IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2021

CORAM

The Honourable Mr. Justice R. Subbiah
and
The Honourable Mr. Justice Sathi Kumar Sukumara Kurup

C.M.A. Nos.1332 and 1762 of 2020

CMA No. 1332 of 2020

M/s. United India Insurance Co. Ltd.,
Having its Branch Office at
No.3, Big Bazaar Street
Dharapuram
Tiruppur District .. Appellant/3rd Respondent

Versus

1. A.Karuppaiyan
S/o. Arunachalam

2. K.Santhoshselvam
S/o. R.Krishnan

3. E.Thenmozhi
W/o. Elango .. Respondents/Petitioner & Respondents 1 & 2

CMA No. 1762 of 2020

A.Karuppaiyan
S/o. Arunachalam .. Appellant/Petitioner

Versus

1. K.Santhoshselvam
S/o. R.Krishnan
2. E.Thenmozhi
W/o. Elango

3.M/s. United India Insurance Co. Ltd.,
Having its Branch Office at
No.3, Big Bazaar Street
Dharapuram
Tiruppur District .. Respondents/Respondents

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.07.2019 in M.C.O.P. No. 18 of 2018 on the file of the Motor Accident Claims Tribunal/Special Subordinate Judge, Erode.

CMA No. 1332 of 2020

For Appellant : Mr. S. Arunkumar

For Respondents : Mr. S.P. Yuvaraj for R1
R2 & R3 : Exparte

CMA No. 1762 of 2020

For Appellant : Mr. S.P. Yuvaraj

For Respondents : Mr. S. Arunkumar for R3
R1 & 2 : Exparte

COMMON JUDGMENT

(Judgment of the Court was delivered by SATHI KUMAR SUKUMARA KURUP,J.)

Both these appeals are directed against the judgment and decree dated 26.07.2019 made in M.C.O.P. No. 18 of 2018 on the file of the Motor Accident Claims Tribunal/Special Subordinate Judge, Erode, Erode. As both these appeals are filed as against the Judgment and Decree dated 26.07.2019 made in M.C.O.P. No. 18 of 2018, they are taken up together and are disposed of by this common judgment.

2. While CMA.No.1332/2020 has been filed by the Insurance Company questioning the quantum of compensation awarded by the Tribunal, the claimant has filed CMA No. 1762 of 2020 seeking enhancement of compensation amount.

3. For the sake of convenience, the parties to these appeals shall be referred to as per their litigative status in the claim petition.

4. On perusal of the claim petition filed by the claimant, it could be inferred that on 19.11.2017 at about 8.45 am when the claimant was riding his two wheeler - TVS XL Moped bearing Registration No. TN 33 BB 1195 on the Velayuthampalayam to Noyyal Road, near Maravapalayam, Kongu Nagar, a car bearing Registration No. TN 33 R 6996 was driven by its driven in a rash and negligent manner from the opposite direction and dashed against the two wheeler driven by the claimant. In the impact, the claimant suffered multiple fracture and grievous injuries

all over his body. The claimant was taken to Amaravathi Hospital, Karur, where, after first aid, he was referred to Ganga Hospital, Coimbatore for further treatment. According to the claimant, he was admitted in the hospital from 19.11.2017 to 23.12.2017 and during the course of such hospitalisation, the claimant had underwent five surgeries for the injuries he sustained in the accident. During the surgery, external fixator plate and screw were implanted and a plastic surgery was performed in his hand. According to the claimant, at the time of accident, he was 42 years and was working as a Salesman in TASMAc outlet at Shop No.3587, Othakadai, Kodumudi Taluk and drawing a sum of Rs.7,500/- per month. Further, the claimant was the owner of 4 acres of agricultural land where he was cultivating seasonal crops such as sugarcane, turmeric, gingili, groundnut, vegetables etc., Above all, he was also vending milk and was earning Rs.25,000/- per month. In all, the claimant was earning Rs.32,500/- per month and by reason of the injuries sustained in the accident, he had lost his livelihood. Therefore, the claimant claimed a sum of Rs.50 lakhs as compensation.

5. The Insurance Company filed a counter statement before the Tribunal disputing the manner in which the accident had occurred. The Insurance Company also denied the age, occupation and income of the claimant and prayed for dismissal of the claim petition.

6. Before the Tribunal, in order to prove the averments made in the claim petition, the claimant examined himself as PW1 besides two other witnesses as PWs 2 and 3 and Exs. P1 to P29 were marked. On behalf of the respondents in the claim petition, neither any witness was examined nor did they mark any documentary. The disability certificate issued to the claimant by the District Medical Board was marked as Ex.C1.

