THE HIGH COURT OF JUD ICATURE AT MADRAS

DATED: 10.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.M.A.No.944 of 2022
and
C.M.P.Nos.7025 & 25048 of 2023
and Cros.Obj.No.82 of 2023

CMA.No.944 of 2022

The Oriental Insurance Co. Ltd.,
Oriental House, 2nd Floor,
Old No.115, New No.216, Prakasam Salai,
Broadway, Chennai - 600 108. ...Appellant

Vs.

1.Sheik Davuth

2.Hemavathy Ramakrishnan ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 18.11.2021 made in MCOP.No.1738 of 2017 on the file of the Motor Accidents Claims Tribunal (Special Sub-Court No.2 / Court of Small Causes), Chennai.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.J.Chelladurai Caldwell for R1

R2 - No Appearance

Cros.Obj.No.82 of 2023

Sheik Davuth ...Applicant

Vs.

1.The Oriental Insurance Co. Ltd.,
Oriental House, 2nd Floor,
Old No.115, New No.216,
Prakasam Salai, Broadway,
Chennai - 600 108.

2.Hemavathy Ramakrishnan ...Respondents

Prayer:- Cross Objection filed under Order 41, Rule 22 of C.P.C., against the CMA.No.944 of 2022 in MACTOP.No.1738 of 2017 and against the award and decree dated 18.11.2021 made in MACTOP No.1738 of 2017 on the file of the Motor Accidents Claims Tribunal (Special Sub-Court No.2 / Court of Small Causes), Chennai.

For Applicant : Mr.J.Chelladurai Caldwell

For Respondents : Mr.D.Bhaskaran for R1

No Appearance for R2

JUDGMENT

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

This appeal is at the instance of the Insurance Company, challenging the award of the Tribunal dated 18.11.2021 made in MCOP.No.1738 of 2017 granting a sum of Rs.48,77,700/- for the injuries suffered by the claimant in a road accident that occurred at about 11.15 p.m. on 10.02.2017.

2.The claimant was a pillion rider in a motor cycle when the accident occurred. According to the claimant, while he was riding as a pillion rider in a motor cycle bearing Registration No.TN-11-H-7680 proceeding from South to North on the left side of the Rajiv Gandhi salai near Akshya Homes Pvt. Ltd., Perungudi, a car bearing Registration No.TN-07-BK-1510 driven by its driver in a rash and negligent manner came from behind and hit the motor cycle. As a result of the accident, the claimant sustained grevious injuries. Contending that the injuries had resulted in a complete disability and total loss of earning power, the claimant sought for a compensation of Rs.2,26,53,000/-. The quantum was supported by the plea that the claimant is a qualified Civil Engineer and was earning around Rs.26,000/- per month as an Employee and also doing private consultancy work in contract works, through which he earned more than Rs.50,000/- per month.

3.The claim was resisted by the Insurance Company contending that the accident did not occur in the manner suggested by the claimant and the rider of the two wheeler was also responsible for the accident in as much as he contributed to the accident by his reckless driving. The Insurance Company also denied the nature of the injuries and the quantum of disability claimed. The claimant was also put to strict proof of his income.

4.At trial, the claimant was examined as P.W.1 and one Hitish Jain, proprietor of Patel Interiors was examined as P.W.2. Exs.P1 to P45 were marked. The disability certificate issued by the Medical Board was marked as Ex.C1. The Tribunal, on consideration of the evidence that was placed on record, particularly, the First Information Report that was marked as Ex.P5 concluded that the accident occurred due to the rash and negligent driving of the driver of the car. The Insurance Company also aided the said finding by not letting in any evidence on the question of negligence..

5.On the quantum, the Tribunal fixed the monthly income at Rs.26,000/- based on Exs.P3, P4 and P41 to P45. It added 40% towards future prospects and arrived at the monthly income at Rs.36,400/-. The Tribunal assessed the functional disability at 50% and arrived at the total loss of earning power at Rs.39,31,200/- (Rs.4,36,800/- x 18 x 50/100). It also awarded a sum of Rs.8,47,874/- for medical expenses based on bills, which were marked as Exs.P8 to P16 and P18. The Tribunal also awarded a sum of Rs.40,000/- each towards pain and suffering and loss of amenities, Rs.5,000/- towards Transportation, Rs.10,000/- towards extra nourishment and Rs.3,600/- towards attender charges. Thus, the total compensation worked out to Rs.48,77,674/- and the same was rounded off to Rs.48,77,700/-. Aggrieved, the Insurance Company is on appeal.

6.Heard Mr.D.Bhaskaran, learned counsel appearing for the appellant / Insurance Company and Mr.J.Chelladurai Caldwell, learned counsel appearing for the 1st respondent. Though served, none appears for the 2nd respondent.

7.Mr.D.Bhaskaran, learned counsel appearing for the Insurance Company would make an attempt to argue on the question of negligence but the total absence of evidence on the side of the Insurance Company would deter him from arguing the question of negligence. Therefore, the learned counsel would concentrate the quantum of compensation. While conceeding the fact that the claimant had suffered injuries, which may have a bearing on earning power, Mr.D.Bhaskaran would submit that the nature of injuries may not result in 50% functional disability, considering the avocation of the claimant. He would point out that the major injuries were in the facial bones namely, Zygomatic Fracture and Orbital Fracture. The other injuries are not very serious, being an amputation of the Thumb, Metacarpl Fracture and Right Brachial Plexes. These injuries, according to Mr.D.Bhaskaran would not result in functional disability therefore, though the Medical Board has assessed the disability at 90%, the functional disability cannot be 50%. He would also contend that the Tribunal was not right in fixing the income at

Rs.26,000/-.

