



CMA.No.2708 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2023

CORAM:

The HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.2708 of 2012
and M.P.No.1 of 2012

The New India Assurance Co. Ltd.,
Kongu Complex, Opp Bus Stand,
34/35, by-Pass Road,
Dhrapuram, Erode District.

...Appellant

Vs.

1. Viswanathan

2. Duraiswamy

3. Subramaniam

...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 20.12.2011 made in MCOP.No.947 of 2007 on the file of the Motor Accident Claims Tribunal (Fast Track Court No.IV), Coimbatore at Tirupur.

For Appellant : M/s.J.Chandran

For Respondents : M/s.MA.P.Thangavel for R1



CMA.No.2708 of 2012

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JUDGMENT

This Civil Miscellaneous Appeal is filed by the Insurance Company challenging the liability fixed on them and also challenging the quantum passed in MCOP.NO.947 of 2007 on the file of Motor Accident Claims Tribunal (Fast Track Court No.IV), Coimbatore at Tripur.

2. The parties are referred to hereunder according to status and ranking before the Tribunal.

3. Brief facts of the case leading to the Appeal are as follows:

On 16.04.2007 at about 11.00 p.m., the petitioner was riding his two wheeler bearing Registration No.TN 39 J 7087 near Veerapandi pirivu at Palladam Road, at that time a van bearing Registration No.TN 39 C 5171 came in opposite direction in a rash and negligent manner and hit against the the two wheeler causing severe injuries to the rider of the two wheeler. A Criminal case was also registered against the driver of the van in Crime No.244 of 2007 under Section 279, 337 of IPC before the Tirupur Rural Police Station. Therefore, the claimant has filed a claim



CMA.No.2708 of 2012

petition claiming a compensation of Rs.6,00,000/- as compensation.

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4. The first respondent who is the owner of the vehicle remained exparte and has not contested the claim petition before the Tribunal.

5. The second respondent has filed counter and contended that the petitioner was responsible for the accident and there was no rash and negligent act on the part of the driver of the first respondent's vehicle. It is also contended that the driver of the van was not having valid driving license at the time of accident, hence the second respondent is not liable to pay the compensation and the claim made is also on higher side and prays to dismiss the petition.

6. Before the claims Tribunal, on the side of claimants P.W.1 to P.W.3 were examined and exhibits Exs.A.1 to A.12 were marked in support of their claim. On the side of the respondents R.W.1 was examined and exhibits Exs.B.1 and B.2 were marked in support of their contention.

7. After considering the evidence placed on record, the Tribunal in



CMA.No.2708 of 2012

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Point No.1 has held that driver of the van belonging to the first respondent was responsible for the accident and the first and second respondents were liable to pay the compensation to the claimant.

8. In Point No.3, Tribunal has assessed the quantum of compensation for the disability sustained and awarded a sum of Rs.4,75,600/- along with interest at the rate of 7.5% p.a from the date of petition till the date of realization, excluding the interest for the default period from 08.07.2010 to 16.12.2010. Aggrieved over the award passed by the Tribunal, the insurance company has filed this Appeal challenging both liability as well as quantum.

9. The learned counsel for the insurance company has submitted that there was no driving license for the driver of the van at the time of accident and in support of the above submissions, they have also examined the officials from the insurance company, but the Tribunal has not properly appreciated the evidence adduced on the side of the insurance company and wrongly held that the insurance company has failed to prove the contention that the driver of the van was not having



CMA.No.2708 of 2012

WEB COPY

valid driving license at the time of accident. She would also submit that the multiplier method adopted is unwarranted and the injuries sustained by the claimant shows that it is not a case of functional permanent disability and assessment made by the Doctor is also on the higher side. In support of her contention, judgment of the Hon'ble Apex Court in ***Raj Kumar vs. Ajay Kumar and another***, 2011 (1) SCC 343 is relied on and prays to set aside the award.

10. Learned counsel for the claimant has submitted that there is no sufficient evidence adduced on the side of the insurance company to prove that the driver of the van does not possess valid driving license at the time of accident and the Tribunal has properly appreciated the evidence of the Doctor who assessed the disability of the claimant and rightly awarded the compensation. He would also submit that the Tribunal has failed to award the compensation under the head future prospects, hence prays to enhance the compensation.

11. I have considered the submissions made by the counsel appearing on both sides and also perused the materials placed on record.



CMA.No.2708 of 2012

WEB COPY

12. To prove the fact that the driver of the van was not having valid driving license at the time of accident, insurance company officials examined as R.W.1 Insurance Official and he stated before the Tribunal that driver of the first respondent was not having driving license to drive the vehicle at the time of accident. Through him the investigation report as well as the policy of the van was marked. The insurance company has not taken any steps to get any information regarding the license either from first respondent or from the driver of the vehicle, by issuing notice. Similarly the officials from the Regional Transport office was not examined by the insurance company to prove that the driver of the first respondent was not having valid license at the time of accident. In the absence of any evidence, the Tribunal has rightly held that the insurance company has failed to prove the fact that driver of the van was not having valid driving license. The burden is on the side of the insurance company to prove that the driver of the van was not having valid driving license at the time of accident, however the insurance company has failed to prove the same.



