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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.02.2021
PRONOUNCED ON : 16.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2313 of 2015
and M.P.No.1 of 2015

The Manager,
United India Insurance Company Limited,
1st Floor, 3rd Cross 100 Ft, Ring Road,
Hosakeraphalli,
Bangalore - 560 035. ... Appellant/2nd Respondent

Vs.

1.Saravanaperumal ... 1st Respondent/Petitioner
2.V.Suryanarayana Reddy ... 2nd Respondent/1st Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed by the Motor Accidents Claims Tribunal, learned Principle Sub-Judge, at Krishnagiri, in MCOP.No.106 of 2013, dated 10.03.2015.

For Appellant : Mrs.I.Malar
For R1 : Mr.Mukund R.Pandiyan
For R2 : No appearance

JUDGMENT

(This case has been heard through video conference)

The Insurance Company is the appellant herein.

2.The brief facts of the case are as follows:

(a)On 23.10.2012, the first respondent herein was proceeding in his Bajaj Discover Motorbike bearing Registration No.TN-24-F-2819 from Jagadevi to Krishnagiri to purchase re-winding materials and drove the same very slowly at about 14.30 hours, in Thiruvannamalai to Krishnagiri main road at Periyapanagamutlu junction road near one Thimmarayana land west side and at that time, Omni Van bearing Registration No.KA-03-M-3193 belonging to the first respondent before the Tribunal and insured with the Insurance Company was driven by its driver on the opposite direction of the claim petitioner and dashed against him. As a result of which, he sustained injuries.



(b) Hence, the first respondent herein has filed a petition in MCOP.No.106 of 2013, on the file of the learned Principle Subordinate Judge, Motor Accidents Claims Tribunal, Krishnagiri and the learned Judge has awarded a sum of Rs.8,04,066/- as compensation. As aggrieved against the same, the Insurance Company has preferred this appeal on the point of quantum.

3. Factum of the accident, manner of the accident and rash and negligence driving on the part of the driver of the offending vehicle are not under dispute.

4. Before the Tribunal, on behalf of the claim petitioner, he examined himself as PW1 and Dr. Gandhi was examined as PW2 and documents were marked as Exs.P1 to P9 and on behalf of the respondents, no oral evidence has been examined and documents have been marked.

5. Heard the learned counsel for the appellant/insurance company and the learned counsel for the first respondent/claimant and perused the materials placed on record.

6. According to the claim petitioner, he suffered functional disability and in support of the same, he has marked Ex.P2/accident register and Ex.P3/discharge summary.

7. On a combined reading of the oral evidence of PW1, coupled with the documentary evidence viz., Exs.P2 and P3, it is seen that the claim petitioner has sustained the following injuries:-

- (i) bleeding from both nostrils
- (ii) 2 x 4 cm contusion at both eye lids of right eye
- (iii) bleeding from mouth and injury at lower jaw
- (iv) 2 x 4 cm abrasion edemate at lt. footright mandible
- parrasymphysis fracture Maxilla lefort II fracture
- (v) Bilateral orbital floor fracture
- (vi) Ankle trimalleolar fracture Weber's Type C

The evidence of PW2/Doctor also supports the injuries sustained by PW1, which are mentioned in Ex.P2/accident register and as per the same, PW2/Doctor had issued Ex.P9/disability certificate.

8. On a close scanning and scrutiny of the injuries sustained by the claim petitioner and Ex.P9/disability certificate issued by PW2/doctor, this Court finds that the Tribunal has fixed the disability suffered by the claim petitioner at 40%. On a combined reading of oral evidence of PW1 & PW2 coupled with Exs.P2, P3 & P9, this Court finds that the whole body disability has to be fixed at 30% but not 40% as fixed by the Tribunal.

9. It remains to be stated that the Tribunal has assigned reason for adopting multiplier method, as it is found that due



to the accident, the claim petitioner had suffered functional disability. According to the claim petitioner, he was doing Motor Coil Rewinding Works. But no document has been produced before the Tribunal and any third party or independent witness was examined to substantiate the alleged avocation and income as spoken to by PW1. In the absence of any reliable evidence, taking note of the nature of the avocation and the place of the avocation, the Tribunal has rightly fixed the income of the claim petitioner at Rs.5,000/- per month and accordingly, awarded compensation of Rs.3,96,000/- under the head of loss of earning capacity.

10. Further, this Court finds that the compensation awarded by the Tribunal under the heads of loss of earning capacity, pain and sufferings, medical expenses, extra nourishment, transportation charges, attendant charges and the partial loss of income, are just and reasonable.

11. In the absence of any positive evidence as to the future medical expenses, the Tribunal appears to have committed an error in awarding a sum of Rs.1,00,000/- under the head of future medical expenses and hence, the amount awarded under the head of future medical expenses is hereby set aside. In all other aspects, the compensation awarded by the Tribunal is hereby confirmed and the same is calculated as under:

S.No.	Description	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1	Loss of earning capacity	3,96,000/-	3,96,000/-
2	Pain and sufferings	25,000/-	25,000/-
3	Medical expenses	2,28,066/-	2,28,066/-
4	Extra Nutrition & Transportation	20,000/-	20,000/-
5	Attender charges	10,000/-	10,000/-
6	Partial Loss of Income	25,000/-	25,000/-
7	Future Medical Expenses	1,00,000/-	---
	Total	8,04,066/-	7,04,066/-

Hence, compensation awarded by the Tribunal is modified from Rs.8,04,066/- to Rs.7,04,066/- (Rupees Seven Lakhs Four Thousand Sixty Six Only)

12. In the result,

(a) This Civil Miscellaneous Appeal is partly allowed to the limited extent indicated as above.



(b) The appellant/Insurance Company is directed to deposit the modified award amount to the credit of MCOP.No.106 of 2013, on the file of the Motor Accident Claims Tribunal, (Principal Subordinate Judge), Krishnagiri, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

(c) The award amount will carry interest at the rate of 7.5% per annum from the date of filing of the petition till the date of payment.

(d) On such deposit, the first respondent herein/claim petitioner is permitted to withdraw the modified compensation amount as awarded by this Court, less the amount already withdrawn, if any.

(f) No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

dua

To

The Motor Accident Claims Tribunal,
Principle Sub-Judge, at Krishnagiri.

Copy to:

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

+1CC to Mr.Mukund R Pandiyan, Advocate, Sr.No.23166

Pre-Delivery Judgment
in
C.M.A.No.2313 of 2015

SSV (CO)
K.RK. (07.09.2021)