BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 08.11.2022

Delivered On : 16.12.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.371 of 2020
and
Cros.Obj(MD)No.1 of 2021
and
C.M.P.(MD)No.65 of 2022

C.M.A.(MD)No.371 of 2020

M/s.Oriental Insurance Co. Ltd.,
HUP.39/40, Saratha Complex,
Northveli Street,
Madurai – 625 001.
(Through its Divisional Manager) .. Appellant/ 2nd Respondent

Vs.

1.Minor.R.Sabarish
rep. through his mother and next
friend R.Jegatha
(amended as per order in I.A.No.174/2019,
dated 15.07.2019) .. 1st Respondent/Claimant
2.D.Sugantha Lakshmi
3.M.Sakthivel .. Respondents2&3/Respondents 1&3

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the order passed in M.C.O.P.No.213 of 2018, dated 24.10.2019, on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate Court, Madurai.

For Appellant	: Mr.C.Jawahar Ravindran
For Respondents	: Mr.K.Mahendran for R1

Cros.Obj(MD)No.1 of 2021

Minor.R.Sabarish
rep. through his mother and next
friend R.Jegatha .. Petitioner / Claimant

Vs.

1. M/s.Oriental Insurance Co. Ltd.,
HUP.39/40, Saratha Complex,
Northveli Street,
Madurai – 625 001.
(Through its Divisional Manager).
2.D.Sugantha Lakshmi
3.M.Sakthivel .. Respondents/Respondents

Prayer: This Cross objection is filed under Order 41 Rule 22 of C.P.C., against the order passed in M.C.O.P.No.213 of 2018, dated 24.10.2019, on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate Court, Madurai.

For Petitioner : Mr.K.Mahendran

For Respondents : Mr.C.Jawahar Ravindran for R1

COMMON JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the award passed in M.C.O.P.No.213 of 2018, dated 24.10.2019, on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate Court, Madurai. The appellant herein is the second respondent-Insurance Company and the first respondent herein is the claimant and the respondents 2 and 3 herein are the respondents 1 and 3 in the original M.C.O.P. Petition.

2. Cross Objection has been filed by the claimant to enhance the award passed in M.C.O.P.No.213 of 2018, dated 24.10.2019, on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate Court, Madurai. The petitioner herein is the claimant and the respondents herein are the respondents in the original M.C.O.P. Petition.

3. A brief substance of the claim petition, in M.C.O.P.No.213 of 2018 , is as follows:

On 19.12.2017, when the petitioner was travelling as a pillion rider in a motorcycle bearing Registration No.TN-59-BS-6003 that was driven by one-Elavarasan from Vellalur to Idayavalasai, the rider of the vehicle drove the vehicle in a rash and negligent manner overtaking a tractor bearing Registration No.TN-59-AX-2809 and hit against the tractor and trailor. The petitioner was thrown out from the motorcycle and he sustained injuries. He sustained fracture in the vertebra, ribs and right femur. He was taken to Meenakshi Mission Hospital and took treatment as in patient, then he took treatment as out patient. The petitioner sustained permanent disability.The petitioner was doing second year Diploma in Mechanical Engineering, in Government Polytechnic College and he could not attend the fourth semester examination. The petitioner claimed a sum of Rs.20,00,000/- as compensation.

4. A Brief substance of the counter filed by the second respondent, in M.C.O.P.No.213 of 2018, is as follows:

No accident has taken place as alleged by the petitioner. The manner of accident narrated in the petition is false. The accident has happened only due to the rash and negligent driving of the driver of the Tractor. The petitioner has to prove his age, injuries and disability. The amount claimed is excessive. The motorcycle was not at all insured with the respondent, at the time of accident. The owner of the vehicle did not inform the accident to the respondent. There is violation of policy condition. The second respondent is not liable to pay compensation.

5. 2 witnesses were examined and 11 documents were marked, on the side of the claimant. No witness was examined and no document was marked, on the side of the respondents.2 documents were marked as Ex.X1 and Ex.X2. After considering both sides, the Tribunal awarded a sum of Rs.14,01,200/- as compensation.

6. Against the order, the second respondent / appellant has filed this appeal, on the following grounds:-

The Tribunal has wrongly applied multiplier method in assessing the compensation for the disability. The Tribunal failed to note that the claimant has not suffered any functional disability. The Tribunal awarded Rs.4,43,400/- towards medical expenses, which is excessive. The total award is excessive.

