



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CMA NO.3427 OF 2009

Iffco - Tokio General Insurance Co. Ltd.,
Thulasi Chambers, II Floor,
No.195, RS Puram,
Coimbatore-2

... Appellant/
4th Respondent

..VS..

1. Shanmugam,
S/o.Varadarajan,

...1st Respondent/Claimant

2. M/s/Apollo Tyres Ltd.,
No.4, Vidayalaya Road,
Salem-7.

3. The New India Insurance Co. Ltd.,
Divisional Office, Premier Complex,
No.102, Yercaud Junction Road,
Salem-16.

4. M.Marimuthu,
S/o Muthusamy,

... Respondents 2 & 4/
Respondents 1 to 3

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.03.2009 in M.C.O.P.No.895 of 2006, on the file of the Motor Accident Claims Tribunal (Principal Subordinate Court), Salem.

For Appellant : Mr. E.Rajadurai
For Respondents : Mr.R.Neelakandan for R1
R2 & R4 Exparte before Tribunal
R3 Given up

J U D G M E N T

Dissatisfied with the award, dated 18.3.2009, passed by the Tribunal in M.C.O.P.No.895 of 2006, the Insurance Company



has preferred the present appeal.

2. The learned counsel appearing for the appellant submits that the respondents 2 and 4 were set exparte and the third respondent given up. Such view of the matter, the appeal is dismissed against the respondents 2 to 4.

3. The case of the claimant/first respondent is as follows:

On 24.7.2006 at about 4.30 p.m., the first respondent met with an accident when the claimant along with his friend third respondent riding a motorcycle bearing registration No.TN 30 V 9589 from Jalagandapuram to Salem, near Sowdeswari Spinning Mill, Bajaj Minidor Auto bearing registration No.TN 30 J 6271 carrying some passengers without following traffic rules in a rash and negligent manner hit the claimant's motorcycle, resulting in the claimant and the driver of the auto were thrown out and the driver of the auto died on the spot. The claimant sustained fracture in his right arm, right hand, right leg, knee joint and he was immediately shifted to Government hospital, Salem and later private hospital, Salem. On complaint, case has been registered in Cr.No.122 of 2006 under Sec.279, 304(A) of I.P.C. by the Jalagandapuram Police station. The second respondent is the owner of the auto and the 4th respondent is the owner of the two wheeler. The claimant/first respondent filed a claim petition before the Tribunal for a compensation of Rs. 11,00,000/- for disability sustained by him.

4. The Tribunal, based on the oral and documentary evidence Exs.A1 to A.12 and Ex.B1 to B7, has awarded a sum of Rs.3,48,380/- as total compensation payable by the appellant Insurance Company to the claimant under various heads.

5. The learned counsel for the appellant submitted that the rider of the two wheeler did not possess valid driving license at the time of the accident therefore, the insurance company is not liable to pay any compensation. The compensation determined by the tribunal by taking disability at 40% and by applying multiplier method is highly excessive for the appellant, who is a pillion rider. Therefore, the liability fastened on the appellant insurer is unsustainable and liable to be interfered with.

6. The learned counsel for the claimant/1st respondent would submit that the appellant has not served notice to the owner of the vehicle and not taken any steps to produce the licence particulars of the concerned RTO nor examined the rider of the motor cycle. The tribunal rightly observed the said facts and awarded compensation by applying multiplier method. Therefore,



the compensation determined by the tribunal is well founded and does not require any interference.

7. From a perusal of records, Ex.A2 - Wound Certificate it reveals that the petitioner sustained grievous injuries in his right and left legs, right knee. The Doctor who issued the disability certificate -Ex.A10 certifies that due to the injuries, even after the treatment, the claimant is having discomfort in his right shoulder and right leg and also right hand. According to his evidence, his nerves are not completely cured and he could not able to move his right shoulder, hence the doctor has assessed 80% partial disability. But the tribunal by considering the fact that the doctor who issued the said disability certificate had not treated the claimant and by considering the documents produced in support of the disability and the treatment taken by the claimant, has fixed the disability at 40% and taking monthly income at Rs.3500/- p.m and by applying multiplier method 17, calculated the loss of earning power due to permanent disability at Rs.2,85,600/-.

8. The claimant has not submitted any documents to prove his income, hence this Court is inclined to modify the monthly income fixed by the tribunal to Rs.3000/-. As per Ex.A2-Wound Certificate, the age of the claimant is 32 years. As per the principles of law laid down by the Hon'ble Supreme Court, the multiplier to be adopted

for the age group 32 years is 16, but the tribunal has adopted the multiplier 17. Hence by fixing the monthly income at Rs.3000/-, adopting multiplier 16 and taking 40% disability, the loss of earning power due to permanent disability is calculated at Rs. 2,30,400/- . The claimant has produced Medical Bills - Ex.A3 for Rs.55,000/-. Considering the nature of injuries and the treatment taken by him, it is believed that he would have spent considerable amount towards medical expenses, hence the sum awarded by the tribunal under the head 'Medical Expenses' is enhanced to Rs.50,000/-. Likewise, in view of the grievous injuries sustained in his right, left legs and right knee, he should have depend upon other person for his day to day activities, hence a sum of Rs.5000/- is granted under the head 'Attendant Charges'. The sum awarded by the tribunal under other heads viz., Pain and Sufferings, Loss of nutrition and transport and Damages are found reasonable and the same is confirmed. Accordingly, the sum awarded by the tribunal is modified by this Court as follows;



WEB COPY

Heads	Compensation awarded by the tribunal Rs.	Compensation modified by this Court Rs.
Loss of income, earning power due to partial permanent Disability	2,85,600/-	2,30,400/-
Medical expenses	30,780/-	50,000/-
Pain and sufferings	20,000/-	20,000/-
Nutrition & Transportation	10,000/-	10,000/-
Damages to clothes	2,000/-	2,000/-
Attendant charges	...	5,000/-
Total	3,48,380/-	3,17,400/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed, the total compensation of Rs.3,48,380/- awarded by the tribunal is reduced to Rs.3,17,400/- along with interest at the rate of 7.5% per annum.

10. The appellant /Insurance Company shall deposit the modified compensation amount, as awarded by this Court along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant/1st respondent is permitted to withdraw the modified amount by filing appropriate application before the tribunal. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

ak



To

The Principal Subordinate Court,
Salem.

WEB COPY

Copy To

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

CMA.No.3427 of 2009

BS (CO)
PM/28/10/2021