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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on: 24.03.2021

Judgment Delivered on: 13.08.2021

CORAM

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.2971 of 2013

United India Insurance Company Ltd.,
19, Neela South Street,
Nagapattinam - 611 001.
Regional Office at
No.134, Greams Road, Chennai - 6.

... Appellant

Vs.

1. Kareem
S/o. Naina Mohammed
2. A.K.Vavaalevai Maricar
S/o. AVK Ahamed Maricar

... 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.3341 of 2009 dated 24.01.2013 on the file of the Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.D.Bhaskaran

For 1st Respondent : Ms.M.Malar

JUDGMENT

(This case has been heard through video conference)

The Civil Miscellaneous Appeal has been filed challenging the fair and decretal order dated 24.01.2013 passed in MCOP.No.3341 of 2009 by the Motor Accidents Claims Tribunal, VI Small Causes Court, Chennai.



2. The facts relevant to the case in brief are as follows:

On 23.07.2009 at about 14.00 hrs on ECR Road, Kottaikaadu, Kancheepuram District while the petitioner was riding the two wheeler bearing Registration No. TN-21-AX 6530, a Tata Ace bearing Registration No. TN 31 J 6697 coming from Chennai to Pondicherry which driven by its driver with a very dangerous speed in a rash and negligent manner, knocked the petitioner riding two wheeler (opposite to each other), thereby the petitioner sustained multiple grievous injuries all over the body.

3. After due enquiry, based on the assessment of evidence before the Tribunal, the Tribunal had passed the award for a sum of Rs.7,31,247/- as compensation.

4. Aggrieved by the same, the second respondent/Insurance Company has filed this appeal seeking to set aside the award passed by the Tribunal.

5. Mr.D.Bhaskaran, the learned counsel for the appellant/Insurance Company has submitted his arguments. As per his submissions, the Tribunal had erred in awarding huge sum with interest as compensation. The Tribunal failed to consider that the claimant has failed to exercise a reasonable care while driving and thereby contributed to the accident. The Tribunal failed to note that the assessment of PW2 doctor is highly exaggerated and the certificate has no basis. The Tribunal failed to note that the Doctor has issued certificate without conducting mandatory test and the alleged injuries will not result in partial permanent disability which is against the medical science and guidelines. The award passed by the Tribunal without any basis and mechanically applying the multiplier. The alleged disability is physical disability and no document was filed by the claimant to prove his avocation and income. Therefore, the award passed by the Tribunal is to be set aside.

6. Ms.M.Malar, the learned counsel for the respondent/claimant has submitted his arguments. As per his submissions, the accident was of the year 2008. Therefore, notional income was fixed at Rs.4500/- and the multiplier method was adopted. Therefore, the Tribunal awarded only a meagre amount of Rs.7,31,247/- as compensation. At the relevant point of time, Rs.6000/- was the nominal income, but unfortunately the Tribunal had reckoned only Rs.4500/- as monthly income. Thus, the Tribunal awarded only a meagre amount.

7. Points for consideration

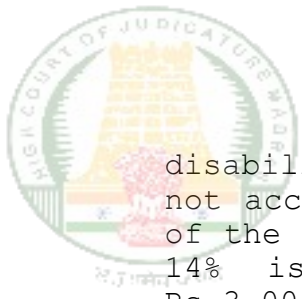


Whether the award passed by the Tribunal is to be set aside?

8. Perused the claim petition filed by the respondent/claimant before the Motor Accident Claims Tribunal in MCOP.No.3341/2009, the counter filed by the appellant/Insurance Company and the Judgment/Order passed by the Motor Accident Claims Tribunal and the Memorandum of appeal filed in this appeal.

