THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.3643 of 2021
and
C.M.P.No.20886 of 2019

M/s.Oriental Insurance Company Limited,
D.O.3, India Life Buildings,
Trichy Road, Coimbatore – 641 018. ...Appellant

Vs.

1.D.Sathishkumar
2.E.Vignesh
3.S.Valliammal ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.1015 of 2014 dated 20.12.2017 on the file of the Motor Accidents Claims Tribunal, Special Sub-ordinate Court, Coimbatore.

For Appellant : Mr.M.B.Raghavan for
M/s.M.B.Gopalan Associates
For Respondents : Mr.C.Veeraraghavan for R1
Notice to R2 & R3 – dispensed with vide order of this Court dated 16.12.2022 in CMA.No.3643 of 2019.

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The Insurance Company is on appeal, aggrieved by the award of a sum of Rs.41,86,935/- for the injuries sustained by the 1st respondent / claimant in a motor accident that occurred on 19.04.2014.

2.According to the claimant while he was walking on the extreme left side of the road near Ashoka Shopping Complex at Nanjappa Road, Coimbatore, the motor cycle bearing registration No.TN 66 H 7717 owned by the 2nd respondent, driven by the 1st respondent in a rash and negligent manner dashed against him from behind causing severe injuries, which included fractures in both the legs. The 1st respondent / claimant was admitted in Ganga Hospital, Coimbatore and he was in the Intensive Care Unit for five days. He had undergone several surgeries and incurred medical expenses of about Rs.5,00,000/- and the future medical expenses estimated at Rs.2,00,000/-. He was referred to the Medical Board and the Medical Board assessed his disability at 38%, considering the fact that the claimant has studied Bachelor of Engineering and working as a computer professional in an Information Technology Company and drawing a salary of Rs.75,000/- per month. He would also claim that he had bright chances of going abroad and the same was scuttled because of the accident. He would also submit that he was forced to quit his job because of the disability suffered by him in the accident. On the above contention the claimant sought for compensation of Rs.60,00,000/-.

3.The claim was resisted by the Insurance Company contending that the accident did not occur in the manner suggested by the 1st respondent / claimant. It was the further contention of the Insurance Company that the disability assessed by the Medical Board at 38% cannot transform into functional disability so as to have an impact on the earning power of the 1st respondent / claimant. In as much as it is not shown that the earning power is affected, multiplier method cannot be adopted in deciding compensation for injuries. The Insurance Company would further claim that there was, in fact, no loss of income for the claimant because of the accident and hence, the claim made for compensation by adopting multiplier method is unsustainable.

4.The Tribunal, concluded that the accident occurred due to the negligence of the driver of the two wheeler and therefore, the Insurance Company would be liable to pay compensation.On the quantum, the Tribunal assessed functional disability at 25%. Taking the age of the claimant at 29, it adopted a multiplier of 17 and the income having been fixed at Rs.70,000/- per month, the compensation for future loss of income was arrived at Rs.35,70,000/-. The Tribunal also granted Rs.2,91,935/- towards medical expenses based on bills, Rs.1,00,000/- each for future medical expenses, pain and suffering and loss of amenities, Rs.10,000/- each for Transportation and extra nourishment and a sum of Rs.5,000/- for damage to clothing. In all the Tribunal, awarded a sum of Rs.41,86,935/- as compensation. Aggrived over the same, the Insurance Company is on appeal.

5.We have heard Mr.M.B.Raghavan, learned counsel appearing for the Insurance Company and Mr.C.Veeraraghavan, learned counsel appearing for the 1st respondent / claimant. Notice to the respondents 2 and 3 is not served. However, in view of the fact that they remained exparte before the Tribunal, notice to them is dispensed with.

6.Mr.M.B.Raghavan, learned counsel appearing for the Insurance Company would submit that assessment of functional disability at 25% is not based on any evidence. Drawing our attention to the evidence of the 1st respondent / claimant as P.W.1, the learned counsel would submit that P.W.1 has admitted that he had worked for five months after being discharged and there was no loss of income during that period of five months. The learned counsel would also pint out that P.W.1 has admitted that he was not terminated from service for inability to work but, his resignation was accepted. Therefore, according to the learned counsel, in the absence of any evidence regarding the actual loss of income or functional disability, the Tribunal was not justified in adopting multiplier method and awarding a sum of Rs.35,70,000/- towards future loss of income. The learned counel does not have any serious grivance regarding the awards under the other heads.

