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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.1601 of 2014

and

M.P.No.1 of 2014

The Branch Manager,
The Oriental Insurance Company Limited,
Lakshmi Towers, No.200/3, 1st floor, R.V.Road,
Adj. To Bangalore Hospital, Bangalore-4. .. Appellant / R2

Vs.

1.Sanjai Harish
S/o.Hariswarnath .. Respondent 1 / Petitioner

2.Sonesh Sood
S/o.Ramesh Sood
(The 2nd respondent remained
ex-parte in the lower court and hence
notice to 2nd Respondent in the
above appeal is dispensed with)
.. Respondent 2 / Respondent 1

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.07.2013 made in M.C.O.P.No.145 of 2013 on the file of the Motor Accident Claims Tribunal, Court of Special Sub Judge, Krishnagiri.

For Appellant : Mr.Elveera Rajendran

For R1 : Mr.Mukund R.Pandian



JUDGMENT

(The case has been heard through video conference)

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This Civil Miscellaneous Appeal has been filed against the award dated 25.07.2013 made in M.C.O.P.No.145 of 2013 on the file of the Motor Accident Claims Tribunal, Court of Special Sub Judge, Krishnagiri.

2.The appellant is the insurer of the vehicle, 2nd respondent in M.C.O.P.No.145 of 2013 on the file of the Motor Accident Claims Tribunal, Court of Special Sub Judge, Krishnagiri. The first respondent filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 15.05.2006.

3.According to the 1st respondent/claimant, on 15.05.2006 at about 11.30 a.m., the 1st respondent was riding the Hero Honda Splendor Motorcycle on Hosur to Bangalore National Highway towards Bangalore. He was proceeding on the left side of the road, slowly and cautiously and thus going near Ashok Leyland Company Plant. At that time, a Tata Mobile Vehicle bearing Registration No.KA-01-N-4488, belonging to the 2nd respondent herein and insured with the appellant/Insurance Company driven by its driver in a rash and negligent manner and collided head on with the said motorcycle. Due to the said impact, the 1st respondent sustained grievous injuries. Immediately, he took treatment at St.Johns Medical College Hospital, Bangalore. The Hosur TIW Police have registered a case against the driver of the said Pick up van in Cr.No.164/2006 U/s.279, 338 IPC.

4.The 2nd respondent remained ex-parte before the Tribunal.

5.The appellant/Insurance Company filed counter statement stating that the accident occurred only due to rash and sudden crossing of the said Hero Honda Splendor vehicle. There is no fault on the part of the Tata Mobile van and the appellant/Insurance Company is not liable to pay compensation to the 1st respondent. The age, occupation, income of the injured are all denied and the 1st respondent sustained only simple injuries. The compensation claimed by the 1st respondent is high.



6. Before the Tribunal, the 1st respondent examined himself as P.W.1 and Dr.M.Devendiran, was examined as P.W.2 and marked seventeen documents as Exs.P-1 to P-17. On the side of the appellant/Insurance Company, neither oral nor documentary evidence was adduced.

7. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the Tata Mobile van belonging to the second respondent and directed both the second respondent/owner of the Tata Mobile van as well as the appellant-Insurance Company to jointly and severally pay a sum of Rs.7,58,400/- as compensation to the first respondent/claimant.

8. Challenging the award of the Tribunal dated 25.07.2013 made in M.C.O.P.No.145 of 2013, the appellant-Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant/Insurance Company submitted that the Tribunal failed to appreciate the facts of the case in a proper perspective. The claimant contended that he was running a partnership firm, but no proof of income was furnished. Also as per the evidence available before the Tribunal, the claimant had not suffered from partial permanent disability affecting his income or livelihood. In such matters, the Tribunal need not have invoked the multiplier system mechanically. For the accident that occurred on 15.05.2006 and considering the age of the claimant as 29 years, the percentage system can be invoked. For the 45% partial permanent disability assessed by the P.W.2/Doctor, who had not treated the claimant, Rs.2,000/- may be calculated for each percentage of disability. For the rest of the headings, the amount allotted by the Tribunal the appellant/Insurance Company does not have any objection. The objection is only with regard to mechanical calculation of multiplier system whereas the Hon'ble Supreme Court had deprecated the practice of mechanically applying the multiplier system in almost all the cases. Therefore, the learned counsel for the appellant/Insurance Company submits that the award passed by the Tribunal regarding the "loss of earning capacity" is not fair and is to be set aside.

