



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

C.M.A. (MD) .No.842 of 2014

and

M.P (MD) No.1 of 2014

Bharti Axa General Insurance Co., Ltd.,
Rep. by its Branch Manager,
P.P. Chavadi,
Theni Main Road,
Madurai.

... Appellant/2nd Respondent

Vs.

1. P.Kaliappan
2. M/s R.A.G.Security Team,
4-370, Panchayat Office Street,
Avarikulam,
Radhapuram,
Tirunelveli District.

... 1st Respondent/Petitioner

... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to set aside the Decree and Judgment of Motor Accident Claims Tribunal-Special Sub Court of Tirunelveli dated 04.01.2014 in MCOP No.206/2013.

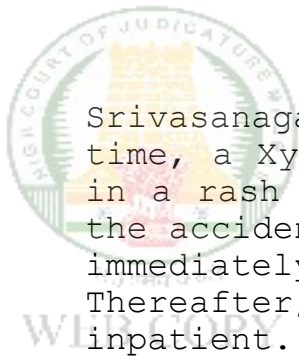
For Appellant : Mr.G.Maruthaiah
For Respondents : Mr.T.A.Ebenezer for R1
No appearance for R2

J U D G M E N T

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J.]

This appeal is directed against the award passed by the Motor Accident Claims Tribunal, Special Court, Tirunelveli, in MCOP No.206 of 2013.

2.The appellant was the second respondent in the claim petition. The first respondent herein sought compensation of Rs.25,00,000/- for the injuries sustained in the accident on 18.02.2012. It is his case that at 06.00 p.m on 18.02.2012, he was proceeding in a Hero Honda motorcycle bearing Reg.No.TN-76-X-0445 on



Srivasanagar four-lane road from south to north direction. At that time, a Xylo Car bearing Reg.No.72-AP-6666 was driven by its driver in a rash and negligent manner and hit against the motorcycle. In the accident, he sustained multiple injuries and fracture and he was immediately taken to Tirunelveli Medical College Hospital. Thereafter, he took treatment at Susrutha Hospital, Nagercoil as inpatient. The claimant further stated that he was 30 years old on the date of accident and he was working as Territory Market Manager in Pharma Solution Private Limited and he was paid Rs.40,000/- per month. Contending that the accident occurred due to the negligence of the driver of the car, he claimed compensation from the owner as well as insurer.

3.The claim petition was resisted by the respondents, the owner as well as insurer by filing separate counters. They disputed the age, avocation and income of the claimant. It is specifically stated that the claimant was driving the motorcycle in the middle of the road and hence, the driver of the car stopped the vehicle, even then, the claimant dashed against the car and invited the accident, hence, no compensation can be paid to him.

4.Before the Tribunal in support of the case of the claimant, two witnesses were examined and 13 documents were marked. On behalf of the respondents, RW.1 and RW.2 were examined and 4 documents were marked. On appreciation of evidence adduced by the parties, the Tribunal came to the conclusion that the driver of the car was responsible for the accident and awarded compensation of Rs.22,20,700/- with 9% interest. Challenging the same, the present appeal has been filed.

5.Mr.G.Maruthaiah, learned counsel for the appellant urged that the Tribunal has committed error in applying multiplier method to arrive at loss of income at Rs.19,87,200/-. It is his submission that in the case of injuries, the Tribunal before applying multiplier has to come to the conclusion the claimant has suffered permanent or temporary disablement and to ascertain whether there is any functional disability. According to the learned counsel, the disability certificate issued by P.W.2 does not show any permanent disability except stating shortage of limb of 4 c.m. So, it is not a fit case to apply multiplier method. He further added that the award amount is excessive and without any basis and interest is also on higher side.

6.Per contra, Mr.T.A.Ebenezer, learned counsel for the claimant argued in support of the finding of the Tribunal and justified applying multiplier in the present case.

7.This Court has carefully considered the rival submission and perused the materials available on record.



