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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.Nos.3245 and 2762 of 2021
and CMP.No.18645 of 2021

C.M.A.No.3245 of 2021:

M/s.United India Insurance Co. Ltd.,
No.135, Silingi Building",
Greaves Road,
Chennai - 600 006.

...Appellant/2nd Respondent

Vs.

1.Thirulockkumar

...1st Respondent/Petititioner

2.G.Vigneswaran

...2nd Respondent/1st Respondent

Common Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 21.12.2020 made in M.C.O.P.No.4587 of 2016 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.K.Varadhakamaraj for R1

C.M.A.No.2762 of 2021

Thirulockkumar

...Appellant/Petitioner

Vs.

1.G.Vigneswaran



2.United India Insurance Co. Ltd.

No.135, Silingi Building",

Greens Road,

Chennai - 600 006.

... Respondents/Respondents

For Appellant : Mr.K.Varadhakamaraj

For Respondents : Mr.S.Arun Kumar for R2

C O M M O N J U D G M E N T

Both these appeals are against the same award. CMA.No.3245 of 2021 has been filed by the Insurance company challenging the grant of a sum of Rs.20,77,400/- as compensation for the injuries suffered by Thirulockkumar in a road accident that occurred on 27.04.2016. C.M.A No:2762 of 2021 has been filed by the victim seeking enhancement.

2.Thirulockkumar lodged the claim contending that he suffered grievous injuries in a road accident that occurred on 27.04.2016 when the motorcycle bearing Registration No.TN-04-AQ-2588 came from behind and hit against the motorcycle bearing Registration No.TN-04-S-8793. As a result of the impact, he was thrown of the vehicle and sustained grievous injuries including severe head injuries.

3.Contending that he was carrying on business in furniture and because of the accident, he could not continue the business and he has lost his entire income as well as his earning capacity the claimant sought for a compensation of Rs.25,00,000/-. The claim was resisted by the Insurance Company contending that the accident did not occur in the manner suggested by the claimant. The Insurance Company had obtained permission under Section 170 on the Motor Vehicles Act to raise defences that are open to the insured. The claim that the injured was earning a sum of Rs.1,00,000/- per month was totally denied. Other formal defences were also raised regarding license and wearing of helmet, etc.



4. Before the Tribunal, the claimant was examined as PW1 and Exs.P1 to P13 were marked. The Insurance Company did not let in any evidence. The disability certificate issued by the Medical Board of the Government Kilpauk Medical College Hospital was marked as Ex.C1.

5. On a consideration of the evidence, the Tribunal concluded that the accident occurred due to the rash and negligent driving by rider of the motorcycle bearing Registration No.TN-04-AQ-2588 which was insured with the appellant Insurance company. To come to such a conclusion, the Tribunal relied upon the FIR and the charge sheet which were filed against the rider of the motorcycle. The Tribunal also took note of the fact that the Insurance company has not let in any evidence in support of its claim that the driver of the motorcycle was not having a valid driving license on the date of the accident.

6. On the quantum, the Tribunal found that the claimant has suffered 50% disability which is classified as a permanent disability by the Medical Board. The Tribunal also took note of the fact that the Medical Board had stated that the injured claimant had hemi paresis on the right side. The Tribunal therefore taking into consideration the nature of the disability particularly right hemi paresis concluded that the disability is permanent as well as functional. Since there was no evidence to support the claim of the injured that he was earning a sum of Rs.1,00,000/- per month the Tribunal assumed his income at Rs.15,000/- per month and added 25% towards future prospects and awarded a sum of Rs.14,62,500/- towards loss of earning capacity. The Tribunal also awarded a sum of Rs.50,000/- towards pain and suffering, Rs.50,000/- towards extra nourishment, Rs.50,000/- towards loss of amenities, Rs.1,000/- towards damages to clothing, Rs.1,800/- towards attender charges and Rs.4,62,061/- towards medical expenses. Thus, the total compensation which was arrived at Rs.20,77,361/- was rounded off to Rs.20,77,400/-.

7. I have heard Mr.Arunkumar, learned counsel appearing for the appellant Insurance Company and Mr.Varadhakamaraj, learned counsel appearing for the respondent/claimant.



8.Mr.Arunkumar, learned counsel appearing for the appellant Insurance Company would contend that though the Medical Board has classified the disability as 50% permanent it has not said that it is a functional disability. Therefore, the Tribunal was not right in adopting multiplier method. Learned counsel would also fault the Tribunal for having adopted Rs.15,000/- per month as income in the absence of any evidence. Considering the date of the accident i.e. on 27.04.2016, the Tribunal must have fixed a lower sum as income. Learned counsel would also contend that the addition of 15% towards future prospects is also excessive.

9.Contending contra, Mr.Varadhakamaraj, learned counsel appearing for the respondent/claimant would submit that the claimant had suffered hemi paresis which has led to his right limbs becoming inactive. Therefore, it is a case of loss of earning capacity for life. Therefore, according to the learned counsel adoption 50% of the permanent disability as functional disability by the Tribunal was justified. He would also submit that assumption of monthly income at Rs.15,000/- by the Tribunal is very reasonable considering the fact that the accident occurred in the year 2016. He would go one step further and contend that the Tribunal must have accepted the oral evidence of the claimant in the absence of any contra evidence and fixed the monthly income at Rs.25,000/-. He would also point out that the claimant has preferred the appeal in CMA.No.2762 of 2021, seeking enhancement.

10.I have considered the submissions of the counsel for the parties.

11.The fact that the claimant had suffered head injury as a result of which his right limbs has become inactive is established beyond doubt by the discharge summary as well as the Report of the Medical Board. While in the discharge summary, it is stated that the claimant has suffered right hemi plegia, in the disability certificate issued by the Medical Board it is stated that the claimant has suffered right hemi paresis which is synonym of hemi plegia. Hemi plegia results in the limbs on one side of the body becoming inactive. Therefore, the claimant would have to limp while walking and his day-to-day activities would also be severely restricted. Therefore, I do not think that the Tribunal could be faulted for taking the 50% disability assessed by the Medical Board as a functional whole body disability and awarding compensation applying multiplier method



instead of percentage method. As far as income that is adopted, though Mr.Arunkumar would term it as very high, I am unable to accept the contention of the learned counsel.

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12.If we assess the wages taking the wages that is paid to NMR workers of PWD as the basis, the same was around Rs.600/- per day and leaving some allowance for holidays a NMR worker himself would have easily earned Rs.15,000/- per month. The claimant has pleaded that he was doing business in furniture and he has produced the license also. Therefore, I do not think the Tribunal could be faulted for fixing a sum of Rs.15,000/- as monthly income and adding 25% towards future prospects. Thus, I do not see any reason to interfere with the award on the head loss of earning capacity. As far as other heads of conventional damages, I find them to be reasonable and medical expenses have been awarded on the basis of the bills. Therefore, I do not find any reason to interfere with the award as the award on the whole looks very reasonable.

13. In view of the above, both these appeals are dismissed and the award of the Tribunal is confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1.The Motor Accident Claims Tribunal,
III Court of Small Causes,
Chennai.

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

+lcc to Mr.K.Varadhakamaraj, Advocate Sr.5461

+lcc to Mr.S.Arunkumar, Advocate Sr.6131

C.M.A.Nos.3245 and 2762 of 2021

vbm[co]
srg 15/03/2022