9. On perusal of the records in MCOP.No.3341/2009 on the file of the Motor Accidents Claims Tribunal, Small Causes Court - IV, Chennai, it is found that Ex.P.1 is the First Information Report in Cr.No.516/2009, Ex.P.2 is the discharge slip, Ex.P.3 is the discharge card, Ex.P.4 is the discharge summary, Ex.P.5 is the medical bills for Rs.45,947/-, Ex.P.6 is the X-ray, Ex.P.7 is the photos with C.D, Ex.P.8 is the O.P.Record, Ex.P.9 is the Medical bills for Rs.4,500/-, Ex.P.10 is the Disability Certificate and Ex.P.11 is the X-ray. Ex.P.2 is the discharge slip issued by the Indiragandhi Government General Hospital, Puducherry and from Ex.P.2, is seen that the claimant was admitted on 23.07.2009 and discharged on 28.07.2009 and took treatment for a period of six days. It is further seen that he had sustained multiple lacerations and crush injury over the right big toe and compound fracture in the right leg. Ex.P.3 is the discharge card issued by the Arupadai Veedu Medical College and Hospital, Puducherry stating that he was admitted on 04.08.2011 and discharged on 20.08.2011 and took treatment for a period of 17 days and underwent a surgery on 05.08.2011. The accident occurred on 23.07.2009 at 14 hours and immediately after the accident, he was treated for the injuries. The petitioner is having infected wound over the right foot. As he was having alcoholic liver disease and anemia for which amputation of great toe and wound debridement and skin grafting was done. These were not immediately after the accident. These were taken place in the year 2011 after two years of the accident. Immediately after the accident, he underwent treatment only for 6 days. Therefore, bills included for Rs.45,947/- is found to be on the higher side and cannot be accepted and therefore set aside. The claim of partial permanent disability also cannot be accepted. Rs.50,000/- awarded towards loss of amenities also cannot be accepted and therefore set aside. While calculating the loss of income for 3 months, the Tribunal has taken Rs.4500/- as monthly income and the same is enhanced by this Court to Rs.6,000/- per month. Therefore, loss of income for a period of three months comes to Rs.18,000/-.

10. P.W.2, the Doctor admitted that he had not treated the claimant and hence, assessing the disability at 75% is found exaggerated. The Tribunal considering the same had fixed



disability at 60% and calculated functional disability is also not acceptable. As per Schedule I Part - II, Serial No.1 * (39) of the Workmen Compensation Act, for the amputation of great toe 14% is the disability. Therefore, for 14% disability, Rs.3,000/- for each percentage is awarded by this Court. Therefore, this Court awards a sum of Rs.42,000/- towards partial permanent disability.

11. Considering the nature of injuries sustained in the right leg, amputation of great toe on the right foot and grievous injuries in right knee, he will be unable to attend his regular work. Therefore, this Court fixes a sum of Rs.10,000/- towards "Extra Nourishment".

12. Since the amounts awarded by the Tribunal under the head Transportation, Damages to Clothes, and Pain and Sufferings are just and fair, the same are 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	Loss of Income for 3 months	13,500	18,000
2	Transportation	5,000	5,000
3	Extra Nourishment	5,000	10,000
4	Damage to Clothes	1500	1500
5	Medical Expenses	50,447	-
6	Attender Charges	5,000	5,000
7	Loss of Amenities	50,000	-
8	Pain and Sufferings	50,000	50,000
9	Disability and loss of earning	5,50,800	42,000
	Total	7,31,247	1,13,500

13. The point for consideration is answered in favour of the appellant/Insurance Company and against the respondents/claimants.

Accordingly, this Civil Miscellaneous Appeal is partly allowed. The appellant herein/Insurance Company is directed to deposit the amount, which this Court determined in this appeal, to the credit of M.C.O.P.No.3341 of 2009 on the file of the Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai,



with accrued interest at the rate of 7.5% per annum from the date of the 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. If the appellant/Insurance Company had deposited the award amount, the balance of the award that is now decided in this Appeal shall be withdrawn by the Appellant/Insurance Company from the deposited amount before the learned Motor Accidents Claims Tribunal. On such deposit, the claimant shall be entitled to withdraw the award amount with accrued interest. No costs.

Sd/-
Deputy Registrar (CLAA)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
IV Small Causes Court, Chennai.
2. The Section Officer,
V.R Section,
High Court, Madras.

+1cc to M/s.M.Malar, Advocate, S.R.No.40578

C.M.A.No.2971 of 2013

NK(CO)
SU(16/11/2021)