7.Mr.C.Veeraraghavan, learned counsel for the 1st respondent / claimant would submit that the Tribunal has taken into account the actual injury and considering the fact that there is a fracture in both the legs and shortening of the limb by an inch, fixed the functional disability at 25%. He would submit that the Tribunal cannot be faulted for fixing the functional disability at 25% while the Medical Board assessed the permanent disability at 38%. We have considered the rival submissions.

8.In cases of injury resulting in permanent disability, multiplier method can be adopted only when it is shown that the permanent disability has led to a functional disability, which in turn leads to loss of earning power. In the absence of any evidence to show that there was a functional disability, which had an impact on the earning power of the injured person, adoption of multiplier method may not be safe. In such case, the Tribunal has to adopt the fixed formula of granting a certain amount per percentage of disability.

9.As rightly pointed out by Mr.M.B.Raghavan, P.W.1 in his evidence has admitted that he had worked for 5 to 6 months after the accident and there was no reduction in his salary during that period. Ex.P19 , relieving letter, on which the learned counsel relies also does not show that the petitioner has been relieved for want of ability to work. It is a simple relieving letter, accepting the resignation of the claimant.

10.In fact, the petitioner has not placed the best evidene before the Court by examining the Doctor to show the functional disability. Functional disability resulting from an injury will vary depending on the profession of the individual. If the individual has to carry out the physical work, shortening of limbs or fracture in the legs or loss of fingers etc., would result in a higher percentage of functional disability. The same may not be the case in respect of the person doing desk work. We already adverted to the fact that the petitioer holds a Bachelor of Engineering Decree in Electronics and Communication Engineering. He has also admitted that he was working in an Information Technology company therefore, necessarily the claimant was doing desk work and it was not an on site job. Therefore, functional disability would not be either equal to or nearer to the actual disability. We cannot rule out certain amount of disability. Whether the Tribunal was justified in taking disability at 25% or not is the question.

11.Considering the entire evidence as well as the nature of injuries shown in the discharge summary, we are of the opinion that the functinoal disability of 25% assessed by the Tribunal is on the higher side. At the same time, we are unable to agree with the contention of Mr.M.B.Raghavan that there would not have been any functional disability. Though the 1st respondent / claimant is shown to be doing desk work or Office work still there will be some difficulties in discharging that work. Even, sitting for longer time may prove to be difficult at times. We therefore, fix the functional disability at 10%. If the functional disability is fixed at 10%, the future loss of income would be Rs.8,40,000/- X 10% X 17 = Rs.14,28,000/-.

12.As already stated, the learned counsel for the Insurance Company has not seriously questioned the grant of compensation under the other heads. We therefore, confirm such grant. In all, the total compensation would be work out to Rs.20,44,935/- and we round it of to Rs.20,50,000/-. In view of the same, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

13.It is stated that the entire award amount as fixed by the Tribunal with interest has been deposited by the Insurance Company. Mr.C.Veeraraghavan, learned counsel for the claimant would state that he has not withdrawn any amount though permission was granted for withdrawal of 1/3rd of the amount. The 1st respondent / claimant is permitted to withdraw the amount awarded with proportionate interest. The balance amount along with acrued interest shall be paid over to the Insurance Company by the Tribunal.

(R.S.M.,J.) **(S.S.K.,J.)**
16.12.2022

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Internet:Yes/No
Index:Yes/No
Speaking/Non-speaking order

R.SUBRAMANIAN, J.
and
SATHI KUMAR SUKUMARA KURUP, J.

KKN

To:-

The Motor Accident Claims Tribunal,
Special Sub-ordinate Court,
Coimbatore.

C.M.A.No.3643 of 2021
and
C.M.P.No.20886 of 2019

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