



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2022

CORAM

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

C.M.A.NO.1657 OF 2021
AND
C.M.P.NO.8805 OF 2021

United India Insurance Company Limited,
104-A, Peramanur Main Road,
Peramanur, Salem.

... Appellant/2nd Respondent

Vs.

1.J.Deepakaran

... 1st Respondent/Claimant

2.P.Suseela Ponnusamy

... 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the award and decree dated 22.11.2019 passed in M.C.O.P.No.2156 of 2016 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Court No.2), Salem.

For Appellant : Mr.M.B.Raghavan

For Respondents : Mr.SP.Yuaraj
for R1
No appearance for R2

J U D G M E N T

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

Challenging the award and decree dated 22.11.2019 passed in M.C.O.P.No. 2156 of 2016 by the learned Special Judge, Motor Accidents Claims Tribunal (Special Subordinate Court No.2), Salem, the present appeal is filed by the Insurance Company.



2. We have heard Mr.M.B.Raghavan, learned counsel for the appellant and Mr.SP.Yuvaraj learned counsel for the first respondent and also perused the materials available on record.

3. The brief facts of the case are as follows :

On 16.6.2016 at 9.45 p.m, when the first respondent/claimant was travelling in a two wheeler bearing Registration No.TN 52 6582, the driver of the bus bearing Registration No.TN 52 U 4799 came in a rash and negligent manner and hit against the two wheeler. Due to the impact, the first respondent sustained fracture and injuries. At the time of accident, the first respondent was 23 years and an Auto Driver by profession and earning a sum of Rs.10,000/- per month. In view of the injuries sustained in the accident, the first respondent prayed for grant of Rs.25,00,000/- as compensation.

4. The appellant/Insurance Company filed their counter statement denying the averments and allegations made in the claim petition and prayed for dismissal of the appeal.

5. To substantiate the case on the side of the claimant, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P10 were produced. The Insurance Company has not let in any oral or documentary evidence.

6. The claimant examined himself as P.W.1 and narrated the manner of accident and the nature of injuries sustained by him. He also filed Ex.P1 copy of First Information Report and Ex.P2 copy of rough sketch. Ex.P3 and Ex.P4 copies of Motor Vehicles' inspection reports. Ex.P5 copy of Final Report.

7. The Tribunal, after considering the oral and documentary evidence, held that the accident had occurred due to the rash and negligent driving of driver of bus, and directed the appellant/Insurance Company to pay the compensation.

8. With regard to quantum, P.W.2 Doctor Senthilkumar deposed that the injured claimant has suffered 49% of disability. Ex.P10 is the disability certificate. The Tribunal by relying upon the evidence of P.W.2 and Ex.P10, came to the conclusion that the claimant is entitled for compensation and by applying multiplier method, awarded a sum of Rs.14,81,760/- towards Loss of Earning capacity. Thereafter, by awarding amounts under various heads, the Tribunal awarded a sum of Rs.24,97,391/- as compensation.

9. The learned counsel for the appellant/Insurance Company mainly contended that the injured claimant is admittedly an Auto driver, but he has not suffered any permanent and functional



disability, hence, it is not a fit case for applying multiplier method.

10. Per contra, the learned counsel for the first respondent drawn the attention of this Court to the evidence of P.W.2 extracted in paragraph 8 of the judgment and contended that the first respondent/claimant has suffered disability and there is no irregularity in applying the multiplier method to arrive the Loss of Earning Capacity of the claimant.

11. It is an admitted fact that the injured was 23 years old at the time of the accident and he was an Auto driver. The Doctor had assessed his permanent disability at 49%. In the instant case, as rightly pointed out by the learned counsel for the appellant that the claimant has not suffered any fracture and functional disability and hence, the multiplier method cannot be applied in this case. The Doctor/P.W.2, after examination of the claimant, issued Ex.P10 certificate to the effect that the injured sustained 49% disability. Hence, by applying Rs.5,000/- per percentage of disability, we are awarding Rs.2,45,000/- [5,000 x 49] for Loss of Earning Capacity. Hence, the sum of Rs. 14,81,760/- awarded by the Tribunal under the head of Loss of Future Earning Capacity is reduced to Rs.2,45,000/-.

12. In addition to that, the amounts awarded by the Tribunal under the conventional heads, viz., Rs.2,00,000/- towards Pain and Suffering; Rs.2,00,000/- towards Loss of Amenities ; Rs.3,67,881 towards Medical Expenses ; Rs.21,750/- towards Loss of income during treatment period ; Rs.1,25,000/- towards Future Medical Expenses; Rs.25,000/- towards Transportation charges; Rs.50,000/- towards Extra Nourishment; Rs.25,000/- towards Attender Charges; and Rs.1,000/- towards Damages to clothes are confirmed. In total, the claimant is entitled to Rs.12,60,631/-, which is rounded off to Rs. 12,60,600/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. Thus, the total compensation payable to the claimants is re-calculated and tabulated below:

S. No.	Heads under which the amount is awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
1.	Loss of Future Earning Capacity	14,81,760	2,45,000



WEB COPY

S. No.	Heads under which the amount is awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
2.	Loss of Pain and Suffering	2,00,000	2,00,000
3.	Loss of Amenities	2,00,000	2,00,000
4.	Medical Expenses	3,67,881	3,67,881
5.	Loss of income during treatment period	21,750	21,750
6.	Future Medical Expenses	1,25,000	1,25,000
7.	Transportation Charges	25,000	25,000
8.	Extra Nourishment	50,000	50,000
9.	Attender Charges	25,000	25,000
10.	Damages to clothes	1,000	1,000
	Total	24,97,391	12,60,631 (rounded off to Rs.12,60,600)

13. In view of the above modification, the Civil Miscellaneous Appeal is partly allowed. The appellant is directed to deposit the above modified award amount with accrued interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order to the credit of M.C.O.P.No.2156 of 2016. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with accrued interest and costs. In all other respects, the impugned award of the Tribunal is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

ms



To

1. The Special Subordinate Judge,
Motor Accidents Claims Tribunal
(Special Subordinate Court No.2),
Salem.

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

+1cc to Mr.SP.Yuaraj, Advocate, S.R.No.12705

C.M.A.No.1657 of 2021
and
C.M.P.No.8805 of 2021

RSV(CO)
RLP(29/03/2022)