IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2023

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.1215 of 2020
and
C.M.P.No.7785 of 2020

The New India Assurance Co. Ltd.,
No.17, Fort Main Road, Second Floor,
Shevapet, Salem 636 002.

...Appellants

Vs

1.K.Subramani
2.P.Kanagaraj
3.3.G.Rangasamy
4.The New India Assurance Co. Ltd.,
No.1360-A, Amman Complex,
1st Floor, Mettur Road,
Erode 638 011
Erode Taluk & District.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 03.09.2019 made in M.C.O.P.No.469 of 2018 on the file of the Motor Accident Claims Tribunal (Special Sub Court), Erode.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : Mr.Amar D.Pandiya,
for Mr.M.Mohamed Riyaz for R1
R2 and R3 – Set *ex parte*
R4 - Notice dispense with.

JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the decree and judgment dated 03.09.2019 made in M.C.O.P.No.469 of 2018 on the file of the Motor Accident Claims Tribunal (Special Sub Court), Erode.

2. The learned counsel appearing for the appellant would submit that he is merely challenging with regard to the compensation awarded towards the permanent disability. Further, he would contend that due to the accident occurred on 07.06.2018, the claimant, who was a lorry driver, was injured and the disability was assessed by Doctor at 61%. The Court below had held that he cannot drive in future and had taken the entire disability of 61% as functional disability and awarded a sum of Rs.17,57,000/- for loss of earning power. However, it appears that the had renewed his driving license recently and the

Transport Department will not renew the driving license without confirming the performance of the driver. Hence, it is clear that now he is in a position to drive. A copy of the renewed driving license of the claimant has also been produced before this Court.

3. Further, the learned counsel would submit that when such being the case, the Tribunal should not have taken into consideration the partial disability as functional disability and at least it should have taken $1/3^{rd}$ of the partial disability as functional disability. Therefore, he would request this Court to award 20% as functional disability for the purpose of compensation for loss of earning power.

4. The learned counsel for the claimant would request this Court to take 30% of functional disability into consideration. However, he had also made a further request to add 20% future prospects, if this Court is inclined to take 20% as functional disability.

5. Heard the learned counsel appearing for the insurance company as well as the claimant and also perused the materials available on recored.

6. No doubt that in the present case, the claimant had sustained injuries. However, at the time of accident, which was occurred in the year 2018, the injured was a lorry driver. Further, it appears that the Tribunal had taken into consideration a sum of Rs.15,000/- as notional income. As contended by the learned counsel for the insurance company, while passing the award, the Tribunal had awarded the compensation for entire disability of 61%, by determining the same as permanent disability. A perusal of the driving license, provided by the learned counsel for the insurance company, would show that now the claimant is able to drive the vehicle.

7. Under these circumstances, this Court is of the considered view that whatever suggested by the learned counsel for the insurance company is just and fair and the Tribunal should not have awarded compensation for the entire disability of 61%, by determining the same as permanent disability. Therefore,

this Court is inclined to award the compensation for 20% of his functional disability and proceed to take the notional income of the injured as Rs.15,000/-. However, the Court below had not awarded any compensation in respect of future prospects. Therefore, this Court is of the considered view that since the age of the injured is 34 years at the time of accident, as held by the Hon'ble Supreme Court in ***National Ins. Co. v. Pranay Sethi & others*** reported in ***2017 (2) TNMAC 609 (SC)***, the further prospects has to be added to an extent of 40%. If 40% future prospects is added, the notional income of the injured will be computed as below:

Rs.15,000 (income) + Rs.6,000 (40% of the income) =Rs.21,000

8. Hence, the loss of income due to disability will be a sum of Rs.4,200/- (Rs.21,000*20%) per month and this Court is inclined to apply the multiplier '16' based on the age of the injured. Accordingly, the compensation for disability will be computed as:

Rs.4,200 (income)*12(months)*16(multiplier)=Rs.8,06,400/-

9. Accordingly, the compensation awarded by the Tribunal is modified as follows:

S.No	***Heads***	***Compensation awarded by Tribunal (Rs.)***	***Compensation awarded by this Court (Rs.)***
1	Loss of Earnings	Nil	Nil
2	Transport to Hospital	10,000	10,000
3	Extra Nourishment	10,000	10,000
4	Attender Charges	10,000	10,000
5	Future Medical Expenses	60,000	60,000
6	Damages for Cloths and Articles	4,000	4,000
7	Medical Expenses	2,87,000	2,87,000
8	Pain and Sufferings	1,00,000	1,00,000
9	Permanent Disability & Loss of Earning Power	17,57,000	8,06,400
	Total	22,38,000	12,87,400

10. Though the learned counsel for the claimant requested this Court to consider for enhancement of compensation with regard to the other heads, this

Court is not inclined to interfere with the compensation fixed by the Tribunal, since the same is just and fair. Only with regard to the loss of earning power and permanent disability, the compensation awarded by the Tribunal of Rs.17,57,000/- stands reduced to Rs.8,06,400/- and with regard to all the other aspects, the award passed by the Tribunal stands confirmed.

12. The learned counsel appearing for the insurance company would submit that 50% of compensation awarded by the Tribunal had already been deposited by the insurance company.

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the appellant/insurance company is directed to deposit the additional amount, if any, based on the present revision of award, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of MCOP.No.469 of 2018 on the file of the Motor Accident Claims Tribunal, (Special Sub Court) Erode. The Tribunal is directed to transfer the entire amount to the claimant by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained for the

claimant or application for withdrawal from the claimant, whichever is earlier. Consequently, the connected miscellaneous petition is also closed. No costs.

11.07.2023

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

To:
The Motor Accident Claims Tribunal,
(Special Sub Court) Erode

KRISHNAN RAMASAMY,J.

nsa

C.M.A.No.1215 of 2020
and C.M.P.No.7785 of 2020

11.07.2023