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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.03.2022

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.No.1181 of 2015
and
Cros.Obj.No.44 of 2019
&
M.P.No.1 of 2015
and
C.M.P.No.5639 of 2017

C.M.A.No.1181 of 2015:

The New India Assurance Company Ltd,
No.92, East Cost Chambers,
1st Floor, GN Chetty Road, T.Nagar,
Chennai 600 017.

...Appellant

vs.

1. T.K.Dilip Kumar

2. T.C.Govindasamy

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to allow the above Civil Miscellaneous Appeal and set-aside the Judgment and Decree dated 12.02.2014 made in M.C.O.P.No.3395 of 2006 on the file of the Motor Accident Claims Tribunal No.VI SCC, Chennai.

For Appellant : Mr.T.Neethi Perumal
For R1 : Mr.K.Varadha Kamaraj

Cros.Obj.No.44 of 2019:

1. T.K.Dilip Kumar

... Cross Objector

Vs



1.The New India Assurance Company Ltd,
No.92, East Coast Chambers,
1st Floor, GN Chetty Road, T.Nagar,
Chennai 600 017.

2. M/s.A.R.Enterprises,
Old No.75, New No.40, Kumarappa Street,
Nungambakkam.

... Respondents

PRAYER: Cross Objection is filed under Order XLI Rule 22 of CPC, to enhance the awarded amount in M.C.O.P.No.3395 of 2006, dated 12.02.2014, on the file of the Motor Accident Claims Tribunal No.VI Small Causes Judge, Chennai.

For Cross Objector : Mr.K.Varadha Kamaraj
For R1 : Mr.T.Neethi Perumal

COMMON JUDGMENT

(Judgment of the Court was made by K.KALYANASUNDARAM, J.,)

The Civil Miscellaneous Appeal is filed by the appellant/Insurance Company challenging the award passed by the Motor Accidents Claims Tribunal, VI Small Causes Court, Chennai in M.C.O.P.No.3395 of 2006 and the cross objection in Cros.Obj.No.44 of 2019 is filed by the claimant for enhancement of compensation.

Facts in brief:-

2. The case of the claimant is that on 18.02.2006 at about 17.30 hours, when he was walking as pedestrian at GST Road, Chromepet, a Scorpio Car bearing Registration Number TN 07 AE 3004 owned by the first respondent and insured with the second respondent, was driven by its driver in a rash and negligent manner and hit against him. In the impact, he sustained grievous injuries. It is his further case that at the relevant time, he was 53 years old and he was working as an Accounts Officer in Ocher Studio Private Limited, Chennai and was earning Rs.8,000/- per month. Since the accident occurred due to the negligence of the driver of the car, he is entitled for compensation of Rs.16,00,000/- from the owner of the offending vehicle and its insurer.

3. The owner of the offending vehicle remained Ex-parte before the Tribunal and the claim petition was contested by the appellant/Insurance Company disputing its liability to pay the compensation. It is further stated that the driver of the offending vehicle did not possess a valid and effective driving



license and therefore, for violation of the policy conditions, no liability can be fastened on the Insurance Company. The averments made as against the other heads are also denied.

4. During the trial, on behalf of the claimant, two witnesses were examined and 16 documents were marked. On the side of the respondents, neither the witnesses were examined nor the documents were marked.

5. P.W.1 is the injured claimant. P.W.2 is the Doctor, who gave disability certificate - Ex.P12. Before the Tribunal, P.W.1, clearly deposed the manner of accident, in the line of the averments made in the claim petition. Ex.P1 is the copy of the First Information Report, which shows that a criminal case was registered against the driver of the car. Since no contra evidence was produced on the side of the respondents, the Tribunal, believing the evidence of P.W.1 and Ex.P1, held that the accident occurred due to the negligent driving by the driver of the car and we find no reason to interfere with the said finding. Hence, the finding on the negligence is confirmed.

6. With regard to quantum, P.W.2, who is a Doctor viz., M.Saravanabhavanandham has stated that the claimant has sustained 90% permanent disability and he issued Ex.P12 - disability certificate. The Tribunal has taken the functional disability as 50% and awarded compensation of Rs.5,28,000/-. On the basis that the earning of the claimant was Rs.8000/- per month, another sum of Rs.1,00,000/- was awarded on the percentage method of applying Rs.2000/- per percentage. That apart, Rs.96,000/- was awarded for loss of income during the treatment period.