8.This is a case of injury. The claimant has stated in the claim petition as well as in the evidence that he was 30 years old when the accident had taken place. In his evidence, he has categorically stated that the driver of the car came in a high speed and rammed the motorcycle, in which, he was riding. Even though the appellant and the owner of the vehicle have taken a specific stand that the injured claimant came in a high speed in the middle of the road and dashed against the car, the driver of the car was admittedly not examined. Further, no steps have been taken to mark the sketch and observation mahazer to establish that the accident occurred in the middle of the road. It is relevant to note that the claimant despite narrating the manner of accident in his evidence, also produced Ex.P.1 copy of the First Information Report to show that the criminal case was registered against the driver of the car. Since no contra evidence was produced by the respondents in the claim petition, the Tribunal came to the conclusion that the driver of the car has caused the accident. We find no ground to interfere with the finding on the negligence.

9.It appears that during trial, Ex.P.10 was produced to claim Rs.3,60,219/- towards medical expenses. The stand of the appellant before the Tribunal was that the entire medical expenses were reimbursed under Group Insurance Scheme. To prove the stand of the appellant/respondent, R.W.1 and R.W.2 were examined and Exs.R1 to R4 were marked. Taking note of the evidence adduced by the respondents, the Tribunal rejected the case of the claimant that he spent Rs.3,60,000/- towards medical expenses. However, the evidence of R.W.1 shows that the claimant was an employee of Pharma Solution Private Limited. So, the case of the claimant that he was an employee in the Pharma Solution Private Limited has been proved. Ex.P.8 Salary Certificate shows that his monthly pay was Rs.17,250/-. P.W.2 Doctor has stated that in the accident, the claimant suffered fracture on the left leg and a plate was fixed during surgery and there is a shortage of 4 c.m in the left leg. He issued Disability Certificate (Ex.P.12) that the claimant has suffered 65% permanent disability. Ex.P.13 X-ray was produced in support of the evidence of P.W.2 and Ex.P.12. Ex.P.7 reveals that after the accident, he was not able to continue his employment and resigned his job. After considering the evidence and following the decision of the Hon'ble Apex Court in the case of **Subbulaxmi vs. M.D.T.Nadu State Transp. Corp and another**, the Tribunal applied multiplier method to arrive at loss of income.

10.It is evident from the testimony of P.W.1 and P.W.2 and Ex.P.12 the claimant has suffered permanent disability. So, the contention of the learned counsel for the appellant that there is no finding with regard to the permanent disability cannot be countenanced. That apart, considering the nature of employment and the disability suffered by the claimant, in our view that the Tribunal has rightly applied the multiplier in this case.



11.Insofar as quantum is concerned, on the basis of Salary Certificate and evidence of Doctor, the Tribunal has taken the disability at 60%, to award Rs.19,87,200/- by applying multiplier '16' (17,250 x 12 x 16 x 60/100). The claim for medical expenses was rightly rejected by the Tribunal, however, a sum of Rs.1,03,500/- was awarded for loss of income during the treatment period. The Tribunal has fixed the age as appeared in the Accident Register (Ex.P.2), since the claimant has not produced any materials to prove his age. The amount for the treatment period viz., for a period of 6 months separately, in our view, cannot be accepted. In addition to the loss of income, the Tribunal has awarded Rs.10,000/- towards transportation charges; Rs.5000/- for extra nourishment; Rs.5000/- for attendant charges; Rs.50,000/- towards pain and suffering and Rs.50,000/- towards loss of amenities. We see no ground to reduce the amount awarded under other heads, hence, they are confirmed. Since the accident occurred in the year 2012 and the award came to be passed in the year 2014, interest is reduced from 9% to 7.5%.

12.In fine, the Civil Miscellaneous Appeal is partly allowed. The claimant is entitled for Rs.21,17,200/-, which rounded off to Rs.21,15,000/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. The appellant Insurance Company is directed to deposit the award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skn

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Motor Accident Claims Tribunal
The Special Subordinate Judge, Tirunelveli

<https://hcservices.ecourts.gov.in/hcservices/>



2. V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.T.A.EBNEZER, Advocate (SR-20584[F] dated 29/06/2021)

+1 CC to M/s.G.MARUTHIAH, Advocate (SR-20655[F] dated 30/06/2021)

C.M.A. (MD) .No.842 of 2014
and
M.P (MD) No.1 of 2014
28.06.2021

GC (31.08.2021) /5P/6C