7. The Tribunal, upon considering the oral and documentary evidence, concluded that the accident occurred only due to the rash and negligent driving by the first respondent, driver of the car. Taking note of the income of the claimant, the Tribunal awarded a total sum of Rs.30,76,000/- as compensation to the claimant and directed the Insurance Company to pay it. The break-up details of the compensation awarded by the Tribunal is as under:-

i)	Loss of earning	Rs.	1,80,000.00
ii)	Transport to Hospital	Rs.	50,000.00
iii)	Extra Nourishment	Rs.	40,000.00
iv)	Attender Charger	Rs.	2,00,000.00
v)	Future medical expenses	Rs.	2,00,000.00
vi)	Damages for clothes and articles	Rs.	10,000.00
vii)	Medical Expenses	Rs.	7,76,000.00

viii)	Pain and suffering	Rs. 2,00,000.00
ix)	Permanent Disability and Loss of earning power	Rs. 14,20,000.00
	Total	Rs.30,76,000.00

8. Mr. S. Arun Kumar, learned counsel for the Appellant/Insurance Company submitted that the Tribunal erred in awarding huge amount as compensation on surmises and conjectures. The Claims Tribunal failed to note that the alleged injury and disability do not warrant compensation of Rs.14,20,000/- towards loss of earning power. The Claims Tribunal failed to differentiate between the physical partial permanent disability and loss of earning power as laid down by the Hon'ble Supreme Court in catena of decisions. The Tribunal erred in assessing the disablement in respect of whole body and correlated it with the alleged income and therefore, fixing the loss of earning power without proof of functional disability cannot be sustained. It is his contention that the claims Tribunal erred in adding Rs.2500/- towards agricultural income without any proof towards loss of the same or records to show that he was owning agricultural land. The claims Tribunal further erred in awarding a sum of Rs.50,000/- towards transportation, Rs.40,000/- towards extra nourishment, Rs.2,00,000/- towards attendant charges. In any event, the amount awarded by the Tribunal in the absence of any proof to show the income of the claimant warrants interference by this Court.

9. Mr. SP. Yuvaraj, learned counsel appearing for the respondent/claimant submit that the claimant suffered grievous head injury in his scalp which is categorised as type III A open fracture right distal humerus, Type III A open fracture shaft of right femur, type II open fracture both bones right leg and abrasion all over the body. The Tribunal did not consider that the Claimant was employed as a Salesman in TASMAC outlet apart from earning through his agricultural lands and as a milk vendor. According to the counsel for the claimant, the claimant was earning not less than Rs.32,500/- per month but the Tribunal has taken only a sum of Rs.10,000/- per month. The accident had taken place in the year 2017 and taking note of the then prevailing cost of living, the amount of Rs.10,000/- fixed as monthly income is very low, which resulted in awarding lesser compensation. Furthermore, the claimant suffered 70% disability and lost his income in total. Therefore, he prayed for appropriate enhancement of compensation amount and to allow CMA No. 1762 of 2020 filed by the claimant.

10. We have heard the counsel for both sides and perused the materials placed on record. This is a case of injury. The Insurance Company is not questioning their liability to pay compensation, rather, they questions the award passed by the Tribunal on the ground that the compensation is excessive and not in consonance with the nature of injuries sustained by the claimant.

11. It is well settled proposition of law that The Motor Vehicles Act is a benevolent legislation intended to add succor to the victims of motor accident. At the same time, the compensation awarded to a motor accident victim shall not be a bounty or windfall much to the chagrin of the person against whom the compensation is directed to be paid.

12. In the present case, the claimant was hospitalised from 19.11.2017 to 23.12.2017. Even in the claim petition, he has stated that he had underwent five surgeries by spending nearly Rs.10,00,000/-. He also stated that the injuries he suffered requires future medical expenses. Having regard to the above, the Tribunal has awarded compensation under several heads, particular among them is the compensation awarded under the head future medical expenses at Rs.2 lakhs, medical expenses at Rs.7,76,000/-. These amount awarded by the Tribunal, in our opinion are fair and reasonable. In any event, the compensation amount awarded by the Tribunal are by and large adequate and therefore, there is no scope for enhancing the compensation awarded by the Tribunal, as has been contended by the counsel for the claimant and therefore, the appeal filed by the claimant for enhancement of compensation deserve only to be dismissed.

