



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.02.2021

Pronounced on : 11.03.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CMA.No.1712 of 2019
and CMP.No.5349 of 2019

The New India Assurance Co.Ltd.,
having office at Unit 121403, 1st Floor,
New India Centre, 17A, Cooperage, Mumbai
and having its Divisional Office at
Sethukrishna Trade Centre, 2nd Floor,
No.133/31-A, Trichy Main Road,
Gugai, Salem-6.

.... Appellant/2nd Respondent

Versus

1.G.Rajaganapathy
S/o.Gopalan

2.Selvakumar
S/o.Kuppan

(The 2nd respondent remained
exparte in the lower court and hence
notice to Second Respondent in the
above appeal is dispensed with)...

Respondents/Claimant
1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act 1988, against the award and decree dated
26.07.2018 made in M.C.O.P.No.1793 of 2015 on the file of the
Motor Accidents Claims Tribunal, I-Additional District Court,
Salem.

For Appellant : Mr.R.Sivakumar

For R1 : Mr.C.Thangaraju

For R2 : Ex-parte



JUDGMENT

SATHI KUMAR SUKUMARA KURUP, J.

This Civil Miscellaneous Appeal had been preferred against the Award and Decree dated 26.07.2018 made in M.C.O.P.No.1793 of 2015 on the file of the learned Motor Accidents Claims Tribunal, I-Additional District Court, Salem.

2.The Insurance Company is the appellant herein. The facts of the case are as follows:

The claimant is the injured/victim of road traffic accident that took place on 11.10.2014. While the claimant, G.Rajaganapathy was riding his two wheeler bearing Registration No.TN-30-AU-0489 on the left side of the road and when he reached near Salem Steel Plant and to enter Sago serve gate, a car bearing Registration No.TN-30-BB-1264 which was driven by its driver in a rash and negligent manner, came and hit the claimant's vehicle on the rear side, as a result of which, the appellant lost balance, fell on the road and sustained injuries. The injured claimant was taken to the Government Hospital, Salem where he was given first aid treatment and later, admitted in Neuro Foundation Hospital. Subsequently, he was shifted to Apollo Hospital, Chennai. Thereafter, he was shifted to Brain and Spine Hospital, Chennai. He had spent Rs.20,00,000/- for his treatment. He suffered permanent disability. Due to the injuries suffered on the brain, the claimant was unable to speak, he was not able to feel the natural urge and now he is like a child and an attender was always necessary to take care of him. The claimant had become permanently immobilized and lost his speech. He was working as Senior Assistant Engineer, Tamil Nadu State Transport Corporation Ltd., Dharmapuri Branch. He was aged 45 years at the time of accident. He was the only bread winner of the family. The claimant had therefore filed M.C.O.P.No.1793 of 2015 on the file of the learned Motor Accidents Claims Tribunal, I-Additional District Court, Salem, seeking compensation of Rs.1,00,00,000/-.

3.The insurer of the TATA Indica Car who was the 2nd respondent in the claim petition had contested the claim petition filed by the 1st respondent herein. As per the contention of the Insurance Company, the claimant was riding the two wheeler in a rash and negligent manner from East-West and got injured himself. The accident had occurred only due to uncontrollable speed of the two wheeler. The two wheeler's Insurance Company was not impleaded as party. The claim petition is to be dismissed as not maintainable as it is filed by the injured person without impleading the insurer of the two wheeler. The injuries sustained by the claimant are simple in nature.



4.Considering the evidence let in before the Tribunal, the Tribunal had arrived at a finding that the offending vehicle/TATA Indica Car had caused the accident and on assessment of the evidence, the Tribunal had passed an award of Rs.46,66,250/- as compensation.

5.Questioning the award passed by the Tribunal, the Insurance Company of the TATA Indica Car has filed this Civil Miscellaneous Appeal.

6.The contention of the learned counsel for the appellant are as follows:

The accident did not occur due to rash and negligent manner on the part of the car, therefore the Tribunal ought to have held that the negligence was on the part of the injured victim who, due to his negligent driving of the two wheeler, suffered injuries and permanent disability. The claims Tribunal erred in awarding Rs.46,66,250/-. The Tribunal erred in relying the evidence of P.W.4, who is a Retired Neuro Surgeon, who had not treated the injured. The Tribunal failed to apportion the negligence in the ratio of 50-50. Further, the Medical Board had assessed the disability, but the Tribunal erred in fixing the functional disability of the 1st respondent as 30%. The Tribunal erred in awarding loss of income but there was no loss of income at all. During leave period, the injured claimant was paid salary. The Tribunal failed to note the age of the deceased as 29 and multiplier will be 14. The Tribunal ought not to have awarded compensation for disability as 50%. The Tribunal failed to note that the 1st respondent failed to prove that due to the accident, he had suffered disability.

7.On the above contentions, we have heard the learned counsel for the 1st respondent/claimant.

8.The appeal had been preferred by the insurer of the TATA Indica Car, Insurance Company.

POINT:

Whether the appeal filed by the insurer of the offending vehicle/car, is to be allowed?

9.On perusal of the petition filed by claimant and the appeal preferred by the Insurance Company along with records and the award passed by the Tribunal, it is revealed that the Tribunal had fixed the compensation on consideration of the evidence let in before it and the age and monthly income of the claimant.

10.On assessment of the evidence let in before the Tribunal, the Tribunal had fixed the liability for cause of this accident



on the driver of the car. At that time of the filing of the claim petition, the claimant was taking treatment for his disability, since he sustained injury in the Brain, the claim petition was filed by his wife on his behalf. Subsequently, after treatment he had regained his mental health and then he was examined as P.W.1. To prove the disability suffered by him, a Neuro Surgeon practicing in Salem, was examined as P.W.2. He had assessed the disability of the claimant. Based on these evidence, the Tribunal had arrived at the conclusion that the accident had occurred due to rash and negligence driving of the driver of the TATA Indica Car.