10. The learned counsel appearing for the 1st respondent/claimant submitted that the claimant sustained (1)

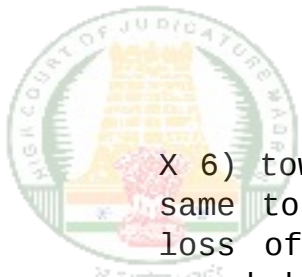


Lacerated wound 8 cm X 3 cms on back of left wrist and lower forearm, Extension tendon injury. Surgery: Repair OFL tendons by plastic surgeons on 16.06.2006 (2) pain tenderness and inability to move the right hip, movements painful, X-ray - posterior dislocation of right hip and fracture posterior UP of Acetebulum, (3) Multiple Abrasions over right leg. Further, the learned counsel for the 1st respondent/claimant submits that he underwent hospitalization from 16.05.2006 to 29.06.2006 and his posterior dislocation of right hip with posterior cip fracture of acetabulum-Left forearm tendon injury. Procedure : Repair of tendons of left forearm on 16.05.2006. Further, he support of the contention of the claimant regarding permanent disability and his avocation he had furnished Ex.P-7/Provisional registration of Small Scale Industries in the name of the 1st respondent, Ex.P-8/Partnership Deed of the petitioner with one Murugan, Ex.P-9/Rental Agreement of the 1st respondent's tool unit, Ex.P10/R.C in the name of the 1st respondent. Therefore, the learned counsel for the 1st respondent/claimant submits that even though, the 1st respondent/claimant have claimed Rs.15,00,000/- as compensation for the partial permanent disability, the learned Tribunal had fixed the notional income and applied the multiplier. Therefore, the contention of the learned counsel for the appellant that the multiplier method cannot be resorted to in this case has to be rejected. The appeal preferred by the appellant/Insurance Company is liable to be dismissed.

Point for Consideration:

Whether the Appellant/Insurance Company is entitled for reduction of compensation?

11.On appreciation of the evidence available before the Tribunal, the age of the injured is 29 years on the date of the accident. The appellant sustained hip fracture and left wrist and for which he had been taking treatment and had recovered. In such circumstances, the injured can sit and perform his functions in his business. Regarding the wrist, it is a tendon injury and does not affect his avocation of doing business. Therefore, there is no claim of partial permanent disability as pointed out by the learned counsel for the appellant/Insurance Company regarding the affecting his livelihood or income. Therefore, considering 45% disability assessed by P.W.2/Doctor, Rs.3,000/- per percentage for 45% works out to Rs.1,35,000/-. That will be the reasonable award. The Tribunal has awarded a sum of Rs.36,000/- (Rs.6,000/-



X 6) towards "partial loss of income" and this Court reduced the same to a sum of Rs.18,000/- (Rs.6,000/- X 3) towards "partial loss of income". The other heads under which compensation was awarded by the claims Tribunal are maintained as such.

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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning capacity	4,89,600/-	1,35,000	Reduced
2.	Pain & sufferings	50,000/-	50,000/-	Confirmed
3.	Nutrition & transportation	20,000/-	20,000/-	Confirmed
4.	Medical bills	1,08,800/-	1,08,800/-	Confirmed
5.	Computer repair bills	19,000/-	19,000/-	Confirmed
6.	Future medical expenses	25,000/-	25,000/-	Confirmed
7.	Attendant charges	10,000/-	10,000/-	Confirmed
8.	Partial loss of income	36,000/-	18,000/-	Reduced
	Total	Rs.7,58,400/-	Rs.3,85,800/-	Reduced by Rs.3,72,600/-

12.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,58,400/- is hereby reduced to Rs.3,85,800/- together with interest at the rate of 6% per annum from the date of claim petition till the date of deposit. Both the 2nd respondent/owner of the vehicle as well as the appellant/Insurance Company are jointly and severally directed to deposit the reduced award amount now determined by this Court along 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/claimant is permitted to withdraw the award amount now determined by this Court along



with interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.145 of 2013, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

gbi

To

1.The Special Sub-Judge,
Motor Accident Claims Tribunal,
Krishnagiri.

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

+1cc to M/s.Mukund R.Pandiyan, Advocate, S.R.No.15650
+1cc to Mr.Elveera Ravindran, Advocate, S.R.No.15577

C.M.A.No.1601 of 2014
and M.P.No.1 of 2014

EV(CO)
SB(09/11/2021)