IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 15.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.3396 of 2012 and
M.P.No.1 of 2012

National Insurance Company Limited, 11M Centre,
No.18, North Usman Road, Chennai-17.
... Appellant/II respondent

Vs.

1. G. Rajasekaran .. I respondent/ claimant

2. R.Manmathan ... II respondent/ I respondent

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 08.03.2012 passed in O.P.No.993 of 2008 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.D.Bhaskaran

For I respondent: Mr.A.Prakash
for C & K Law firm

For II respondent: Notice unserved

J U D G M E N T

Aggrieved over the orders passed by the Tribunal, the National Insurance Company Limited, Chennai has filed the present appeal.

2. The claimant/first respondent has filed a claim petition before the Tribunal seeking compensation of Rs.6,00,000/- for the injuries sustained by him in a road

accident that took place on 17.02.2008.

3. The brief case of the claimant is as follows: On 18.02.2008 at about 9.30 a.m., while the claimant was riding his motorcycle bearing registration No.TN-07-AE-2448 along Velachery 100 feet road from north to south direction, a motorcycle bearing registration No.TN-07-AP-8976 came from West to East 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 motorcycle bearing registration No. TN-07-AP-8976 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 counter affidavit.

5. Before Tribunal, on the side of the claimant, the claimant and Dr.J.R.R.Thiagarajan were examined as PW1 and PW2 respectively and Ex.P1 to Ex.P10 were marked. On the side of the second respondent, RW1 and RW2 were examined and Ex.R1 to Ex.R4 were marked.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.3,28,600/- as compensation to the claimant under various heads as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Loss of Earning Power/ Capacity (10,000 x 12 x 14 x 12%)	2,01,600
2	Permanent Disability	24,000
3	Loss of income during treatment	30,000
4	Transportation Charges	2,000
5	Extra Nourishment	2,000

Sl No	Heads	Amount in Rs.
6	Damage to clothes and articles	1,000
7	Medical Expenses	48,000
8	Pain and Sufferings	20,000
	Total	3,28,600

The Tribunal has also directed the appellant/insurance company to pay the compensation to the claimant at the first instance and then recover the same from the owner of the vehicle. Aggrieved over the same, the Insurance Company has filed the present appeal.

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

8. The learned counsel appearing for the appellant/ insurance company submitted that the Tribunal has failed to note that the insured did not possess valid driving licence and hence, it is a violation of policy conditions and for the same, the insurance company cannot held liable to pay compensation to the claimant.

9. He further submitted that the PW2 had assessed 40% disability, which is exaggerated and no multiplier method of calculation is warranted and these facts are not considered by the Tribunal. He also submitted that since the claimant was working as a police constable in the police department, there was no loss of income or reduction in his salary, however, the Tribunal has awarded a sum of Rs.30,000/- towards loss of income and hence, the Award passed by the Tribunal is highly excessive and the same is liable to be set aside.

10. For the last three occasions, none appeared for the first respondent/claimant and hence, today the case is posted for orders. Today also no argument was advanced on behalf of the first respondent/claimant.

11. Now the points for determination is

(i) Whether the insurance company is held liable to pay compensation?

(ii) Whether the Award passed by the Tribunal is an excessive?

12. Point No.1:

The learned counsel appearing for the appellant submitted that on the date of accident, the rider of the vehicle did not possess valid driving license and the same is violation of the policy conditions. Therefore, the insurance company is not liable to pay compensation to the claimant and only the owner of the vehicle has to pay compensation.

13. At this juncture, it is necessary to rely upon a decision rendered by the Honourable Supreme Court in Oriental Insurance Company Ltd. Vs. Shri Nanjappan and others reported in 2004(1) TN MAC 211 (S.C), wherein, at paragraph No.8, it is held as follows.

> " Therefore, while setting aside the judgment of the High Court, we direct in terms of what has been stated in Baljit Kaur's Case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondents/claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises, the executing court shall take assistance of the concerned Regional Transport authority. The executing court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In

case there is any default it shall be open to the executing court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

In the light of the above decision, the appellant/insurance company is liable to pay compensation at the first instance to the claimant and then recover the same from the claimant and the point is answered accordingly.

