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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 23.04.2021
Judgment delivered on : 03-06-2021

CORAM

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.M.A. No. 1975 of 2020

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M/s. Reliance General Insurance Company Limited
Represented by its Manager,
No.19, Reliance Centre,
Walchand Hirachand Marg,
Ballard Estate,
Mumbai - 400 001

.. Appellant/2nd Respondent

Versus

1. R.Sathish Kumar ...1st Respondent/Petitioner
2. H.Ravi
[Respondent No.2 set ex-parte
before the Tribunal] ..2nd Respondent/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree made in M.C.O.P. No. 51 of 2018, dated 23.04.2019 on the file of the Motor Accident Claims Tribunal, Court of the Special Sub Judge (MACT), Krishnagiri.

For Appellant : Mr. S. Arunkumar

For 1st Respondent : Mrs. R. Poornima for R1
R2 : Exparte before the Tribunal

J U D G M E N T

S. KANNAMMAL, J

This Civil Miscellaneous Appeal is filed by the appellant/Insurance Company against the award and decree dated 23.04.2019 passed in M.C.O.P. No. 51 of 2018 on the file of the Motor Accident Claims Tribunal, Court of the Special Sub Judge (MACT), Krishnagiri, (for short, 'the Tribunal').



2. The appellant is the 2nd respondent in M.C.O.P. No. 51 of 2018 before the Tribunal. The 1st respondent herein filed the said claim petition, claiming a sum of Rs.45,00,000/- as compensation for the injuries sustained by him in the accident that took place on 17.11.2017. The second respondent is the owner of the lorry, who remained ex-parte before the Tribunal.

3. As per the claim petition, on 17.11.2017, at about 12.15 pm the claimant was walking on the road, towards the toll plaza where he was employed. At that time, the driver of the lorry bearing Registration No. KA 02 AF 9586 belonged to the second respondent in this appeal and insured with the appellant, was driven by its driver in a rash and negligent manner and hit the claimant from behind. In the impact, the claimant sustained grievous injuries and was taken to the Government Headquarters Hospital, Krishnagiri where he was admitted as an in-patient. According to the claimant, he sustained fracture in both his legs, injury in his right side lungs, fracture in his left hand fingers, fracture of right ribs and multiple fracture all over his body. It is stated by the claimant that even after discharge from the Government Hospital, Krishnagiri, he was admitted in Saraswathi Hospital, Krishnagiri where he had undergone a surgery. During such surgery, rods were inserted in both his legs. It is also stated that the claimant is taking treatment for the injuries he sustained in the accident continuously. As per the claim petition, the claimant was aged 26 years at the time of accident. He was employed as a Toll Attender (Bill Collection) at Toll Plaza, Krishnagiri and earning Rs.14,500/- per month. On account of the injuries he sustained, he lost his avocation and could not work as before. Therefore, he filed the claim petition claiming a sum of Rs.45 lakhs as compensation.

4. The Claim Petition was resisted by the appellant Insurance Company by filing a counter statement contending inter alia that the manner of accident, as projected by the claimant is incorrect. It was the claimant, who, without noticing the lorry moving out of the weigh bridge suddenly darted across the road, which resulted in the accident. The Insurance Company also denied the age, avocation and income of the claimant and prayed for dismissal of the claim petition.

5. Before the Tribunal, in order to prove the averments in the claim petition, the claimant examined himself as PW1 besides examining the Manager of the Toll Plaza as PW2 and marked Exs. P1 to P11. On behalf of the Insurance Company, one Sivaguru was examined as RW1 and Ex.R1 to R3 were marked.



6. The Tribunal, considering the pleadings, oral and documentary evidence let in by the parties, held that the accident occurred due to rash and negligent driving by the driver of the lorry bearing Registration No.KA-02-AF-9586 belonging to the 2nd respondent and directed the appellant/Insurance Company to pay a sum of 23,45,000/- as compensation to the 1st respondent. Aggrieved by the award passed by the Tribunal, the appellant has come forward with the present appeal.

7. The learned counsel appearing for the appellant/Insurance Company contended the accident had occurred near a Toll Plaza, where there are number of speed breakers to regulate the speeding vehicles. While so, the question of rash and negligent driving of the driver of the lorry will not arise. The Tribunal, without proper appreciation of this aspect has concluded that the driver of the lorry alone is responsible for the accident. On the other hand, the claimant had equally contributed to the accident by darting across the vehicle without noticing the oncoming lorry. Therefore, the learned counsel for the appellant prayed for setting aside the award in so far as it relates to fixing negligence on the part of the driver of the lorry, instead fix contributory negligence on the part of the claimant as well.

