IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 16.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.1367 of 2013 and
M.P.No.1 of 2013

United India Insurance Co. Ltd
Neyveli. ..Appellant/2nd Respondent

Vs.

1.Peranandam ..1st Respondent/Petitioner
2.K.Ravi
(2nd respondent was set exparte by the Claims Tribunal)
..2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 19.10.2005 passed in MCOP No.352 of 2005 by the Addl. District Court, FTC No.2, Cuddalore (Before District Court OP No.1819 of 2003 & Sub Court OP No.1829 of 2003, Cuddalore), on the file of the Motor Accidents Claims Tribunal, Cuddalore.

For Appellant : Mr.M.J.Vijayaraghavan
For Respondents: R1- No Appearance
R2-Notice unserved

J U D G M E N T

The appellant/ United India Insurance Company Limited, Neyveli, has filed the present appeal challenging the quantum of compensation awarded by the Tribunal.

2. The claimant/first respondent has filed a claim petition before the Tribunal seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 14.04.2003.

3. The brief case of the claimant is as follows: On 14.04.2003 at about 4.30 p.m, while the claimant was riding his motorcycle bearing registration No.TN-02-J-8926 along Main

Bazaar Road, near Tamilnadu Book House Block-19, Neyveli, a mini lorry bearing registration No.TN-57-3268 came in the opposite direction dashed against the motorcycle riding by the claimant, due to which he sustained grievous injuries. According to the claimant, the rash and negligent riding of the rider of the mini lorry bearing registration No. TN-57-3268 was the cause of accident and since the above said vehicle was insured with the second respondent, both of them are liable to pay compensation to the claimant.

4. The second respondent/ Insurance Company resisted the claim petition by filing a counter affidavit.

5. Before Tribunal, on the side of the claimant, the claimant and the doctor were examined as PW1 and PW2 and Ex.P1 to Ex.P7 were marked. No oral or documentary evidence was adduced on the side of the second respondent. The 1st respondent was set exparte.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.2,95,590/- as compensation to the claimant under various heads as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Permanent disability	15,000
2	Loss of earning power capacity 1500 x 12 x 13	2,34,000
3	Medical Expenses	36,590
4	Pain & Suffering	10,000
	Total	2,95,590

The Tribunal has also directed the appellant/insurance company to pay the compensation to the claimant on behalf of the 1st respondent. Aggrieved over the same, the Insurance Company has filed the present appeal.

7. Even though notice was served to the 1st respondent and paper publication was also effected, none appeared for the 1st respondent/claimant.

8. Heard the learned counsel for the appellant and I have perused the materials on record.

9. The learned counsel appearing for the appellant/insurance company submitted that there is no dispute with regard to negligence and liability and the only dispute is with regard to quantum of compensation and the multiplier adopted by the Tribunal is wrong. He further submitted that after analysing the evidence and the documents on record, the Tribunal has rightly fixed the disability suffered by the 1st respondent/claimant at 35%.

10. Now the point for consideration is, whether the compensation awarded by the Tribunal has to be enhanced?

11. Point No.1:

The 1st respondent/claimant in the claim petition claimed that he was a civil contractor and earned a sum of Rs.10,000/- per month. But, the 1st respondent/claimant has not produced any evidence before the Tribunal to prove his income. Hence, the Tribunal has rightly fixed the minimum monthly income as Rs.1500/- per month. According to the appellant, the 1st respondent/claimant has not produced any clinching evidence before the Tribunal that due to his disability, he could not able to do his work in future and thereby, caused loss of earning capacity. The doctor has assessed the permanent disability suffered by the claimant as 40% and the disability certificate given by him has marked as Ex.P6. To support the above document, he has examined as PW2 and he deposed that the claimant suffered bone fracture on his right leg and thereby he was unable to sit and move as normal and thus, he assessed 40% disability. The 1st respondent/claimant has not produced any material to prove his business of civil contractor and there is no evidence to prove that due to the said disability, he was unable to do his business work. Only based on the Ex.P6 disability certificate issued by the doctor, future loss of income has been derived by the Tribunal. But, in the said evidence of PW2, there is no concrete material or the statement given by the doctor that future work of the claimant would be prevented due to disability. PW1 in his evidence has not specifically adduced that he was not continuing the work as civil contractor and thereby, his future income would be prevented. But, the Tribunal has deliberately failed to discuss for determining the loss of future income.

12. In the light of judgement in the case of Rajkumar vs. Ajay Kumar and another reported in (2011) 1 Supreme Court Cases 343, the Tribunal has to record the reason for adopting the multiplier method, based on the permanent disability which

prevented the claimant to carry on his business in future. It is also to be established that the claimant is totally disabled from earning any kind of livelihood, or whether inspite of permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. These aspects have to be satisfied before the court and based on the said evidence, it can be assessed before awarding the compensation to the claimant/injured persons. The doctor has assessed 40% permanent disability. But, there is no other clinching materials placed to prove the case of the claimant that due to permanent disability, his livelihood would be prevented. Therefore, this Court has no hesitation to set aside the findings of the Tribunal awarding the compensation by adopting the multiplier method. As per Ex.P6 and the evidence of PW2, the 1st respondent/claimant is entitled for the permanent disability at 40%. Further, as per the decision of our Hon'ble Supreme Court, it is appropriate for this Court to award a sum of Rs.2,500/- per percentage. Accordingly, the claimant is entitled for a sum of Rs.1,00,000/- (Rs.2500/- x 40) towards " loss of earning power/capacity". As far as the other heads are concerned, no amount was awarded towards loss of income during the treatment period for four months, extra nourishment, attender's charges, transportation and damages to clothes and articles by the Tribunal. Hence, this court is inclined to award a sum of Rs.12,000/- towards loss of income during the treatment period for four months, Rs.10,000/- towards extra nourishment, Rs.7,500/- towards attender's charges, Rs.5,000/- towards transportation and Rs.2,000/- towards damages to clothes and articles. Accordingly, the revised compensation awarded by this court under various heads is extracted here under.

Sl No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/Awarded by this court
1	Loss of Earning Power/ Capacity	2,34,000 (1500 x 12 x 13)	1,00,000 (2,500 x 40)
2	Permanent Disability	15,000	---
3	Pain & Sufferings	10,000	30,000

Sl No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/Awarded by this court
4	Medical Bills	36,590	36,590
5	Loss of income during the treatment period for 4 months	--	12,000 (3000x4)
6	Extra Nourishment	-	10,000
7	Attender's charges	-	7,500
8	Transportation	-	5,000
9	Damages to clothes and articles		2,000
	Total	2,95,590	2,03,090

Accordingly, the 1st respondent/claimant is entitled to a compensation of Rs.2,03,090/- rounded off to Rs.2,00,000/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is scale down from Rs.2,95,590/-to Rs.2,00,000/-. No costs. Connected miscellaneous petition is closed.

(ii) The appellant/insurance company is directed to deposit the compensation of Rs.2,00,000/- with interest at the rate of 7.5.% p.a. from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of 6 weeks from the date of receipt of a copy of this order. The insurance company is at liberty to withdraw the amount deposited by them over and above the revised compensation awarded by this court.

(iii) On such deposit being made by the appellant/ insurance company, the claimant is at liberty to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

1.The Additional District Judge,
FTC No.2, Cuddalore

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

CMA. No.1367 of 2013
and
M.P No.1 of 2013

SSD(CO)
SP(23/11/2021)