IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.03.2021

Coram:

THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.3298 of 2017
and
C.M.P.No.20829 of 2017

United India Insurance Company Ltd.,
Micro Office, rep. by its Branch Manager,
Office at Arunagiri Nather Street,
Kuthalam, Kuthalam Taluk,
Nagapattinam District.

.. Appellant/2nd Respondent

Vs.

1. Mohamed Riyas, S/o Abdul Farook
2.Umarsabu, S/o Ahamed Hussain

.. Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 13.07.2017 made in M.C.O.P.No.34 of 2016 on the file of the Motor Accidents Claims Tribunal (Additional Sub-Court), Mayiladuthurai.

For appellant : Mr.D.Bhaskaran
For respondents: Mr.Nissar Ahamed for R-1

JUDGMENT

(The Judgment of the Court was delivered by R.Subbiah, J)

This appeal is filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal in and by Award dated 13.07.2017 made in M.C.O.P.No.34 of 2016 on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Court, Mayliaduthurai in the claim petition filed by the first respondent herein.

2. It is the case of the first respondent/claimant before the Tribunal that, on 27.02.2015 at about 4.30 p.m., while he was proceeding in a two-wheeler bearing Registration No.TN-31-AU-9624 along with his aunt, from Srinivasapuram to Kollidam, an Ambassador Car bearing Registration No.TN-07-W-3909, owned by the second respondent herein and insured with the appellant-Insurance Company, came in a rash and negligent manner from the opposite direction and dashed against the two-wheeler in which the deceased was proceeding near Amman Nagar. In the said impact, the first respondent/claimant fell down and sustained injuries all over his body and he suffered fracture and surgery was done on his right leg in a private hospital where he took treatment from 27.02.2015 to 19.03.2015. During surgery, steel rod was fixed on the leg in dislocated part. Thereafter, he had taken treatment at Coimbatore Ganga Hospital. On account of the accident, he is finding it difficult to carry out his normal activities. At the time of accident, he was working as Indoor Salesman (Merchandiser) in Dubai at Jupiter Electronics and was earning 2610 Dhirhums = Rs.46,980/-. Due to accident, he is not in a position to carry out his normal activities as before and hence, he made a claim for a sum of Rs.61,41,780/- as compensation before the Tribunal.

3. The above claim petition of the first respondent/claimant was resisted by the Insurance Company and also the second respondent herein by filing their respective counter statements before the Tribunal.

4. In order to prove the claim, the claimant examined himself as P.W.1 and marked Exs.P-1 to P-17. On the side of the respondents before the Tribunal, R.W.1 was examined and Ex.R-1 was filed.

5. The Tribunal, on an analysis of the entire materials available on record, came to the conclusion that the accident was the result of the rash and negligent driving of the driver of the Ambassador Car, owned by the second respondent herein and insured with the appellant/Insurance Company. After coming to such conclusion, the Tribunal had fixed the disability of the claimant at 60% based on Ex.P-15 disability certificate issued by the Medical Board. Thereafter, by taking a sum of Rs.20,000/- as the monthly loss of income of the claimant, and by adding 30% towards future prospects, and applying 17 multiplier, the Tribunal awarded a sum of Rs.31,82,400/- under the head "disability" in proportion to 60% disability. The break-up details of the amounts awarded by the Tribunal are as follows:

Sl. No.	Heads under which the amounts are awarded by the Tribunal	Amount (in Rs).
1	Loss of income	31,82,400
2	Pain and suffering	1,00,000
3	Additional nutrition	25,000
4	Transport expenses	10,000
5	Medical expenses	1,94,145
	Total	35,11,545

Aggrieved by the award of compensation mainly under the head "disability", the Insurance Company had preferred this appeal.

