IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2021

CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

CMA.No.3069 of 2012

The New India Assurance Co.Ltd.,
21, Pattulos Road,
Chennai -2. ... Appellant/2nd Respondent

..Vs..

1.S.Ganesan
2.K.Karuthapandian
(2nd respondent remained exparte and notice dispensed with for him) ... Respondents/Petitioner and 1st Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree made in MACTOP.No.4627 of 2007 on the file of the Motor Accidents Claims Tribunal (IV Judge, Court of Small Causes), Chennai dated 19.07.2011.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Ms.Subadra for R1
R2-Notice unserved

J U D G M E N T

This appeal has been filed by the Insurance Company as against the award dated 19.07.2011 made in MCOP.No.4627 of 2007 on the file of the Motor Accident Claims Tribunal / IV Judge, Court of Small Causes, Chennai.

2. The case of the first respondent/claimant is that on 01.06.2016 at about 7.30 am, he was standing in front of a Tea Stall at Thirisoolam. At that time, a Lorry bearing Registration No.TNU-5956, which was insured with the appellant-Insurance Company, was proceeding from south to north direction on the same road, in a rash and negligent manner was driven on a stone and thereby, one of the stone hit the eyes of the petitioner. Due to the said accident, the petitioner sustained grievous injury in his right eye. Immediately, he was admitted in the

Egmore Eye Hospital and took treatment from 01.06.2006 to 14.06.2006, but he lost his vision in the right eye.

3. It is the further case of the claimant that he was working as coolie-cum-driver in a Lorry. Since he lost his eye sight, he was not able to pursue the above work. Hence, he made a claim for a sum of Rs.6,00,000/- as compensation.

4. The said claim was resisted by the Insurance Company by filing a detailed counter statement denying the avocation, involvement of the said Lorry, manner of accident and other details furnished by the claimants and prayed for dismissal of the claim petition.

5. In order to prove his claim, the claimant examined himself as PW1 and also examined PW2, the Doctor who assessed the claimant and Exs.P1 to P7 were marked. On the side of the Insurance Company, Ex.R1, driving license of the driver of the said Lorry was marked. The Tribunal after considering the oral and documentary evidence adduced by both the parties fixed the liability as against the appellant/Insurance Company and fixed the quantum of compensation for a sum of Rs.4,08,600/-. The break-up details of the amounts awarded by the Tribunal under various heads are as follows:

S.No.	Heads under which the amount is awarded by the Tribunal	Amount in Rs.
1.	Loss of Income	18,000
2.	Transport to Hospital	5,000
3.	Extra nourishment	10,000
4.	Pain and Sufferings	30,000
5.	Permanent Disability	3,45,600
	Total	4,08,600

6. The learned counsel for the appellant/Insurance Company has filed this appeal on the following main grounds that the Lorry bearing Registration No.TNU-5956, which was insured with the appellant-Insurance Company, was falsely implicated in this case; the Tribunal without considering the injury sustained by the claimant in the accident, has fixed excessive percentage of disability, i.e., 40%; the Tribunal without any valid proof fixed a sum of Rs.4,500/- as monthly income of the claimant; the Tribunal erred in applying multiplier "16" while calculating amount under the head "Permanent Disability";

7. The learned counsel for the appellant further submitted that there was a delay in lodging the FIR. The respondent/claimant is put to strict proof of the validity of

the insurance policy of the Lorry and driving license of the driver in charge at the time of accident. Hence, this appeal is filed to set aside the order of the Tribunal.

8. In reply, the learned counsel for the respondent/claimant submitted that the Tribunal has considered all the relevant documents adduced by both the parties and rightly come to the conclusion that the Insurance company is liable to pay the compensation and the amount determined by the Tribunal is just and fair.

9. This Court considered the submissions made by the learned counsel for both sides and perused the materials available on record.

