



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 09.03.2021

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.1307 of 2017
& C.M.P.No.6769 of 2017

The Oriental Insurance Company Limited,
A.A.Complex, 1st Floor,
No.159, Kumaran Road,
Tirupur.

... Appellant/2nd Respondent

/versus/

1. Thiru. Moses
2. Govindaraj,

... 1st Respondent/Petitioner
... 2nd Respondents/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree made in M.A.C.T.O.P.No.511 of 2012 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Tirupur, dated 08.06.2015.

For Appellant	: Mr.M.Krishnamoorthy
For R1	: Mr.S.S.Swaminathan,
For R2	: exparte

J U D G M E N T

Heard the Learned Counsel for the appellant and the learned Counsel for the respondent.

2. The Appeal is filed by the Insurance Company challenging the quantum of award passed by the Tribunal.

3. The brief facts of the case is that, on 14.11.2012 at about 4.30 p.m when the claimant was riding his motor cycle bearing registration No.TN-39-AW-2741 on Salem to Kovai road near Tasmac shop at Pallengounderpalayam, the driver of the maruti car bearing registration No.TN-59-U-2612 came from opposite direction rash and negligently hit the motorcyclist. The claimant was thrown away from his motor cycle and sustained injuries all over his body. The vehicle was also extensively damaged. The injured was taken to Krishna hospital at Perundurai and later shifted to Sri Kumaran hospital, Tiruppur.



He was treated as inpatient from 15.11.2012 to 17.11.2012 and thereafter, as out patient for a period of 120 days. At the time of accident, the claimant was about 29 years unmarried earning Rs.15,000/- as Merchandiser. In the accident, he sustained fracture on right ankle therefore, he is unable to work as below. A sum of Rs.5,00,000/- with 12% interest was sought as compensation against the owner of the car and his insurer.

4. The Insurance Company has filed counter stating that the claim petition is bad for non joinder of necessary party namely the owner and insurer of two wheeler, which was driver by the claimant. Since, the accident has occurred involving two vehicle both the vehicle owners and the insurers are necessary parties and liability has to be apportioned between them, as per their contribution for the accident. The claimant and the driver of the car both had no valid driving licence. Therefore, the Insurance Company is not liable to indemnify the claimant.

5. Before the Tribunal, three witnesses were examined in support of the claimant and 14 Exhibits were marked. On the side of Insurance Company, two witnesses were examined.

6. The Tribunal, on considering the F.I.R and other oral evidence held that the accident took place due to the negligence of the car driver and fixed the responsibility on the owner of the car and its Insurance Company. Based on the disability certificates and medical records along with the salary certificate, the Tribunal has awarded a sum of Rs.4,03,600/- as compensation with 7% interest from the date of petition (11.12.2012) till the date of realisation.

7. The appeal is filed on the ground that the Tribunal failed to take note of the fact that there was no evidence to show that the car hit the two wheeler driven by the claimant. The motor vehicle inspector report Ex.P.3 does not reveal any damage to the car. The Tribunal erred in holding that the injury sustained by the claimant has caused impairment in his earning capacity. The fracture of calcaneum (heel bone) in the right foot is only a simple injury required inpatient treatment for three days. The disability certificate given by P.W.2 is an exorbitant certificate not based on medical record. The tribunal erred in awarding a sum of Rs.2,44,800/- applying multiplier method for the disability, beside awarding a sum of Rs.2,44,800/- it has also awarded a sum of Rs.57,000/- for 19% disability which amounts to double payment.

8. The Learned Counsel appearing for the respondent/claimant would submit that the claimant has proved that the accident has occurred solely due to the negligence of the car driver. Further, the evidence of P.W.2, he has proved is earning capacity as a Merchandiser. The disability certificate given by P.W.3 cannot be neglected and the tribunal



has given reasoning why he has fixed 8% functional disability and 19% permanent disability for awarding compensation under two different heads. The Learned Counsel would also submit that, at the time of accident, the claimant was unmarried bachelor. His marriage prospects affected due to the fractured ankle not taken note by the Tribunal. The Tribunal failed to award compensation under that head the loss of marriage prospect and restricting the interest @ 7% instead of 7.5%. Therefore, any minor excess in payment of compensation under the head of disability has to be ignored in view of not awarding adequate compensation under the other non-conventional head.

9. On perusing the medical records, this Court finds that the claimant had sustained fractured injury in his left ankle. No doubt it has caused restriction in the movement like climbing the steps and standing for a long time. Fixing 8% functional disability is not supported by medical records. It is the presumption of the Tribunal that the said injury had caused 8% functional disability. The other error in the award is that, after taking 19% as a whole body disability and reducing it to 8% as functional disability, the Tribunal has gone ahead and also awarded a sum of Rs.57,000/- for the 19% disability. For the very same disability i.e., fracture of left ankle, the tribunal has awarded compensation by applying multiplier and also a sum of Rs.3,000/- per percentage. In view of this Court, this is duplication of award for same injury. Therefore, taking note of the fact that having awarded a sum of Rs.2,44,800/- applying multiplier for 8% for functional disability, there is no necessity to award a further sum of Rs.57,000/- for very same injury when there is no reason or justification to award separately.

10. As pointed out by the Leaned Counsel for the respondent, there is no award passed for loss of marriage prospects. Therefore, taking into consideration of quantum of compensation under various heads for which the compensation is awarded, it is suffices to reduce by Rs.57,000/- which is awarded for 19% disability in duplication to award of Rs.2,44,800/- for the very same disability under head of loss of earning capacity. Accordingly, the award passed by the Tribunal is reduced from Rs.4,03,600/- to Rs.3,46,600/- and the interest fixed by the tribunal is enhanced from 7% to 7.5%.

11. The Learned Counsel appearing for the appellant has stated that pursuant to the interim order passed by this Court dated 19.04.2017, the entire award amount of the Tribunal has been deposited to the credit of M.C.O.P.No.511 of 2012 and the claimant/1st respondent has already withdrawn 50% of it. If it is so, the 1st respondent/claimant is permitted to withdraw the balance modified award of this Court along with enhanced interest, less the amount already withdrawn by him.

12. As a result, the Civil Miscellaneous Appeal is



partly-allowed. The claimant is entitled for a sum of Rs.3,46,600/- with 7.5% interest from the date of petition (11.12.2012) till the date of realisation. The said amount shall be deposited within 8 weeks from the date of receipt of a copy of this order, if not deposited sofar. On such deposit the claimant is permitted to withdraw the same on filing proper application. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Bsm

To:-

1.The Motor Accidents Claims Tribunal
(Chief Judicial Magistrate), Tirupur,

Copy To

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

+1cc to Mr.S.S.Swaminathan, Advocate, S.R.No.15003

C.M.A.No.1307 of 2017
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NRL (CO)
GN(21/09/2021)