13. At the same time, the Tribunal has awarded a sum of Rs.1,80,000/- towards loss of earning during the period of treatment at the rate of Rs.10,000/- per month for 18 months. Further, a sum of Rs.14,20,000/- was awarded towards permanent disability and loss of earning power. This was mainly questioned by the learned counsel for the appellant-Insurance Company as excessive. The counsel for the appellant-Insurance Company also urged this Court to take note of the fact that the claim of the claimant that he was employed as Salesman in a Tasmac Outlet as also doing agricultural business and milk vending is bereft of any material evidence. We find adequate force in such submission of the counsel for the appellant. We also find that the Tribunal, having awarded Rs.1,80,000/- towards loss of earning, ought not to have awarded compensation amount under the head permanent disability and loss of earning power at Rs.14,20,000/-. Therefore, we are of the view that the amount of Rs.1,80,000/- awarded by the Tribunal is liable to be set aside.

14. The claimant has filed salary certificate under Ex.P23 to show that he was earning Rs.10,000/- per month. If this amount is taken as the monthly income of the claimant, with 25% towards future prospects, the monthly income of the claimant could be arrived at Rs.12,500/- per month. The Tribunal has taken the disability of the claimant at 70% as assessed by the Doctor. But at the same time, there is nothing on evidence to show that the claimant suffered functional disability and that he could not be employed after his recovery from the injuries he sustained. Therefore, the disability of the claimant, in our opinion, can be fixed at 60% which would meet the ends of justice. If this is taken as the basis for awarding compensation, the yearly loss of income of the claimant could be assessed at Rs.12,500 X 12=Rs.1,50,000/-. The disability of the claimant is to be taken at 60% and if so, a sum of Rs.90,000/- (Rs.1,50,000 X 60%) will be the annual loss of income. Applying multiplier '13', the compensation payable to the claimant under the head permanent disability or loss of earning power will be 11,70,000/-.

15. The Tribunal awarded a sum of Rs.2,00,000/- towards attendar charges. The claimant was admitted in a private hospital where he would have been attended by nurses and para-medical staff. The claimant also did not produce any evidence to show that he incurred a sum of Rs.2 lakhs towards attendant charges. In the absence of any evidence to substantiate the claim for attendant charges, we are inclined to award only a sum of Rs.1 lakh towards attendant charges as against Rs.2 lakhs awarded by the Tribunal.

16. Similarly, the amount of Rs.2 lakhs awarded by the Tribunal towards pain and suffering, in our opinion, is excessive. Therefore, we reduce the amount of Rs.2 lakh awarded by the Tribunal to Rs.1,50,000/- which would meet the ends of justice.

i)	Transport to Hospital	Rs.	50,000.00
ii)	Extra Nourishment	Rs.	40,000.00
iii)	Attender Charger	Rs.	1,00,000.00
iv)	Future medical expenses	Rs.	2,00,000.00
v)	Damages for clothes and articles	Rs.	10,000.00
v)	Medical Expenses	Rs.	7,76,000.00
vii)	Pain and suffering	Rs.	1,50,000.00
viii)	Permanent Disability and Loss of earning power	Rs.	11,70,000.00
	Total	Rs.	24,96,000.00
	Rounded off to	Rs.	25,00,000.00

17. In the result, the judgment and decree dated 26.07.2019 made in M.C.O.P. No. 18 of 2018 on the file of the Motor Accident Claims Tribunal/Special Subordinate Judge, Erode, Erode is modified and the compensation of Rs.30,76,000/- awarded by the Tribunal is reduced to Rs.25,00,000/- as indicated above. Resultantly, CMA No. 1332 of 2020 filed by the Insurance Company is partly allowed and CMA No. 1762 of 2020 filed by the claimant is dismissed. The Insurance Company is directed to deposit the sum of Rs.25,00,000/- determined by us in this appeal, with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, after adjusting the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. If any excess amount is deposited, the Insurance Company shall withdraw the same. The claimant is permitted to withdraw the entire compensation amount of Rs.25 lakhs with interest by filing appropriate application before the Tribunal. No costs.

Sd/-
Deputy Registrar(Spl cell CJ conf)

//True Copy//

Sub Assistant Registrar

dh/rsh

To

1.The Motor Accident Claims Tribunal,
Special Sub Judge, Erode.

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

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.19578

CMA. Nos.1332 & 1762/2020

PA(CO)
CB(20/10/2021)