10. The first and foremost contention of the appellant/Insurance Company was that the Lorry bearing Registration No.TNU-5956 insured with the appellant was falsely implicated in the accident and also denied the manner of accident. In this regard, the claimant examined himself as PW1 and marked Ex.P1, attested copy of FIR, Ex.P2, attested copy of Rough Sketch and Ex.P3, attested copy of Charge Sheet and proved that due to the negligence of the Lorry bearing Reg.No.TNU-5956, the stone hit his eye and he lost his vision in the right eye. However, no contrary evidence was placed as against the evidence of PW1. Therefore, this Court is not able to accept the submission of the appellant/Insurance Company. Hence, the findings of the Tribunal that due to the rash and negligent driving of the driver of the Lorry bearing Reg.No.TNU-5956 the said accident occurred and its insurer, the appellant/Insurance Company is liable to pay the compensation amount to the claimant, are confirmed.

11. The next point for consideration is that the appellant has submitted that the Tribunal has fixed excessive percentage of disability, i.e., 40% for the injuries sustained by the claimant. It is an admitted fact that while fixing disability by a Doctor, it may vary around 10% from one Doctor to another, and hence, considering the injury sustained by the claimant, disability is fixed at 30%.

12. As far as the monthly income of the claimant, it is the submission of the learned counsel for the appellant that the Tribunal has fixed a sum of Rs.4,500/- as monthly income without verifying the fact that as to whether the claimant had suffered any loss of earning capacity due to the accident. However, the claimant has marked Ex.P6, his driving licence to show that he was working as a driver-cum-coolie in Lorry and by examining PW2 he proved that due to the accident, he lost his vision in the right eye. Thus, he proved that he is not able to continue his

job as a Driver. Considering the said aspects, this Court is of the view that the Tribunal has rightly fixed the monthly income of the claimant at Rs.4500/-.

13. As far as the amount awarded under the head "Permanent Disability" is concerned, the appellant has submitted that the Tribunal has erred in applying multiplier "16" and awarded exorbitant amount. Considering the age of the claimant was 37 at the time of the accident, the correct multiplier to be applied as per "Sarala Varma case" is "15". Thus, this Court is of the view that by taking multiplier "15", and by taking the disability at 30% the amount awarded under the head permanent disability is modified as Rs.2,43,000/- [(4,500 x 12 x 15) x 30%].

14. The petitioner was hospitalised as inpatient for a long time and hence, a sum of Rs.12,000/- is awarded under the head "Attender Charges". Further, considering the treatment underwent by the claimant, a sum of Rs.15,000/- is awarded under the head "Loss of amenities"

15. The amounts awarded by the Tribunal under all the other heads are just, fair and reasonable, and hence, they are confirmed.

16. Thus, this Court has enhanced the compensation amount under the heads as follows:

Heads	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
Loss of Earnings (Rs.4,500 pm x 4 months)	18,000/-	18,000/-
Transport Charges	5,000/-	10,000/-
Extra Nourishment	10,000/-	10,000/-
Pain and Sufferings	30,000/-	30,000/-
Attendance Charges		12,000-
Loss of Amenities		15,000/-

Heads	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
Permanent Disability	(4,500 p.m x 12 x 16 x 40%) 3,45,600/-	(4,500 p.m x 12 x 15 x 30%) 2,43,000/-
Total	4,08,600/-	3,38,000/-

17. In the result, the Civil Miscellaneous appeal is partly allowed, by reducing the total compensation amount to Rs.3,38,000/- from Rs.4,08,600/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

18. The appellant/Insurance Company shall deposit the reduced compensation amount of Rs.3,38,000/-, 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 order. On such deposit being made, the claimant is permitted to withdraw the award amount, less the amount if any already withdrawn by filing necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar(Inspec.)

//True Copy//

Sub Assistant Registrar

Dna
To

1.The Motor Accident Claims Tribunal /
IV Judge, Court of Small Causes, Chennai.

2.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.M.Krishnamoorthy, Advocate Sr.8102
+1cc to Mr.M.Malar, Advocate Sr.7442

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srg 22/09/2021