

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 21.01.2021

Judgment Delivered on : 29.01.2021

Coram:

HONOURABLE MR.JUSTICE R.SUBBIAH
and
HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.2591 of 2019
and
C.M.P.No.12441 of 2019

The Divisional Manager,
National Insurance Co. Ltd.,
No.110, II Floor,
J.N. Street, Pondicherry. ... Appellant /2nd Respondent

Vs.

1. Kadar Mohideen,
S/o Aziz Basha ...1st Respondent/Claimant
2. Ravi, S/o Ettiyar ...2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 26.07.2018 made in M.C.O.P.No.118 of 2016 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Villupuram @ Tindivanam.

For appellant : Mr.S.Arun Kumar

For respondents: Mr.V.Raghavachari for R-1

R-2 set ex-parte
before the Tribunal

JUDGMENT

R.SUBBIAH, J

This Civil Miscellaneous Appeal is filed by the Insurance Company as against the Award, dated 26.07.2018 passed in M.C.O.P.No.118 of 2016 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Villupuram @ Tindivanam.

2. The first respondent in this appeal is the injured-victim. He sustained injuries in the accident that had occurred on 31.10.2013 involving his two-wheeler bearing Registration No.PY-01-BE-1454 and the two wheeler bearing Registration No. TN 16 A 2305 belonged to the first respondent, which was insured with the appellant-Insurance Company.

3. It is the case of the first respondent/claimant before the Tribunal that on 31.10.2013 at about 7 p.m., he was riding his two-wheeler bearing Registration No.PY-01-BE-1454 in which one Dhanasekaran was a pillion-rider. When the vehicle was approaching Kanthadu Village, towards Marakkanam, the vehicle-Hero Honda Splendour Pulsis, bearing Registration No.TN-16-A-2305, was driven by the first respondent from opposite direction in a rash and negligent manner and hit the two-wheeler driven by the claimant. In the impact, the claimant fell down and sustained grievous injuries. According to the claimant, he sustained crush injuries on his left foot with multiple fractures on his femur, left angle and other injuries all over his body. It is the further case of the claimant that at the time of accident, he was earning a sum of Rs.35,000/- p.m. in his hardware business as well as engaging himself in real estate business. Therefore, the claimant filed the claim petition claiming a sum of Rs.50 lakhs as compensation before the Tribunal.

4. The appellant-Insurance Company filed counter statement before the Tribunal denying the averments made by the claimant. The insurance company also denied the averments with respect to the age, avocation and income of the claimant and prayed for dismissal of the claim petition.

5. In order to prove the averments in the claim petition, the first respondent/claimant examined himself as P.W.1 before the Tribunal, besides marking Exs.P-1 to P-27. On the side of the appellant/Insurance Company, R.W.1, Assistant from RTO Office, Tindivanam was examined, besides Ex.R1 was marked.

6. The Tribunal, after analysing the entire evidence available on record, had come to the conclusion that the accident was the result of the rash and negligent driving on the part of the offending two-wheeler bearing Registration No.TN-16-A-2305, owned by the first respondent and insured with the appellant-Insurance Company. Accordingly, the Tribunal passed an Award for a sum of Rs.32,39,500/- as compensation and the break-up details of the same are tabulated below:

Sl. No.	Heads under which the amounts are awarded by the Tribunal	Amounts awarded by the Tribunal (in Rs.)
1	Transportation, nourishing food and miscellaneous expenses	1,00,000
2	Medical expenses	15,09,000
3	Future medical expenses	50,000
4	Attender charges	26,500
5	Disability	13,44,000
6	Loss of earning during the period of treatment	60,000
7	Damages for pain, suffering and trauma	1,00,000
8	Loss of amenities	50,000
	Total	32,39,500

Challenging the above said Award of the Tribunal, the Insurance Company had preferred this appeal.

7. In the present appeal, the Insurance Company is mainly questioning the sum of Rs.13,44,000/- awarded by the Tribunal under the head "disability". The learned counsel appearing for the appellant-Insurance Company submitted that, it is alleged by the claimant that on account of the accident, he sustained injuries on his left leg and also sustained compound fracture in his femur. It was also contended that during treatment, his left great toe was amputated. It is the submission of the counsel for the appellant that when it is claimed by the first respondent/claimant that he was running hardware shop and also doing real estate business, the injuries sustained by him will not have the effect of depriving him of his income. It is the further stand of the learned counsel appearing for the appellant/Insurance Company that the nature of disability suffered by the claimant-victim, will not have any bearing on the claimant continuing his avocation, as before. It is the further submission of the learned counsel appearing for the appellant-Insurance Company that, before the Tribunal, P.W.1 claimant had adduced evidence stating that he was working as a driver in Kuwait and earning Rs.30,000/- per month. On the other hand, in the claim petition filed before the Tribunal, it was stated that he is earning Rs.35,000/- per month by running a hardware shop. In any event, except the driving licence, no other documentary evidence was produced to prove his avocation as driver. In such circumstances, the sum of Rs.13,44,000/- awarded under the head "disability" is not sustainable. The Tribunal ought not to have awarded the said sum by applying

multiplier method. Further, the Tribunal had awarded the said amount under the head "disability" by fixing a sum of Rs.10,000/- as notional income and adopted multiplier method in proportion to 70% permanent disability. Since the notional monthly income of the claimant has been fixed at Rs.10,000/- without any documentary evidence in support of the same, the learned counsel for the appellant submitted that the amount awarded by the Tribunal under the head "disability" may be reduced.

