000
5. Damage to Clothes	Rs. 1,000	Rs. 1,000
6.Attender Charges	Rs. 35,000	Rs. 35,000
7.Future Medical Expenses	Rs. 1,00,000	Rs. 1,00,000
8.Loss of Income for 1 year	Rs. 90,000	---
9.Loss of amenities	Rs. 1,00,000	Rs. 1,00,000
Total	Rs.24,04,750	Rs.23,56,000

5. The submission made by the learned counsel appearing for the appellant/Insurance Company is obviously without prejudice to the contention on the liability. The learned counsel placed reliance on the Division Bench judgment in National Insurance Company Limited, Chennai v. S.Sankara Narayanan and others reported in 2012 (8) MLJ 145 and contended that the Tribunal ought to have ordered pay and recovery as the breach has been fundamental.

6. Insofar as the liability is concerned, we do not find any error in the conclusion arrived at with respect to pay and recovery. The facts involved in the case before the Division Bench are different. In that case, in total contravention to the policy, the insured used the vehicle for hire for carrying the agricultural produce. It is not as if it is used for the commercial purpose. In such view of the matter, we are of the view that the award of the Tribunal for pay and recovery cannot be found fault with.

7. Thus, while holding that the finding of the Tribunal with respect to pay and recovery has been correct, we are only stating that it is not too fundamental to avoid the payment of pay and recovery by the appellant. Therefore, the award of the Tribunal with respect to pay and recovery has been confirmed. Though we find that breach is on the part of the insured, the liability cannot be avoided, while holding that it is a fit case for pay and recovery.

8. On the question of quantum, we find that there is not much difference with the amount arrived at by the learned counsel appearing for the appellant/Insurance Company and the learned counsel for the cross objector with respect to the total compensation awarded. This, we hold so in view of the fact that the Tribunal ought not to have awarded Rs.7,500/- per month and thus should have been taken at Rs.12,000/- per month, while fixing future prospects at 40% instead of 50%. However, the functional disability is fixed at 65% instead of 95%. We find that the Tribunal was not right in awarding loss of income for one year and thus, the same stands deleted. Towards the future medical expenses, the Tribunal ought to have awarded only 50% since there is no evidence to show the need for future surgeries.

9. In such view of the matter, the total compensation arrived at is Rs.23,06,000/- with interest at 7.5% from the date of the petition till the date of realization and the breakup details are as follows:

Name of the Head	Amount Awarded by this Court
1.Permanent Disability	Rs. 19,65,000
2. Pain and Suffering	Rs. 1,00,000
3.Extra Nourishment	Rs. 30,000
4.Transportation	Rs. 25,000
5. Damage to Clothes	Rs. 1,000

Name of the Head	Amount Awarded by this Court
6.Attender Charges	Rs. 35,000
7.Future Medical Expenses	Rs. 50,000
8.Loss of amenities	Rs. 1,00,000
Total	Rs.23,06,000

10. The appellant/Insurance Company is directed to deposit the compensation awarded by this Court, less the amount, if any, already deposited to the credit of M.C.O.P.No.2126 of 2015 on the file of the Motor Accidents Claims Tribunal (Principal Sub-ordinate Judge), Cuddalore within a period of six weeks from the date of receipt of a copy of the judgment.

11. We also direct the Tribunal to transfer the amount by way of RTGS to the bank account of the claimant within a period of three weeks from the date of deposit of the award amount. On such transfer, the claimant is entitled to withdraw the same.

12. The Civil Miscellaneous Appeal stands allowed accordingly and the Cross-Objection is dismissed. No costs. Consequently, connected C.M.P.No.26967 of 2019 is closed.

Sd/-
Assistant Registrar(C.S.VII)

/True Copy/

Sub Assistant Registrar

To

The Principal Subordinate Judge,
Motor Accidents Claims Tribunal
Cuddalore.

Copy to : The Section Officer, V.R.Section,
High Court of Madras, Chennai.

+2cc to Mr.A.N.Viswanath Rao, Advocate Sr.No.14808
+1cc to Mr.N.Somasundaar, Advocate sr.No.14591

AKM/16.03.2020 /5P-6C/

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