7. The learned counsel appearing for the appellant/Insurance Company submitted that the Ex.P16 - Mental Impairment Certificate, shows that the insured claimant was already having some health issues and hence the functional disability of 50% taken by the Tribunal is on the higher side. It is also argued that when the Tribunal is applying multiplier method to award an amount under the head 'loss of earning capacity', another sum of Rs.96,000/- was awarded for the loss of income during the treatment period cannot be sustained.

8. Per contra, the learned counsel appearing for the respondent/claimant submitted that the P.W.2, Doctor, has rightly assessed the disability of the claimant as 90%, the Tribunal without any basis, has taken the functional disability at 50%. According to the learned counsel, the claimant has suffered Paralysis only on account of the injury sustained in the accident and hence, the claimant is entitled for more compensation.

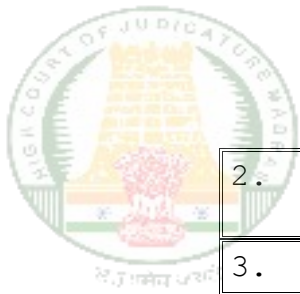


9. In the matter on hand, it has already been held that the accident occurred due to the negligence of the driver of the car. In respect of the quantum, there is no dispute that the injured claimant was 53 years old, on the date of the accident and he proved his salary of Rs.8000/- through Ex.P11 - salary certificate. The Tribunal taking note of the fact that the claimant himself deposed before the Tribunal and withstood the cross examination undertaken by the insurance company, has held that the disability suffered by him cannot be 90% and it could be only 50%. The reason given by the Tribunal has to be confirmed. We have also seen the evidence given by P.W.1 before the Tribunal.

10. Therefore, the amount of Rs.5,28,000/- awarded by the Tribunal under the head 'loss of future earning capacity' is confirmed. As rightly pointed out by the learned counsel appearing for the insurance company that despite awarding amount of Rs.1,00,000/- for disability by applying percentage method, award of Rs.96,000/- for loss of income for treatment period cannot be sustained, hence it is set aside. The claimant took treatment for a considerable period of time, from 18.02.2006 to 27.04.2006 and thereafter from 01.03.2007 to 08.03.2007 at Apollo Hospital, Chennai. Hence, the amount awarded under the head 'Transportation' is enhanced to Rs.30,000/- and the amount awarded under the head 'damage to clothes' is enhanced to Rs.2,000/-. Further, due to the accident, the claimant suffered agony for quite a long time and therefore, the amount awarded under the head 'pain and suffering' and 'loss of amenities' are hereby enhanced to Rs.1,50,000/- and Rs.1,00,000/- respectively.

11. Considering the facts and circumstances of this case that the claimant has suffered head injury and he is also not able to continue his employment, and substantially he had lost his earning capacity, we are inclined to modify the award amount as under:-

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award set aside or confirmed or enhanced or reduced or granted
1.	Disability of 50% at the rate of Rs.2000/- per percentage	1,00,000	-	set aside



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2.	Loss of income for 12 months	96,000/-	-	set aside
3.	Transportation	20,000/-	30,000/-	Enhanced
4.	Extra nourishment	40,000/-	40,000/-	Confirmed
5.	Damage to clothes	1,000/-	2,000/-	Enhanced
6.	Medical expenses	11,00,000/-	11,00,000/-	Confirmed
7.	Attender charges	25,000/-	25,000/-	Confirmed
8.	Pain and suffering	40,000/-	1,50,000/-	Enhanced
9.	Loss of amenities	25,000/-	1,00,000/-	Enhanced
10.	Loss of Future earning capacity	5,28,000/-	5,28,000/-	Confirmed
	Total	19,75,000/-	19,75,000/-	

12. For the above reason, both the Civil Miscellaneous Appeal and the Cross Objection petition are dismissed and the compensation awarded by the Tribunal is confirmed. The appellant/Insurance Company is directed to deposit the award amount of Rs.19,75,000/- along with interest at the rate of 7.5 % per annum from the date of claim petition till the date of realization and costs, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the respondent/claimant is permitted to withdraw the award amount, along with proportionate interest and costs, less the amount already withdrawn if any. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal No.VI SCC,
Chennai.

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

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.19868

+1cc to Mr.T.Neethi Perumal, Advocate, S.R.No.20288

C.M.A.No.1181 of 2015
and
Cros.Obj.44 of 2019

KV[co]
NSK/17/05/2022