7. A brief substance of the cross objection is as follows:-

The claimant has sustained 85% disability, the Tribunal is wrong in fixing the yearly income as Rs.60,000/-. The Tribunal has failed to consider that the claimant was doing Diploma in engineering and ought to have fixed the monthly income as Rs.12,000/- per month. The Tribunal has failed to award Rs.2,00,000/- towards matrimonial status, Rs.1,00,000/- towards future medical expenses, Rs.1,00,000/- towards pain and sufferings and prayed the amount to be enhanced.

8. On the side of the Insurance Company, it is stated that it was the driver of the tractor, who was rash and negligent. On the side of the claimant, it is stated that it was the rider of the two wheeler, who was rash and negligent. On the basis of P.W.1 and on the basis of Ex.P.1- copy of F.I.R., the Tribunal has fixed the negligence on the rider of the two wheeler, which is reasonable.

9. On the side of the Insurance Company, it is stated that the Doctor, who gave treatment to the claimant was not examined as a witness before the Tribunal. P.W.2 did not give any treatment to the claimant. The Tribunal is wrong in fixing the functional disability. Disability certificate issued by the Board was not at all marked. The Tribunal is wrong in relying on an unmarked document. Even for an amputation, the maximum disability is fixed only 50% to 60% and only in the case of amputation, functional disability can be fixed. Multiplier method cannot be mechanically applied by the Tribunal. A judgment of this Court reported in 2005-1-TNMAC-87 (DB) (United India Insurance Company V. Veluchamy and another) is cited, wherein, it is stated as follows:-

> *"Bodily injury – Compensation – Assessment – Principles governing – Multiplier method cannot be mechanically applied in all cases of injury or permanent disablement to ascertain future loss of income or earning power. But, depends upon factors such as nature*

and extent of disablement, avocation and extent to which employment or earning power affected. Multiplier method applicable for ascertaining loss of income or earning, if injured lost his employment or avocation completely and has to be idle till rest of life. Even in such cases, no need to adopt same period as that of fatal cases as provided under IInd Schedule. If there is no amputation and likelihood of improvement in future, lesser period may be adopted, mainly id depends upon avocation or nature of employment attended by injured at the time of accident.

10. On the side of the insurance company, another judgment of the Hon'ble Supreme Court reported in 2010-2- TNMAC – 581 (SC) (Raj Kumar V. Ajay Kumar and another) is cited, wherein, it is stated as follows:-

"Ascertainment of effect of permanent disability on actual earning capacity involves three steps; Firstly, the Tribunal to ascertain what activities claimant could carry on, in spite of permanent disability and what he could not do as a result of permanent disability. Secondly, to ascertain avocation, profession and nature of work before the accident and injured/ claimant's age. Thirdly, to find out whether (i) claimant totally disabled from earning any kind of livelihood or(ii) whether in spite of permanent disability claimant could still effectively carry on activities and functions which he was earlier carrying on, or (iii) whether he was prevented / restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities or functions so as to continue to earn his livelihood."

11. On the side of the Insurance Company, a judgment of this Court reported in ***2011-2-TNMAC-174 (National Insurance Company Limited V. B.Rayappan***) is cited, wherein, this Court has set aside the order, applying multiplier method for 40% disability.

12. On the side of the Insurance Company, another judgment of this Court reported in ***2013-2-TNMAC-583 (National Insurance Company Limited V. G.Ramesh)*** is cited, wherein, for 27% disability, this Court has not adopted multiplier method.

13. On the side of the claimant, it is stated that he was referred to the Medical board and the certificate issued by the Medical Board is a Court record. There is no necessity to mark the said certificate, since the same is already available in the Court record. The claimant suffered 85% functional disability, he was aged about 17 years and he was a student, studying Diploma in engineering.