8. Per contra, it is the submission of the learned counsel appearing for the first respondent/claimant that it is an admitted fact that on account of the accident, the claimant's left great toe was amputated. The claimant was a driver by avocation and hence, the injuries sustained by him will have a bearing on his normal life and he cannot carry on his avocation for the rest of his life. The Tribunal, having regard to the above facts has awarded a fair and reasonable compensation befitting the nature of injuries sustained by the claimant. Thus, the learned counsel appearing for the first respondent/claimant prayed for confirmation of the amount awarded by the Tribunal.

9. Keeping in mind the submissions made on either side, we have carefully perused the materials available on record.

10. It is the case of the claimant in the claim petition that he was earning a sum of Rs.35,000/- by doing business in hardware (shop) and also by engaging himself in real estate business. But, before the Tribunal, he had adduced evidence to the effect that he was working as a driver in Kuwait and earning Rs.30,000/- per month. At the same time, in order to substantiate this piece of evidence, except marking his driving licences as Exs.P-5 and P-6, he has not produced any other document. In spite of the same, the Tribunal had taken a sum of Rs.10,000/- as notional income of the claimant and made calculation for arriving at the amount under the head "disability" by applying multiplier method.

11. In our considered view, the nature of injuries sustained by the claimant, namely amputation of his left toe, will not have a bearing on his avocation. In such circumstances, we are of the view that this is not a fit case to adopt multiplier method and award the compensation towards the loss of earning capacity. Therefore, the sum of Rs.13,44,000/- awarded by the Tribunal under the head "disability" cannot be sustained. Thus, the said sum of Rs.13,44,000/- arrived at by the Tribunal based on the notional income at Rs.10,000/- in proportion to 70% disability with multiplier 16 is unwarranted, considering the factual aspects of the case. Therefore, the amount of

Rs.13,44,000/- awarded by the Tribunal under the head "disability" is set aside, instead, taking into consideration the facts narrated above, we fix a sum of Rs.3,000/- per percentage of disability. Accordingly, Rs.2,10,000/- (Rs.3,000 X 70) is awarded under the head "disability" as against Rs.13,44,000/-

12. We find that the amounts awarded by the Tribunal under the other heads are just and proper and therefore, they are confirmed. In effect, the amounts awarded by the Tribunal, in comparison with the amount(s) now awarded by this Court, are tabulated hereunder:

Sl. No.	Heads under which the amounts are awarded by the Tribunal	Amounts awarded by the Tribunal (in Rs.)	Amounts awarded by this Court (in Rs.)
1	Transportation, nourishing food and miscellaneous expenses	1,00,000	1,00,000
2	Medical expenses	15,09,000	15,09,000
3	Future medical expenses	50,000	50,000
4	Attender charges	26,500	26,500
5	Disability	13,44,000	2,10,000
6	Loss of earning during the period of treatment	60,000	60,000
7	Damages for pain, suffering and trauma	1,00,000	1,00,000
8	Loss of amenities	50,000	50,000
	Total	32,39,500	21,05,500

13. Accordingly, the appeal is partly allowed. The total amount of compensation awarded by the Tribunal at Rs.32,39,500/- is hereby reduced to Rs.21,05,500/- (Rupees twenty one lakhs five thousand and five hundred only), which shall carry interest at 7.5% per annum from the date of claim petition till the date of payment. The appellant/Insurance Company is directed to deposit the above said sum of Rs.21,05,500/- along with interest, and costs, if any awarded by the Tribunal, after adjusting the amount(s), if any already deposited by them, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made by the

appellant/Insurance Company, the first respondent/claimant is permitted to withdraw the entire award amount as computed above, along with accrued interest, and costs as awarded by the Tribunal, after adjusting the amount(s) if any already withdrawn by him, in accordance with law. No costs in the present appeal. Consequently, C.M.P. is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cs

To

1. The II Additional District Judge,
Motor Accidents Claims Tribunal,
Villupuram @ Tindivanam.
2. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.S.Arunkumar, Advocate Sr.5112

+1cc to Mr.V.Raghavachari, Advocate Sr.4635

C.M.A.No.2591 of 2019

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