



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.04.2022

PRONOUNCED ON : 07.06.2022

C O R A M :

The Hon'ble Mrs. Justice J.NISHA BANU

C.M.A.No.1145 of 2014
and M.P.No.1 of 2014

The Branch Manager,
M/s.United India Insurance Co.Ltd.
No.28, Mylam Road
Meenachi Complex,
Tindivanam

...Appellant/2nd respondent.

Vs

1.Ekambaram (died) ...I Respondent/Petitioner
2.A.Murugaiyan
3.Mangalakshmi
4.Mahadevan ...II Respondent/I Respondent

R3 and R4 brought on record as LR's of the
deceased R1 vide order dated 2/11/2021
made in CMP.15630/2021 in CMA.1145/2014

PRAYER : CMA filed under Section 173 of Motor Vehicles Act,
1988, against the judgment and decree passed in M.C.O.P.No.33
of 2011 on 09.01.2013 on the file of Motor Accident Claims
Tribunal of Tindivanam, Villupuram District.

For Appellant : Mr.J.Chandran
For Respondent No.2 : Not Ready in Notice
For Respondent Nos.3&4 : Mr.T.Dhanyakumar



JUDGMENT

This appeal is filed by the appellant/Insurance company against the award passed in MCOP.No.33 of 2011 dated 09.01.2013 granting compensation of Rs.12,80,040/- as excessive and unsustainable as the claimant travelled along with bricks as load man and it is a prohibited travelling so the insurance company is not liable to pay the compensation.

2. It is the case of the claimant that on 22.11.2010, about 8.30 A.M., when four men travelled in a Lorry, bearing Registration No.TN 37 E 4878, from Brik kiln at Kendykuppam, Pondicherry to Kadapakkam, along with bricks, near Marakanam, due to the rash and negligent driving of the driver of the lorry and applying sudden brake, the four men sustained injuries. All four injured claiming compensation filed MCOP Nos.33/2011, 34/2011, 38/2011 and 47 /2011 and award was passed by the Tribunal in all the four cases.

3. The Insurance Company, appellant herein, has filed this appeal questioning the award passed in the claim petition No.33 of 2011, on the grounds that the injured travelled as load man in the lorry and the injured is not directly employed by the owner of the vehicle and so, the insurance company is not liable to pay compensation. The other contention is that the Tribunal without any basis, fixed 70% disability and in the absence of income proof, by taking Rs.9000/-, applying multiplier 15 arrived at loss of earning power as Rs.11,34,000/- which is against the well laid principles of law.

4. On the other hand, the learned counsel for the injured claimant submitted that compensation awarded is not at the higher side but a just and reasonable compensation. The learned counsel filed medical documents of the injured who subsequently died and prayed this court to confirm the award so as the legal heirs would atleast get the fruits of the award.

5. Heard the learned counsel appearing for either side and perused the award carefully.

6. Admittedly, the appellant/Insurance company has not filed appeals challenging the liability or quantum of compensation awarded by the Tribunal in respect of other 3 MCOPs. The Tribunal given a finding in the common order passed in the four cases that all the injured claimants travelled in the Lorry as loadman for loading and unloading the bricks and therefore, the 1st and 2nd respondent before the Tribunal viz., the insured and insurer are liable to pay the compensation. Since the said finding with respect to liability is accepted by the appellant/insurance company and not challenged the award for the other 3 claimants, this court need not gone into



7. In the accident, the original claimant suffered grievous injuries and fracture of right leg knee, right side shoulder, right side ribs and sustained permanent disability. P.W.3 doctor in his evidence, stated that on his examination of the injured, he found that there was no movement in the right leg knee, 30% reduced action of knee and 20 degrees lesser muscle movements, 3rd to 7th ribs broken and having severe pain, lesser chest shrunk and expansion and is reduced by 4 cm, fracture of tibia bone and assessed the disability as 70%. The Tribunal by following the judgment of the Honourable Supreme Court in the case of Raj Kumar Vs Ajay Kumar and another reported in 2011 ACJ 1, held that the percentage of permanent disability as expressed by the doctors with reference to the whole body or more than, not with reference to a particular limb. Holding so, fixed the disability at 70% as assessed by the doctor and arrived at loss of earning by adopting multiplier 15 and awarded compensation of Rs.11,34,000/- under the head "Permanent disability". In addition to that taking note of the condition of the claimant, as he required attendants for his day to day activities, granted compensation of Rs.20,000/- under the head "Attendant charges". The Tribunal also granted compensation under other heads and award altogether is tabulated as under:-

Section 168 of the Act mandates that the endeavour of the Tribunal should be to pay the just compensation to an accident victim. The Tribunal, in this case, considered many factors for the purpose of arriving at the just compensation. The idea behind the award of compensation was to give a helping hand to the injured or the legal heirs of the victim of a road accident. The injured has to receive compensation, commensurate with the injuries sustained by him. the percentage of disability and other features which would stand in the way of leading a normal life would be taken into



8. In Arvind Kumar Mishra v. New India Assurance Co. Ltd., (2010) 10 SCC 254, the Supreme Court held that in case of functional disability to be 70%, the loss of earning capacity is to be computed according to the multiplier method. The Supreme Court further held that the whole idea of compensation is to put the claimant in the same position as he was insofar as money can.

9. In view of the above decisive rulings, this court finds that the compensation awarded to the injured is just and reasonable and no grounds made out in this appeal, to interfere with the award of the Tribunal. Accordingly, the Civil Miscellaneous Appeal is dismissed. The award of the Tribunal is confirmed. No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

nvsri

To

The Motor Accidents claims Tribunal of Tindivanam,
Villupuram District.

Copy to:

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

+1cc to Mr.T.Dhanyakumar, Advocate SR. No. 32681

+1cc to Mr.J.Chandran, Advocate SR. No. 32718

C.M.A.No.1145 of 2014

MG (CO)

PR (06/07/2022)