14. Point No.2

The contention of the appellant is that without appreciating the evidence on record, the Tribunal has assessed 12% disability and also adopted multiplier method. He further submitted that without any basis, the Tribunal has also awarded amount towards Loss of Income to the claimant and awarded a huge amount as compensation. However, with regard to the disablement of the claimant, no contradictory plea has been raised by the insurance company during the cross examination of PW2. Admittedly, the claimant was working as a Grade-I Police Constable at Adyar Traffic Enforcement. It is stated by the claimant during the examination that he is not able to perform his duty in the department, as done earlier. However, he has also stated that, he received the salary without any deductions.

15. The claimant/PW1 fairly admitted in his examination that he received a sum of Rs.10,000/- per month as salary and now he is continuing his work in the Department. No other reasons have been adduced in the evidence that due to his disability, his salary was reduced by the Department. Therefore, considering the evidence of the PW1 and also as there is no specific pleadings in the claim petition that his salary was reduced due to his disability, this court accepted the contention of the learned counsel appearing for the appellant and come to the conclusion that the claimant is not entitled for compensation towards " Loss of earning Power/Capacity", since there is no specific evidence or materials placed before the Tribunal to prove the factum of loss of earning capacity by the claimant in his future service. However, he is entitled to a sum of (10,000 x 4) Rs.40,000/- towards "Loss of Income" during the treatment period for four

months.

16. Further, The PW2 Dr.J.R.R.Thiagarajan has assessed permanent disability suffered by the claimant as 40%. Since the petitioner has sustained fracture of both bones with dislocation in the right ankle and the PW2 has given the disability only with regard to the particular limb, the Tribunal has fixed the disability at 35% and by reducing 1/3 percentage with reference to the whole body, has fixed 12% as " Functional disability". The above assessment made by the Tribunal is unsustainable and the Tribunal is not an expert to assess the disability. If the Tribunal disbelieved the evidence of PW2 and the disability certificate, it is for the Tribunal to refer the claimant to the Medical Board for assessing the disability suffered by him. But the Tribunal has not done so. Therefore, as per the disability Certificate Ex.P9 and the evidence of PW2, it is appropriate to to fix the disability suffered by the claimant as 40%.

17. The claimant was a police constable and during the accident, he has sustained fracture of both bones with dislocation in the right ankle and inview of the same, he is having difficulty in sit and walk. Considering the above facts, this court opines that it is just and reasonable to award Rs.3,000/- per percentage. Accordingly, (3000 x 40) a sum of Rs.1,20,000/- is awarded towards " Permanent Disability". Considering the facts and circumstances of the case and the nature of injuries and fracture sustained by the claimant, this court is of the view that it is appropriate to award compensation under other heads also, as extracted here under.

Sl No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/Awarded by this court
1	Loss of Earning Power/ Capacity	2,01,600 (10,000 x 12 x 14 x 12%)	-
2	Permanent Disability	24,000 (2000x12)	1,20,000 (3000x40)
3	Loss of income during the treatment period for 4 months	30,000	40,000 (10,000x4)

Sl No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/Awarded by this court
4	Transportation Charges	2,000	5,000
5	Extra Nourishment	2,000	10,000
6	Damage to clothes and articles	1,000	1,000
7	Medical Expenses	48,000	48,000
8	Pain and Sufferings	20,000	40,000
9	Attender's charges Total	-	10,000
10	Loss of amenities	-	20,000
	Total	3,28,600	2,94,000

Accordingly, the claimant is entitled to a compensation of Rs.2,94,000/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

18. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is scale down from Rs.3,28,600/- to Rs.2,94,000/-. No costs. Connected miscellaneous petition is closed.

(ii) The appellant/insurance company is directed to deposit the compensation of Rs.2,94,000/- 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 months from the date of receipt of a copy of this order.

(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

mst

To

The II Court of Small Causes Judge,
Small Causes Court,
(Motor Accident Claim Tribunal)
Chennai

Copy To

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

CMA. No.3396 of 2012

VG-II(CO)
SB(16/09/2021)