IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA No.2693 of 2021
and
CMP.No.15476 of 2021

M/s.United India Insurance Company Limited,
Regional Office-1,
No.104-A, Peramur Main Road,
Salem-636 007. ... Appellant/Respondent 2

Vs

1.Ramesh ... 1st Respondent/Appellant

2.Jothilingam ... Respondent 2/Respondent 1

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree made in M.C.O.P.No.2177 of 2016, dated 13.01.2020, on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court No.2, Salem.

For Appellant : Mr.M.B.Raghavan
For Respondents : No Appearance

J U D G M E N T

The Insurance Company is on appeal. Challenge is to the quantum of compensation awarded for the injury suffered by the claimant/first respondent in a road accident that occurred on 01.03.2014.

2.According to the claimant while he was travelling in his two wheeler bearing Registration No.TN52-Y-2373 at about 9.15 p.m. on Bhavani-Mettur Road near Madhaiyankottai bus stop, a car bearing Registration No.TN-52-Y-2692 driven by its driver in a rash and negligent manner came in the opposite direction and hit against the two wheeler. As a result of the impact, the claimant was thrown off his vehicle and he suffered grievous injuries. Contending that the claimant who was aged about 29 years at the time of accident and was earning Rs.15,000/- per month is unable to do the same work after the accident because of the injuries. It is stated that the injuries had left an impact on his earning power. The claimant assessed the compensation payable to him as a result of the accident at Rs.10,30,000/- and the claim was restricted to Rs.10,00,000/-.

3.The Insurance Company resisted the claim contending that the accident did not occur in the manner suggested by the claimant. According to the Insurance Company, it was the claimant who was responsible for the accident. The quantum of compensation claimed was termed as excessive. It was also contended that the claimant did not possess valid driving licence. The Tribunal upon consideration of the evidence on record came to the conclusion that it was the negligence of the driver of the car that caused the accident. It also held that as the insurer of the car, the Insurance Company would be liable to pay the compensation. On quantum, the Tribunal accepted the report of the medical board that the injuries have caused at 34% permanent disability to the claimant and the Tribunal adopted multiplier method and assessed the loss of earning capacity at Rs.6,31,176/-. The Tribunal also awarded a sum of Rs.1,00,000/- towards pain and suffering. Rs.1,75,000/- towards loss of amenities. Rs.20,000/- towards transport. Rs.60,000/- towards extra nourishment. Rs.10,000/- towards Assistants. Rs.1000/- towards damages to clothing and other property.

4.Thus the Tribunal awarded a total sum of Rs.9,97,176/- since the claimant did not produce his driving licence, the Tribunal deducted 20% of it and awarded a sum of Rs.7,97,741/-.

5.Heard Mr.M.B.Raghavan, learned counsel appearing for the appellant/Insurance Company.

6.Despite service, the first respondent/claimant is not appearing either in person or through counsel duly instructed eventhough the respondent/claimant and the owner of the vehicle though served.

7.Mr.Raghavan would vehemently contend that the Tribunal was not right in applying multiplier method in as much as, there is no evidence of any functional disability, which would have a bearing on the earning power of the claimant. From the report of the medical board, it could be seen that the claimant was admitted as an inpatient only for six days and the treatment done was I.M. Nailing. The contents of the report of the medical board, which has been marked as Ex.C1 would show that the flexion extension arc of the right knee is 0° to 100° and the muscles strength is 4/5 in the fluxor muscles and the extensor muscle. Though the permanent disability is assessed at 34%. The period of treatment and the absence of any further evidence regarding requirement of future treatment, according to Mr.Raghavan, demonstrates that the injury would not have a lasting impact or is not likely to have a lasting impact on the earning capacity of the claimant.

8.I have considered the submissions of the learned counsel for the appellant.

9.In fact, a perusal of the award of the Tribunal does not show that it has come to a definite conclusion that the injury had affected the earning power of the claimant. The Tribunal has gone on to adopt the multiplier method without rendering a clear finding regarding the loss of earning power. Multiplier method in an injury case could be adopted only when there is evidence of loss of earning power. The percentage of injury does not have a direct relation to the loss of earning power in many cases. In the case on hand, the injury is fracture of both bones of the leg namely, the tibia and fibula. From the report of the medical board, it is seen that there is no problem in the movement of the right knees. Of course, there is a slight weakening of the muscle strength which may not have a lasting impact considering the age of the claimant. There is also no evidence of any further treatment being required. The discharge summary also does not suggest any further treatment and therefore I am of the opinion that the Tribunal was not right in applying the multiplier method in order to fix the compensation for loss of earning power. The award on the other heads also namely, pain and suffering, loss of amenities and extra nourishment are definitely on the higher side. The claimant has been admitted as an inpatient for six days. Of course, the injury being a fracture of both the bones in the right leg, the claimant would have undergone pain for reasonably long time. The compensation for loss of amenities is not resorted to normally in a case of minor injuries. However, the Tribunal has chosen to award a sum of Rs.1,75,000/- towards loss of amenities and award of Rs.60,000/- for extra nourishment is without any basis.

10.Considering the over all circumstances, the award of the Tribunal seeks modification and it is modified as follows:

The compensation for disability is fixed at Rs.1,70,000/- @ 5,000/- per percentage of disability. The compensation for pain and suffering is reduced to Rs.75,000/-. The compensation for loss of amenities is reduced to Rs.1,00,000/-. The compensation for extra nourishment is reduced to Rs.25,000/-.

11.The learned counsel for the Insurance Company would fairly concede that the Hon'ble Supreme Court has held in the case of Dinesh Kumar v. National Insurance Company reported in (2018 1 TNMAC 34) that absence of driving licence alone cannot be a ground to assume contributory negligence or to make any deduction in the compensation. Therefore, the deduction of 20% made by the Tribunal is set aside. The award is modified.

12.Since the fracture is of both the bones and the claimant is a Mason, there will be definitely loss of income and the same is fixed at Rs.60,000/- @ Rs.10,000/- per month for a period of six months. The compensation awarded is as follows:

For permanent disability	Rs.1,70,000/-
For pain and suffering	Rs.75,000/-
For loss of amenities	Rs.1,00,000/-
For transportation	Rs.20,000/-
For extra nourishment	Rs.25,000/-
For assistants	Rs.10,000/-
For loss of clothing	Rs.1000/-
For loss of income	Rs.60,000/-
Total	Rs.4,61,000/-

13.The total compensation is fixed at Rs.4,61,000/-. The tribunal has granted interest at 7.5% and the same is confirmed. The Insurance Company is directed to deposit the balance amount, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the same. This Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Motor Accidents Claims Tribunal,
Special Subordinate Court No.2,
Salem.

CMA No.2693 of 2021 and
CMP.No.15476 of 2021

KV(CO)
GN(08/02/2022)