14. On the side of the claimant, a judgment of the Hon'ble Supreme Court reported in 2021-2-TNMAC-790 (SC) (Meena Pawaia V. Ashraf Ali) is cited, wherein, the Hon'ble Apex Court has fixed the monthly income as Rs.10,000/- for a B.E. 3rd year student and after applying 40% future prospects, loss of income was

calculated by adopting multiplier method. The relevant paragraph reads as follows:-

> *" Considering the fact that the deceased had a bright future, income can be fixed at Rs.10,000/- p.m. Addition of future prospects in case of non-earning person. The scope merely because deceased, who was not serving and earning, it cannot be said that his future income is likely to remain static. The rise in cost of living would also affect such a person. Therefore, future prospects to be added as held by the Apex Court in Pranay Sethi at 40% and future loss of income, thus fixed at Rs.14,000/- p.m. The deceased being a bachelor, 50% to be deducted towards personal expenses and multiplier to be applied on the basis of the age of the deceased not age of parents and applying multiplier of 18, loss of income awarded at Rs.15,12,000/- as against Rs.5,40,000/- awarded by the High Court. "*

15. On the side of the claimant, a judgment of this Court reported in ***2017-2-TNMAC-725 (DB) (National Insurance Company Limited V. Senthil Kumar)*** is cited, wherein, this Court fixed the disability at 60% and applied multiplier method.

16. On the side of the claimant, another judgment of this Court reported in ***2014-1-TNMAC-657 (DB) (R.Harrish V. G.Divakaran)*** is cited, wherein, this Court has fixed the income as Rs.12,000/- per month, after adding future prospects, has fixed the loss of income.

17. On the side of the claimant, it is further stated that the injured boy was not able to move and that there were no rebuttal evidence on the side of the insurance company. Doctor was not examined.

18. It is seen that the claimant was referred to Medical Board and the medical board has fixed the disability at 85%. Though the report of the medical board was not marked as a document, it was the Court, who refer the matter to the Medical board and hence, the report of the medical board is to be taken into consideration. Discharge summary was marked as Ex.P2. Medical Certificate was marked as Ex.P7. Letter sent to the Government Polytechnic College was marked as Ex.P8. Photographs were marked as Ex.P10.

19. Considering the disability certificate given by the medical board, it is decided that the claimant is having 85% disability. Considering the fracture in the vertebra, ribs and right femur and considering the age of the claimant, it is decided that the disability fixed by the Tribunal is reasonable. The Tribunal has fixed the income as Rs.60,000/- per annum, on the basis of the dictum of the Hon'ble Supreme Court in ***Aravind Kumar Mishra V. New India Assurance Co. Ltd, reported in-2010-10-SCC-254***.

20. On the side of the claimant, it is stated that the income ought to have fixed as Rs.9,000/- per month. No document was filed on the side of the claimant to prove that the claimant was earning at the time of accident and he was a student, studying diploma in engineering and hence, it is decided that the income fixed by the Tribunal is reasonable. Considering the age of the claimant, multiplier '18' was adopted by the Tribunal and the loss of income was fixed as Rs.9,18,000/-, which is reasonable.

21. Medical bills were marked as Ex.P3, P5 and P6. The Tribunal has awarded Rs.4,43,196/- towards medical expenses, which was rounded off to 4,43,200/-, which is reasonable. The Tribunal has awarded Rs.10,000/- towards transportation, Rs.20,000/- towards pain and sufferings, Rs.5,000/- towards extra nourishment, Rs.5,000/- towards attender charges, which are all reasonable.

22. On the side of the claimant, it is stated that as Rs.1,00,000/- towards pain and sufferings, Rs.1,00,000/- towards future medical expenses and Rs.2,00,000/- towards loss of marriage prospects, to be awarded and the amount to be enhanced.

23. There is no evidence as to possibility of future medical expenses and as to the loss of marriage prospects. The claimant has not claim any amount towards future marriage prospects in the original claim petition. Only in the cross objection, the claimant has raised these points. Hence, the claimant is not entitled for any compensation under these heads.

24. For the above said reasons, it is decided that there is nothing sufficient enough to interfere in the orders of the Tribunal. Hence, both the Appeal and the cross objection are dismissed and the award of the Tribunal is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

(i) The quantum of compensation awarded by the Tribunal is hereby confirmed.

(ii) The Insurance Company, is directed to deposit the entire compensation of Rs.14,01,200/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the Insurance Company, the Tribunal is directed to deposit the compensation amount of the minor claimant / injured in any one of the Nationalised Banks, in a Fixed Deposit scheme, till he attains majority.

The mother and guardian of the minor claimant-Jegatha, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minor. The Claimants is not entitled for interest for the default period, if there is any default.

16.12.2022

Index : Yes/No
Internet : Yes/No
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To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Madurai.

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

R. THARANI, J.

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Pre-delivery Judgment made in

C.M.A.(MD) No.371 of 2020
and
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