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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 17.12.2020

Judgment Delivered on : 26.02.2021

CORAM

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.1770 of 2012

Branch Manager
The Oriental Insurance Co. Ltd.,
AA Complex, First Floor,
159, Kumaran Road, Tiruppur.

... Appellant/3rd Respondent

Vs.

1. Senthilkumar
S/o. Kannan

.. 1st Respondent/Petitioner

2. Shanmugapandi
S/o. Sithiah, C/o. Sivagnanam

3. Sivagnanam
C/o. Chidambaram

.. 2 & 3 Respondent/1&2 Respondent

4. Savarimuthu

5. Branch Manager,
United India Insurance Co. Ltd.,
139, Kumaran Road,
Tiruppur.

... 4 & 5 Respondents/4 & 5 Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.256 of 2008 dated 19.09.2011 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge (FTC-5), Tiruppur.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.MA.P.Thangavel for R1

Mrs.I.Malar for R5.



JUDGMENT

(This case has been heard through video conference)

The Civil Miscellaneous Appeal has been filed challenging the fair and decretal order dated 19.09.2011 passed in MCOP.No.256 of 2008 by the Motor Accidents Claims Tribunal, II Additional District and Sessions Judge (FTC-5), Tiruppur.

2. Aggrieved by the award passed by the Motor Accident Claims Tribunal/ II Additional District and Sessions Judge (FTC-5), Tiruppur, the Insurance Company has filed this appeal seeking to set aside the award passed by the Tribunal.

3. The case in brief is as follows:

On 19.02.2008 at about 6.30 p.m., when the claimant was riding a Motor Cycle bearing Registration No. TN 37 AW 6088 near a Petrol Bunk, Oothukuli road, at that time, the Auto bearing Registration No. TN 39 AD 7850 driven by its driver in a rash and negligent manner, dashed against the claimant, as a result of which, he sustained grievous injuries. The first respondent herein is the claimant before the Tribunal. The second respondent is the driver of the auto and the third respondent is the owner of the auto. Fourth respondent is the owner of the Motor Cycle. The fifth respondent is the Insurer of the Motor Cycle.

4. Mr.S.Arun Kumar, the learned counsel for the appellant/Insurance Company has submitted his arguments. As per his submissions, the claimant suffered only fracture injury and the Tribunal has granted Rs.3,92,880/- for the accident in the year 2008 which is on the higher side. The learned counsel submitted that the assessment of disability is on the higher side and the Doctor has not produced working sheet and he has not substantiated the assessment. He relied on the decision in Rajkumar Vs. Ajaykumar & another reported in 2011 (1) SCC 343 and submitted that the assessment of the disability by the Doctor is only with regard to a particular part and not in respect of the whole body. The burden is on the Tribunal to consider whether the disability would affect the functional capacity of the injured. Therefore, he would contend that in this case, the disability is not permanent and the Tribunal has wrongly adopted multiplier method.

5. Mr.P.Thangavel, the learned counsel for the first respondent/claimant contended that with regard to negligence, there is no contra evidence made by the Insurance Company. Similarly, there is no contra evidence let in by the Insurance Company either to disprove assessment of disability or to disregard the evidence of P.W.2, who is an expert. He submitted that the accident occurred on 19.02.2008 and on the date of the



accident, the injured was earning a sum of Rs.6,000/- and the Tribunal has fixed only a sum of Rs.3,500/- per month. The proper multiplier to be adopted is 17, however the Tribunal had taken it only as 16.

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6. Point for consideration

Whether the award passed by the Motor Accident Claims Tribunal is excessive.

7. Perused the petition and counter in MCOP.No.256 2008 and the impugned award passed by the Motor Accident Claims Tribunal, II Additional District Judge, Tiruppur and the memorandum of grounds of appeal.

8. On perusal of the award passed by the Tribunal, it is found that on the date of the accident, the injured/claimant/first respondent herein was aged 27 years. He had suffered multiple fractures on his thigh and the leg and his avocation was Packing Master and he was paid Rs.6,000/- per month. He would have been unable to attend to his regular work during the period of treatment. Therefore, this Court awards a sum of Rs.18,000/- towards the loss of income during the period of treatment. Considering his avocation, he had not suffered disfiguration in the hands, affecting his hands being employed for this job, to be treated as functional disability. Therefore, there is no functional disability affecting his avocation. When the functional disability is not attracted, the multiplier method need not be invoked. Now, coming to the assessment of his disability as assessed by the Doctor who was a witness before the Tribunal as P.W.2 and the disability certificate marked as Ex.P.4, the Doctor had assessed the disability as 56.7% whereas the Tribunal had taken it to be 54% based on the Rulings of the Hon'ble Supreme Court reported in (2009) 1 SCC (Crl.) 666 (Gnanam @ Gnanamurthy Vs. Metropolitan Transport Corporation) wherein it had been stated that opinion regarding disability differs individually from Doctor to Doctor and regarding the percentage of disability, 5% may vary and the Tribunal concerned may exercise its discretion. If that is applied, the disability may be considered as 51%. Therefore, this Court awards a sum of Rs.1,53,000/- (51x3000).

9. Considering the period of treatment and the nature of injuries sustained by the claimant, the Tribunal awarded a sum of Rs.5,000/- towards Extra Nourishment and Transportation which is meagre. Therefore, this Court enhances the same to Rs.25,000/- and 5,000/- towards Extra Nourishment and Transportation respectively. This Court also awards a sum of Rs.25,000/- towards Loss of Amenities.

10. Since no document has been marked on the side of the



claimant regarding the medical expenses, no amount has been granted under the head "Medical Expenses".

11. The Tribunal awarded a sum of Rs.25,000/- towards pain and sufferings and it is reasonable and the same is hereby confirmed. The break-up details of the amounts awarded under various heads are as follows:

Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Permanent Disability	3,62,880	1,53,000
2	Pain and Sufferings	25,000	25,000
3	Extra Nourishment	5,000	25,000
	Transportation		5,000
4	Loss of Amenities	-	25,000
5	Loss of income during the period of treatment	-	18,000
	Total	3,92,880	2,51,000

12. The Point for consideration is answered in favour of the appellant/Insurance Company and against the first respondent/claimant.

Accordingly, this Civil Miscellaneous Appeal is allowed. The appellant/Insurance Company is directed to deposit the amount, which we have determined in this appeal, to the credit of M.C.O.P.No.256 of 2008 on the file of the Motor Accidents Claims Tribunal, II Additional District and Sessions Judge (FTC-5), Tiruppur, with accrued interest at the rate of 7.5% per annum from the date of claim petition, till the date of deposit along with costs, through RTGS or NEFT method as held by this Court in (The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others) 2016 (1) TN MAC 433, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant shall be entitled to withdraw the award amount with accrued interest. No costs.

Sd/-
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge (FTC-5),
Motor Accidents Claims Tribunal,
Tiruppur.

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

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.12439

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.12009

C.M.A.No.1770 of 2012

CA(CO)
SU(09/11/2021)