



IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 29.01.2021

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

C.M.A.No.58 of 2017

HDFC Ergo General Insurance Company Limited,
2nd Floor, Global Centre,
Thrissur District,
Kerala.

.. Appellant /R3

/versus/

1.Venkidusamy

..R1/ Petitioner

2.Jofi

3.Ajo Jose

.. RR2 & 3/ RR1 & 2

(3rd respondent exparte in lower Court)

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.1347 of 2013 dated 28.04.2016 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Tiruppur.

For Appellant :Mr.E.Rajadurai for
M/s M.B.Gopalan Associates

For Respondents:Mr.Ma.Pa.Thangavel for R1
Mr.A.Charles Darwin for R2

R3 : Exparte

J U D G M E N T

This appeal filed by the Insurance Company being aggrieved by the liability fixed on the Insurance Company.

2.Brief facts of the case is that, on 27.09.2012, at about 9.00 p.m., while the claimant was driving his Maruthi car bearing Reg.No.TN 37-P 3326 at the left extreme of Kovai to Sakthi the road, a car bearing Reg.No.KL-08-AT-4175 came in a rash and negligent manner and dashed against the claimant's car. In the said accident, the claimant sustained grievous injury. He was taken to Coimbatore Medical College Hospital for first aid. He has sustained severe injury including fracture shaft of femur right leading to closed reduction and internal fixation. At the time of the accident, the claimant was working as Driver



in Tamil Nadu State Transport Corporation. Claiming that due to the accident, he has lost his entire earning power and cannot go to work claim petition for Rs.12,00,000/-filed for loss of income and earning capacity.

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3.The Insurance Company filed counter stating that the accident occurred due to the negligence of the claimant. First Information Report was registered against the claimant for causing accident. While so, being a tortfeasor the claimant is not entitled for any compensation. Further, the quantum of compensation claimed also is exorbitant. Before the Tribunal, the claimant and two other witnesses were examined. In support of the claimant, 7 exhibits were marked. On the side of the defence, one witness was examined. The Tribunal has considered the disability certificate issued by PW-2 and has applied multiplier for computing loss of earning capacity. The Tribunal has awarded a sum of Rs.7,19,713/- with interest at the rate of 7.5% p.a, from the date of petition till the date of realisation.

4.In this appeal, the learned counsel appearing for the appellant submitted that when the First Information Report which is marked as Ex.P1 clearly attributes the negligence on the part of the claimant, the Tribunal ought not to have awarded any compensation to the claimant and ought to have exonerated the insurance company from paying any compensation. The learned counsel appearing for the appellant further submitted that even assuming there was any negligence on the part of the driver of the vehicle insured under them, the contribution of the claimant should have been taken note of and further the nature of injury sustained by the claimant has not caused any functional disability to him. Therefore, application of multiplier method is not required. Admittedly, the claimant continues his employment as driver in the corporation. There is no loss of income and the injury sustained by him are not total disability where the multiplier could be applied. Further, the compensation awarded under other non-conventional heads like pain and suffering; transportation; and extra nourishment are also very exorbitant and excessive.

5.This Court, on perusal of the records, particularly disability certificate Ex.P6, First Information Report Ex.P1 and deposition of PW-1 is of the view that mere closure of First Information Report due to delay will not lead to inference that the traffic offender is an innocent person and entitled to claim compensation for his own wrong. PW-3 Gopal who has deposed that he was present at the time of accident and saw the car bearing Reg.No.KL 08 AT 4475 coming rash and negligently is contrary to the contention of the First Information Report. In any event, as pointed out by the learned counsel appearing for the appellant, without contribution of the claimant, the accident



could not have occurred. Also, this Court is convinced that the multiplier applied by the Tribunal is unwarranted in this case, since the injured person neither sustained total disability or real loss of earning capacity.

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6.As per the disability certificate, he has sustained 39.94% of permanent disability. The said disability has not caused any impediment to his avocation as driver and to his income/earning capacity. The accident occurred on 27.09.2012. The claimant has produced his pay certificate dated 29.09.2014 (i.e) nearly two years after the accident wherein his avocation as Special Grade Driver is mentioned and no loss of income reflected. Hence, this appeal is partly allowed by modifying the quantum of compensation as below:-

Sl. No.	Particulars	Award passed by the Tribunal (Rs.)	Award passed by this Court (Rs.)	Enhanced/ Reduced/ Confirmed/ Awarded
1.	Loss of income	5,14,800-00	1,20,000-00 (40%x3000)	Reduced
2.	Medical expenses	64,913-00	64,913-00	Confirmed
3.	Pain and suffering	50,000-00	25,000-00	Reduced
4.	Extra Nourishment	40,000-00	20,000-00	Reduced
5.	Transportation	10,000-00	10,000-00	Confirmed
6.	Attender charges	15,000-00	15,000-00	Confirmed
7.	Loss of amenities	25,000-00	25,000-00	Confirmed
	Total	7,19,713-00 rounded off Rs.7,00,000-00	2,79,913-00 rounded off Rs.2,80,000-00	Reduced

7.The award of the Tribunal is modified and scaled down from Rs.7,19,713/- to Rs.2,80,000/- with interest at the rate of 7.5% from the date of petition till the date of deposit.

8.On perusal of the records, the appellant/Insurance company had already deposited the entire award of the Tribunal with interest and costs, as per the order of this Court in C.M.P.No.540 of 2017 in C.M.A.No.58 of 2017, dated 02.02.2017. Therefore, the claimant/1st respondent is permitted to withdraw the modified award of this Court, (less the amount already withdrawn, if any). The appellant/Insurance Company is permitted to withdraw the excess amount, less the modified award amount.



9. In the result, this Civil Miscellaneous Appeal is partly allowed. No order as to costs.

Sd/-
Deputy Registrar

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Sub Assistant Registrar

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To:
The Motor Accident Claims Tribunal,
II Additional District Judge, Tiruppur.

Copy to:
The Section Officer,
VR Section, High Court, Madras.

+lcc to Mr.A.Charles Darwin , Advocate SR.No. 4948
C.M.A.No.58 of 2017

EV(CO)
A.SK(14.09.2021)