CMA.No.2708 of 2012

WEB COPY

13. P.W.3, Dr.Senthil Kumar, Ortho Surgeon who was working in Coimbatore Medical College Hospital, Coimbatore, was examined on the side of the claimant. He has recorded in the disability certificate that the claimant has suffered head injury in right forehead bone depressed fracture, right frontal contusion, fracture in maxilla and fracture lateral left ankle. He has also recorded that tenderness was present over left ankle, forehead, muscle power left leg at 4/5 and fixed permanent disability at 62.7%. Based on the above evidence, the Tribunal has also accepted the disability of the claimant as 62.7%. This Court by considering the guidelines given by the Hon'ble Apex Court in Raj Kumar vs. Ajay Kumar and another, 2011 (1) SCC 343, has considered the case of the claimant herein. The claimant was a Driver and his driving license is also marked as Ex.A.7 to show that he is driver by profession. The claimant has claimed that he was earning Rs.6,000/- per month but no evidence was produced before the Court to prove his monthly income. Hence, the Tribunal has fixed Rs.3,000/- as notional income considering the year in which the accident was taken place. The



CMA.No.2708 of 2012

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Tribunal also held that due to the hole in the frontal skull which causing regular head ache and consequently he used to get fits, which prevented him from continuing his earlier avocation as driver, thereby he has lost the earning capacity by doing his profession. This Court finds there is no infirmity in such finding. The claimant has suffered head injury, fracture in right bone deprement fracture in Maxilla, fracture in lateral left Ankle which also resulted in changing his physical condition and consequential effects of these injuries also shows that the claimant cannot continue any work which involves in hard manual labour. I am of the view that considering that the claimant was aged about 42 years and his incapacity to do their earlier avocation, fixing the disability as 35% would be appropriate for the reduction of earning capacity. Therefore, the loss of income would be $[3000 \times 12 \times 15 = 5,40,000 \times 35\%] = \text{Rs},1,89,000/-$ The Claimant is also entitled for 25% of Future Prospects as held by Apex Court in ***Erudhaya Priya vs State Express Transport Corporation***, reported in AIR 2020 SUPREME COURT 4284 award of 25% of 47,250/-



CMA.No.2708 of 2012

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14. Eventhough, the claimant has not filed an appeal for enhancement, it is settled law that, when quantum is challenged, the Court has to award just compensation. Even though the claimants claimed lesser amount than the just compensation quantified, it is duty of Tribunal or court to award the compensation as quantified. The Tribunal after treating the injury/disability as permanent disability, it ought to have awarded compensation under the head, loss of amenities attendant charges but same were not awarded. Accordingly this court is inclined to award Rs.30,000 as loss of amenities and Rs.5000/- towards attendant charges. The Tribunal has awarded Transportation charges and Nutrition and the same is enhanced to Rs.5000/- as Rs.15,000/- respectively.

15. In the light of the above discussion, the award of the Claims Tribunal is modified as follows:

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
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CMA.No.2708 of 2012

1.	Loss of income	3,38,580/-	2,36,200/-	Enhanced
2.	Pain and Sufferings	30,000/-	30,000/-	Confirmed
3.	Nutrition	5,000/-	15,000/-	Enhanced
4.	Transport to Hospital	1,500/-	5000/-	Enhanced
5.	Medical Expenses	1,00,520/-	1,00,520/-	Confirmed
6.	Loss of Am entities	-	30,000/-	Awarded
7.	Attendant Charges	-	5000/-	Awarded
8.	Damages to cloth	-	1000/-	Awarded
	Total	Rs.4,75,600/-	Rs.4,22,770/-	

16. In fine, the claimant would be entitled to an reduced compensation of Rs.4,22,770/-. The 1 to 3 respondents are jointly and severally directed to pay the petitioner as compensation of Rs.4,22,770/- with interest at the rate of 7.5% p.a., from the date of the petition to the date of realization, less any amount if already paid. The 3rd respondent is directed to deposit the amount within two months from the date receipt of copy of this order. On such deposit, the claimant would be entitled to withdraw the said amount by making appropriate application before the Claims Tribunal and no interest for a default period from 08.07.2010 to 16.12.2010.



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CMA.No.2708 of 2012

17. Accordingly, this Civil Miscellaneous Appeal is dismissed.

Consequently, connected miscellaneous petition is closed. No costs.

Index : Yes/No
Speaking Order: Yes/No
Neutral Citation: Yes/No
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03.08.2023

To

- 1.The Motor Accidents Claims Tribunal,
(Fast Track Court No.IV, Coimbatore at Tirupur.
- 2.The Section Officer,
VR Section, Madras High Court.



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CMA.No.2708 of 2012

K.RAJASEKAR, J.

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C.M.A.No.2708 of 2012

03.08.2023