11. On assessing the evidence, the claimant was working as Assistant Engineer in State Transport Corporation, Salem, at the time of accident. The income of the injured/claimant at the time of the accident was taken as Rs.62,182/- and to prove the salary aspect, pay certificate was produced from the Tamil Nadu State Transport Corporation and it was marked as Ex.P-8. As per Ex.P-8, the monthly salary of the 1st respondent /injured was Rs.62,182/- at the time of accident. The 1st respondent/claimant was aged 49 years at the time of the accident. Therefore, the loss of income due to the accident was calculated as $\text{Rs.62,182/-} \times 12 = \text{Rs.7,46,184/-}$, the appropriate multiplier for the age group '49' will be '14', and also the disability is 30%, $\text{Rs.7,46,184/-} \times 14 \times 30/100 = \text{Rs.31,33,972.8/-}$ (rounded off to Rs.31,34,000/-) is the loss of income of the injured claimant.

12. The Doctor, Neuro Surgeon who is working at Neuro Foundation at Salem, had treated the claimant for some time and later, the claimant was referred to Appolo Hospital, Chennai, for treatment. During an enquiry in the Tribunal, the Neuro Surgeon at Salem, P.W.4/Dr.Ramakrishnan and P.W.2/Dr.Baskaran, had deposed evidence regarding partial permanent disability. He had issued Ex.P12/disability certificate wherein he had mentioned the details of the disability as difficulty in speech, the victim needs assistant to walk, he has memory disturbance, confusion, loss of concentration, hard grip walking, right-arm movements restrictions. The Doctor had stated that the Brain cells on the left temporal region were found dead. Considering the above injuries and physical condition of the claimant, the claimant would not carry out his work as done by earlier. He had lost his earning capacity as his movement has been reduced and his future prospects are bleak.

13. The Insurance Company/2nd respondent had objected to the calculation of the multiplier method to arrive at permanent disability as the claimant had not suffered functional disability affecting his regular job. It is their case that he had been given a lesser job considering his disability for the present. Therefore, the Tribunal ought not to have adopted



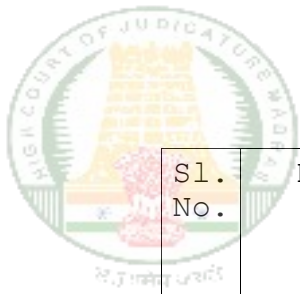
multiplier method. Though the Doctor had assessed the disability at 50%, the Tribunal has rightly taken it as 30% in view of the injuries sustained by the claimant. During the arguments the learned counsel for the 1st respondent/claimant submitted that the claimant had retired from service voluntarily, due to the partial permanent disability. The Tamil Nadu State Transport Corporation had accepted the same and discharged him from service. The records for the same was also recorded. Therefore, the contention of the appellant that the 1st respondent had not suffered functional disability and loss of income due to functional disability is rejected.

14.The amount allotted to the claimant under non-pecuniary heads are found to be unjustified in the circumstances of this case. Towards transportation, the Tribunal awarded Rs.75,000/-, which is excessive and the same is hereby reduced to Rs.40,000/-, Rs.50,000/- towards extra nourishment is reduced to Rs.40,000/-, Rs.2,00,000/- towards loss of amenities is reduced to Rs.1,00,000/-.

15.The contention of the learned counsel for the appellant/Insurance Company that the claimant had reimbursed the amount towards medical expenses. Therefore, the medical expenses cannot be included as he had already been reimbursed the amount since he is in Government job, he availed medical expenses. Therefore, the same need not be included. Considering the nature of injuries suffered by the claimant for the future medical expenses a sum of Rs.2,00,000/- was granted by the Tribunal and it is justified.

16.The contention of the learned counsel for the appellant/Insurance Company that the claimant was not subjected to the Medical Board by the Government, cannot be accepted, whether this case was referred to the Medical Board or not, is not clear. Due to pile up of cases in the Government Hospital, the claims Tribunal summoned P.W.2, the Neuro Surgeon who is practicing in Salem, who deposed about the disabilities of the claimant. Based on the same the claims Tribunal passed the award. Accordingly, this award is modified:

Sl. No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1	Loss of Income	31,34,000/-	31,34,000/-	Confirmed
2	Pain and Sufferings	1,00,000/-	1,00,000/-	Confirmed



Sl. No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
3	Transport Charges	75,000/-	40,000/-	Reduced
4	Extra nourishment	50,000/-	40,000/-	Reduced
5	Medical expenses	9,07,254/-	-	Set aside
6	Future medical expenses	2,00,000/-	2,00,000/-	Confirmed
7	Loss of Amenities	2,00,000/-	1,00,000/-	Reduced
	Total	Rs.46,66,254/- (Rounded off to Rs.46,66,250/-	Rs.36,14,000/-	Reduced by Rs.10,52,250/-

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.46,66,250/- is hereby reduced to Rs.36,14,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the modified award amount now determined by this Court, together with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent is permitted to withdraw the modified award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant/Insurance Company is permitted to withdraw the excess amount if any lying in the deposit to the credit of M.C.O.P. No.1793 of 2015, if the entire award amount has already been deposited by them. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

gbi



To

1. The I-Additional District Judge,
Motor Accidents Claims Tribunal,
Salem.

+1cc to Mr.R.Sivakumar, Advocate, S.R.No.15749
+2cc to Mr.C.Thangaraju, Advocate, S.R.No.15988

CMA.No.1712 of 2019

NMI (CO)
CB(14/09/2021)