



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 18.03.2021]

[PRONOUNCED ON : 23.03.2021]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.84 of 2016
and
C.M.P.No.848 of 2016

M/s. The Oriental Insurance Company Ltd.,
Siva Complex, 2nd Floor,
No.22-C, Saradha College Main Road,
Salem - 636 016. ... Appellant/2nd Respondent

.. Vs ..

1. P.Ramalingam ... 1st Respondent/Claimant
2. P.Nagalingam ...2nd Respondent/1st Respondent

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 28.04.2015 made in M.C.O.P.No.1123 of 2013 on the file of the Motor Accidents Claims Tribunal (Additional District Judge), Namakkal.

For Appellant : Mr.K.Vinod

For Respondents : Mr.Ma.P. Thangavel for R.1
No Appearance for R.2

JUDGMENT

The Insurance Company has preferred this appeal against the award dated 28.04.2015 passed by the learned Additional District Judge, Motor Accidents Claims Tribunal, Namakkal, in M.C.O.P.No.1123 of 2013, on the ground of quantum of compensation.

2. In the connected C.M.A.No.83 of 2016, the factum of the accident and the manner of the accident were considered by this Court and held against the Insurance Company and hence, the learned counsel for the appellant/Insurance Company would contend that only as against the quantum of compensation awarded by the Tribunal, the above appeal is preferred.



3. The Tribunal has considered the disability of the claimant, who subsequently died, at the rate of 40%. The first respondent herein has filed a claim petition in M.C.O.P.No.1123 of 2013 claiming compensation for the injuries sustained by him in the road transport accident which occurred on 03.07.2013 in the Salem-Namakkal main road.

4. The factum of the accident, manner of the accident and rash and negligent driving on the part of the driver of the offending vehicle are not in dispute and hence, the finding in this regard is hereby confirmed.

5. In the absence of any challenge, the appeal is preferred by the Insurance Company on the point of quantum.

6. To substantiate the disability suffered by the claimant Ramalingam, he examined himself as P.W.2 and discharge summary were marked as Exs.P.10 and 11; Medical Bills were marked as Ex.P.12 and Wound Certificate was marked as Ex.P.9. P.W.6-Dr.Kathiravan, based upon the discharge summary and wound certificate, has fixed the disability at 40% and the same is accepted by the Tribunal. The claimant is said to have sustained fracture on the left hand and grievous injuries and he was admitted in Maruthi Hospital, Namakkal for first aid and then he was admitted in Vinayaka Mission Hospital, Salem, where he was taking treatment as an inpatient for 9 days.

7. P.W.6-Dr.Kathiravan, in his evidence, had deposed that in the left upper hand of the claimant, humerus bone was broken; plate was fixed; subsequently, it was found that his bone fracture was malunited and still he is having pain on touch in the place of bone fracture; left upper side muscles were small; reduced working capacity; movement is reduced by 10 degrees in the left shoulder joint and left forearm joint; he will not be able to lift any weight and will not be able to do any hard work. P.W.6-Doctor had also deposed that the claimant has got a permanent disability due to the injuries sustained by him and fixed the permanent disability at 40%.

8. Following the decision of the Hon'ble Supreme Court reported in 2014(1) TN MAC 459 SC [Syed Sadiq etc Vs. Divisional Manager, United India Insurance Company Ltd.], the Tribunal has fixed the notional income of the claimant at Rs.6,500/- per month and as the claimant has sustained 40% of disability, he will not be able to do the regular work as before the accident and accordingly, arrived at a conclusion to award compensation under II Schedule of Section 163(A) of the Motor Vehicles Act.



9. During the course of the argument, the learned counsel for the appellant/Insurance company would contend that P.W.6-Doctor, who has not treated the claimant, has assessed the disability as 40% and hence, this Court has directed the claimant to appear before the Medical Board constituted by the Government of Tamil Nadu in Rajiv Gandhi Government General Hospital, Chennai, and the Medical Board has addressed a letter dated 31.12.2020 to the Registry along with a proceedings dated 24.12.2020, from where it is seen that the Medical Board has assessed the disability at 34%.

10. It is seen from the records that based upon Ex.P.12, Medical Bills, a sum of Rs.2,35,765/- was granted towards medical expenses. The compensation granted under the other heads are appears to be reasonable, considering the nature of the injuries and the type of the operation that has been carried on. As per Ex.P.29-disability certificate, the disability was fixed by the Tribunal at 40%, but the Medical Board has fixed the disability at 34%. After going through the medical records; permanent disability certificate issued by P.W.6-Doctor and the discharge summary, I find that the earning capacity of the claimant could have been reduced to the extent of the disability and he having suffering functional disability due to the injuries sustained in the accident, in view of the settled proposition of law as held by the Hon'ble Apex Court in the decision reported in 2010 (2) TN MAC 581 SC, [Rajkumar Vs. Ajaykumar & another], the compensation has been awarded by the Tribunal by applying multiplier method. The notional income of the claimant has also been properly fixed by the Tribunal. I find 6% difference in assessing the permanent disability by P.W.6-Doctor and the Medical board.

11. Considering the above facts and circumstances of the case and also taking note of the fact that the award was passed prior to Yasodapriya's case, I find that the award passed by the Tribunal appears to be just and reasonable. Accordingly, the same is hereby confirmed and the Civil Miscellaneous Appeal is liable to be dismissed.

12. In the result, the Civil Miscellaneous Appeal is dismissed and the award dated 28.04.2015 passed by the learned Additional District Judge, Motor Accidents Claims Tribunal, Namakkal, in M.C.O.P.No.1123 of 2013, is confirmed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

13. If the award amount with accrued interest has not been deposited, the appellant/Insurance Company is directed to deposit the entire award amount with accrued interest at the rate of 7.5% per annum from the date of claim petition with



costs, to the credit of M.C.O.P.No.1123 of 2013 on the file of the Motor Accidents Claims Tribunal, (Additional District Judge), Namakkal, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the first respondent herein/claimant is permitted to withdraw the same, less the amount already withdrawn, if any.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Jr1

To

1. The Additional District Judge,
Motor Accidents Claims Tribunal,
Namakkal.

Copy To

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

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.19065

+1cc to Mr.Elveera Ravindran, Advocate, S.R.No.18732

C.M.A.No.84 of 2016

SSI (CO)
GN(16/11/2021)