8.In the absence of any other evidence except Exs.P41 to P45, the learned counsel would press in to service a the copy of the Form-26 AS that was provided by the injured to the Insurance Company to contend that his income has not been reflected in the said Form 26AS. Therefore, according to Mr.D.Bhaskaran, the Tribunal was not right in taking the income at Rs.26,000/- per month and the functional disability at 50% by the Tribunal is excessive.

9.Contending contra, Mr.J.Chelladurai Caldwell, learned counsel appearing for the claimant would submit that the perusal of the discharge summaries, which have been marked as Exs.P27 & 28 issued by reputed Medical Institutions in the city would show that apart from the fracture of the facial bones, there is a near total amputation of the left thumb and a right brachial plexes of C7 & C8 and there has been a nerve root avulsion, which has a serious effect on the functioning of the right upper limb. Therefore, the Tribunal was justified in arriving at the functional disability at 50%.

10.The learned counsel appearing for the appellant would also draw our attention to the contents of the discharge summaries referred to above to butress his claim regarding the effect of the injuries. On the salary, the learned counsel would submit that the claimant had averred in the claim petition as well as the proof affidavit that he was working with Barath Building Construction (India) Private Limited till May, 2016. Thereafter, he had shifted to a new Employer at a lesser salary because he was allowed to doing his private business also, being a Civil Engineer.

11.The learned counsel would also draw our attention to the Form 26AS and claim that between July 2016 and November 2016, he has received more than Rs.3,56,000/- from other sources apart from his Employment. This being the turn over for the period less than a year would definitely be an indicator to the fact that the claimant would have earned at least Rs.26,000/- per month. Therefore, according to the learned counsel, the Tribunal cannot be faulted for having arrived at the loss of earning power at Rs.39,31,200/-. The learned counsel for the respondent would submit that fixation of Rs.26,000/- as a monthly income by the Tribunal is on the lower side and considering the fact that the claimant was doing other contracts also, the Tribunal should have fixed the monthly income at a higher rate. He has also filed a cross-objection seeking higher compensation. We have considered the rival submissions.

12.On the question of disability, we find that the Tribunal has taken into account the relevant factors and fixed the disability at 50%. The functional disability always depends on the avocation of the injured. In the case on hand, the injured is a Civil Engineer, who has to spend a lot of time on site and he is also required to draw plans and working drawings. The facial injury, particularly, on the zycomatic bone and the orbital bone will defintiely have an effect on his endurance on site. The avulsion that is caused in C7 & C8 would have a lasting effect on the function of the right upper limb, which would definitely impact his work as a Civil Engineer. The metacarpl fracture on the right hand also will have an effect on his ability to draw plans and working drawings. Therefore, we are unable to fault the Tribunal for having fixed the functional disability at 50%.

13.Though the learned counsel for the respondent would submit that the Medical Board has assessed the disability at 90%, the Tribunal was not right in fixing the disability at 50%, the disability assessed by the Medical Board is a over all phenomena and the Tribunal has to consider the functional disability only because it is the functional disability which has the impact on the earnings and the compensation has to be determined for the loss of earning power only. We therefore, affirm the finding of the Tribunal that the functional disability would be 50%.

14. As regards income, the pay slips have been marked as Exs.P41 to P45 and the pay slip for the month of February, 2016 is marked as Ex.P4 and the order of appointment marked as Ex.P3. There is no evidence to show the income.

15.No doubt, the income tax returns, which were marked as Exs.P34, P35, P36 & P37 are sought to be pressed in to service by the learned counsel for the respondent. The Tribunal has rightly disbelieved the returns on the ground that the returns are filed after the accident. We do not see any reason to disagree with the Tribunal on its conclusion. Though Form 26AS has been produced before the Insurance Company and the same has not been made a part of the record in the proceeding before the Tribunal. We are therefore, unable to accept the contention of the learned counsel for the respondent that the Tribunal erred in fixing only Rs.26,000/- as monthly income while we reject contention of the learned counsel for the appellant that it is on the higher side.

16.As far as the compensation granted on other heads also, we do not find any reason to interfere with the quantum. May be, if we are to make an microscopic examination, there may be a little increase on one head and a little reduction on the other head but on the whole, we find that the compensation is just and reasonable. Hence, we do not see any ground to interefere with the award of the Tribunal. This Civil Miscellaneous Appeal and the Cross-objection therefore, fail and they are accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

17.It is stated that the Insurance Company has deposited 50% of the compensation with proportionate interest. The claimant is permitted to withdraw the same. The Insurance Company will have eight weeks time to deposit the balance amount along with proportionate interest and the costs awarded by the Tribunal. The Claimant is permitted to withdraw the said sum also.

(R.S.M.,J.) (N.S.,J.)
10.11.2023

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Internet:Yes
Index:No
Speaking
Nuetral Citation :No

To:-

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