8. As regards the quantum of compensation, the counsel for the appellant would contend that the claimant had sustained 50% disability. There is no proof to show that after the accident, the claimant could not attend to his employment. In the absence of any evidence to show that the claimant sustained functional disability, the Tribunal ought not to have awarded compensation by resorting to multiplier method. According to the learned counsel for the appellant, the Tribunal ought not to have taken the entire percentage of disability as assessed by the Doctor at 50% instead the percentage of disability of the claimant could have fixed at 35% and awarded appropriate amount as compensation under the head loss of earning power. In any event, the compensation awarded by the Tribunal under various heads is excessive and not befitting to the nature of injuries sustained by the claimant and it warrants interference by this Court.

9. Per contra, the learned counsel for the first respondent/claimant would contend that the after the accident, the claimant could not continue his employment, which could be evident from the deposition of PW2, Manager of the Toll Plaza. PW2 in his evidence has stated that due to the injuries sustained by the claimant, he could not continue his work thereafter. Further, by reason of the injuries, the claimant could not raise from his chair without the help of others or he could not flex the first finger on his left hand. The mobility



of the claimant was greatly affected due to the injuries he suffered. Thus, on the basis of the evidence to show that the claimant suffered locomotive impairment and taking note of the consequences of the injuries, the Tribunal awarded appropriate compensation under the head of loss of earning power. Further, the claimant produced medical bills under Ex.P1 to P3 to show that he incurred a sum of Rs.2,58,000/- towards hospitalisation expenses and that was awarded by the Tribunal. In any event, the compensation awarded by the Tribunal is befitting the nature of injury sustained by the claimant and therefore, the counsel for the first respondent/claimant prayed for dismissal of this appeal.

10. Heard the learned counsel appearing for the appellant as well as the 1st respondent and perused all the materials available on record.

11. It is seen from the records that at the time of accident, the claiming was walking towards the toll plaza, where he was employed. At that time, he was hit by the offending lorry. When the claimant was walking towards the toll plaza, it cannot be said that he would have, in any manner, contributed to the accident. Even though there may be several speed breakers on both sides of the toll plaza to regulate the speed of the vehicles, there is nothing on record to state that the claimant had in any manner contributed to the accident. Therefore, the Tribunal is wholly justified in fixing the entire negligence on the part of the driver of the lorry.

12. As regards the quantum of compensation, from the materials available on record, it is seen that the 1st respondent was working as a Toll Attender (bill collection) and was earning a sum of Rs.13,000/- per month. Admittedly, the claimant was not in permanent employment and he was paid daily wages at a prescribed rate. This is explicit from the deposition of PW2, Manager of the Toll Plaza where the claimant was employed. In other words, the amount of Rs.13,000/- is a fixed consolidated amount which was paid every month to the claimant. It is needless to mention that as a daily rated employee or a contractual employee, the claimant will be paid wages only for the actual number of days of his employment. In case, the claimant absented himself for duty for a day or two, the amount proportionate to his absence will be deducted from the monthly wages. Thus, the claimant could not have received Rs.13,000/- per month throughout the year and his absence from duty also has to be taken into account. Therefore, fixing a sum of Rs.13,000/- per month is not proper. Instead, a sum of Rs.12,500/- could be fixed as monthly wages of the claimant.

13. It is also seen from the deposition of PW2 that after



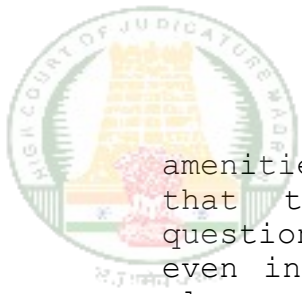
the accident, the claimant did not attend to his employment, meaning thereby, the claimant was deprived of his employment due to the injuries he sustained in the accident. It is also on record that the accident had caused functional disability of the claimant inasmuch as even to raise from the chair, the claimant require an attendant. The photographs produced before this Court clearly reflects the present state of disability of the claimant. Furthermore, the claimant, as PW1, has deposed that he could not walk, sit or squat as before. The claimant was aged 26 years and the injuries he suffered had an adverse impact to carry out his normal day to day work. Even according to the claimant, he has to be helped by some one from raising from the chair. In such a situation, we are of the view that the Tribunal is wholly justified in awarding the compensation by resorting to multiplier method, even though it is a case of injury.

14. As far as future prospects of the claimant, we find that it could be fixed only at 35% and not 40% as calculated by the Tribunal inasmuch as the claimant was only discharging duties as a daily wage or contract employee and not in any permanent employment.

15. The claimant's disability was assessed by a competent medical board where he appeared. The disability of the claimant was assessed at 50% and having regard to the nature of injuries, the period of his hospitalisation and the consequences that had befallen on the claimant owing to such injuries, we are of the view that the disability assessed by the medical board at 50% can be taken as such without any reduction.