6. It is the main submission of the learned counsel appearing for the appellant/Insurance Company that, on account of the accident, the claimant had suffered fracture on his right leg, but this cannot be said to be the permanent disablement. In such circumstances, absolutely, there is no need to award the amount by applying multiplier method. Moreover, the Tribunal, while fixing the compensation under the head "disability", had taken the loss of monthly income of the claimant at Rs.20,000/- on the reasoning that the claimant was employed in Dubai and earning a sum of Rs.46,980/- as stated by the claimant in the claim petition. Though the claimant had claimed that he was earning Rs.46,980/- per month, Exs.P-8 and P-9 being the receipts given to one Sirajunnisa by the claimant and the computerised statement of bank account of the Indian Bank, Mayiladuthurai in the name of the said Sirajunnisa, show that on average, the amount of Rs.20,000/- was deposited, based on which, the Tribunal had come to the conclusion that it was appropriate to fix Rs.20,000/- as the loss of monthly income of the claimant.

7. In the above context, the learned counsel appearing for the appellant/Insurance Company submitted that the Tribunal miserably failed to note that the claimant had admitted that he was not in employment at the time of accident. Further, he had not produced any tangible evidence to show that he was working in Dubai at the time of accident and earning huge income, except marking the Aadhar Card, Bank Pass Book etc. Under such circumstances, the Tribunal ought not to have fixed Rs.20,000/- as the monthly loss of income of the claimant. Thus, the learned counsel appearing for the appellant/Insurance Company submitted that the amount awarded by the Tribunal under the head "disability" needs appropriate reduction by this Court.

8. Per contra, the learned counsel appearing for the first respondent/claimant supported the award passed by the Tribunal.

9. Keeping in mind the submissions made on either side, we

have carefully perused the materials available on record.

10. We find that the Medical Board had assessed the disability of the claimant at 60% which is based on the whole body disability and it appears to be slightly on the higher side. In our opinion, it would be appropriate to fix the disability of the first respondent/claimant at 40%.

11. Similarly, considering the nature of disability, the claimant would find it difficult to carry out his normal activities as before the accident. Therefore, we do not find any error in adopting the multiplier method while calculating the loss of income of the first respondent/claimant.

12. At the same time, we find that Rs.20,000/- fixed by the Tribunal as the monthly loss of income, appears to be on the higher side. Hence, by fixing a sum of Rs.14,000/- as the monthly loss of income of the first respondent/claimant, with 30% addition towards future prospects, the amount could be modified under the head "disability". Accordingly, the amount under the head "disability" is calculated as below:

14,000 + 14,000 x 30% = 18,200

18,200 x 12 x 40% x 17 = Rs.14,85,120/-

13. The amounts awarded by the Tribunal under the other heads, being just and proper, are hereby confirmed.

14. Accordingly, the break-up details of the amounts awarded by this Court in comparison with the amounts awarded by the Tribunal are tabulated below:

Sl. No.	Heads under which the amounts are awarded	Amount awarded by the Tribunal (in Rs).	Amount awarded by this Court (in Rs.)
1	Loss of income	31,82,400	14,85,120
2	Pain and suffering	1,00,000	1,00,000
3	Additional nutrition	25,000	25,000
4	Transport expenses	10,000	10,000
5	Medical expenses	1,94,145	1,94,145
	Total	35,11,545	18,14,265

15. In the result, the present appeal filed by the Insurance Company is partly allowed, by reducing the amount of compensation awarded by the Tribunal at Rs.35,11,545/- to Rs.18,14,265/-, with 7.5% interest per annum from the date of

claim petition till the date of deposit. The appellant/Insurance Company is directed to deposit the amount determined by this Court as above, with interest, and costs, if any awarded by the Tribunal, after adjusting the amount(s) if any already deposited by them, within a period of four weeks from the date of receipt of a copy of this judgment. On such entire deposit being made, the first respondent/claimant is permitted to withdraw the amount with accrued interest and costs, if any awarded by the Tribunal, after adjusting the amount(s) if any already withdrawn by him, by filing appropriate application before the Tribunal. There shall be no order as to costs in the present appeal. Consequently, C.M.P. is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To
1.The Additional Sub-Judge,
Motor Accidents Claims Tribunal,
Mayiladuthurai.

+1cc to Mr.Nissar Ahamed , Advocate SR.No. 14762

VG II(CO)
A.SK(23.09.2021)