16. Having regard to the above, if the loss of earning power of the claimant is calculated by taking into account the sum of Rs.12,500/- as monthly wages with 35% future prospects being Rs.4,375, the actual loss of income will be (Rs.12,500 + Rs.4,375/-) Rs.16,875/- and the annual loss of income can be computed at (Rs.16,875/- X 12) Rs.2,02,500/-. For 50% disability with multiplier '18' the loss of earning power can be determined at (Rs.2,02,500 X 50 / 100 X 18) Rs.18,22,500/-. Therefore, we reduce the sum of Rs.19,66,000/- awarded by the Tribunal under the loss of Earning Power to Rs.18,22,500/- which would be the just and fair amount payable to the claimant as compensation.

17. In so far as the compensation awarded under other heads, we are of the view that they are meagre and not proportionate to the nature of injuries suffered by the claimant. Therefore, we are inclined to enhance the compensation amount awarded by the Tribunal in favour of the claimant in so far as they relate to 'Pain and Suffering' and 'loss of



amenities'... At the same time, we are not oblivious of the fact that this is an appeal filed by the Insurance Company questioning not only the liability but also quantum. However, even in the absence of any cross-appeal by the claimant, it is always open to the appellate Court to enhance the compensation amount, if it warrants enhancement. In this context, we are fortified by the Judgment of the Honourable Supreme Court in the case of Jhitendra Khimshankar Trivedi vs. Kasam Daud Kumbhar reported in (2015) 4 SCC 237 wherein it has been held as follows:-

13. The tribunal has awarded Rs.2,24,000/- as against the same, claimants have not filed any appeal. As against the award passed by the tribunal when the claimants have not filed any appeal, the question arises whether the income of the deceased could be increased and compensation could be enhanced. In terms of Section 168 of the Motor Vehicles Act, the courts/tribunals are to pass awards determining the amount of compensation as to be fair and reasonable and accepted by the legal standards. The power of the courts in awarding reasonable compensation was emphasized by this Court in Nagappa vs. Gurudayal Singh and others (3), Oriental Insurance Company Ltd., vs. Mohd. Nasir and another (4) and Ningamma and another vs. United India Insurance Company Limited (5). As against the award passed by the tribunal even though the claimants have not filed any appeal, as it is obligatory on the part of courts/tribunals to award just and reasonable compensation, it is appropriate to increase the compensation.

18. Thus, it is well settled that even in the absence of a cross-appeal by the claimant, seeking enhancement, in certain cases, where it is found to be just and necessary, the Court can enhance the compensation amount. Having regard to the above well settled principle enunciated by the Honourable Supreme Court, we proceed to determine the just compensation payable to the claimant.

19. It is seen from the records that the Tribunal awarded a sum of Rs.2,58,000/- which are based on medical bills produced by the claimant under Exs. P1 to P3. Therefore, we see no reason to interfere with the amount awarded under the head medical expenses. Similarly, the Tribunal awarded a sum of Rs.50,000/- towards pain and suffering and Rs.50,000/- towards loss of amenities and enjoyment to life, which in our opinion can be scaled up to Rs.75,000/- each which would be the just and fair compensation payable to the claimant having regard to the fracture injuries he suffered. Similarly, taking into account



the period of hospitalisation and the surgeries undergone by the claimant during his hospitalisation, we scale up the compensation with respect to Transport, Nutrition and Attender Charges from Rs.20,000/- to Rs.50,000/-.

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20. In the result, the Civil Miscellaneous Appeal filed by the Insurance Company is partly allowed. No costs. The amount of compensation awarded by the Tribunal in favour of the claimant is re-determined from Rs.23,45,000/- to Rs.22,81,500/- as tabulated below:-

Sl. No.	Description	Amount awarded by the Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Earning Power	19,66,000/-	18,22,500/-	reduced
2.	Medical Expenses	2,58,000/-	2,58,000/-	confirmed
3.	Transport, Nutrition and attender charges	20,000/-	50,000/-	enhanced
4.	Pain and Sufferings	50,000/-	75,000/-	enhanced
5.	Loss of Amenities and Enjoyment of Life	50,000/-	75,000/-	enhanced
6.	Damages to clothing and articles	1,000/-	1,000/-	confirmed
	Total	23,45,000/-	22,81,500	Reduced by Rs.63,500/-

21. The appellant/Insurance Company is directed to deposit the 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, to the credit of M.C.O.P. No.51 of 2018. On such deposit, the 1st respondent/claimant is permitted to withdraw the award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary application 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.51 of 2018, if the



entire amount has already been deposited. Consequently,
connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

msm/rsh

To

1. The Special Sub Judge (MACT),
(Motor Accident Claims Tribunal), Krishnagiri.

Copy to:

The Section Officer,
V.R.Section, High Court, Chennai.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.27438

CMA No.1975 of 2020

VBM(CO)
CB(22/07/2021)