IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.No.1755 of 2020
and
C.M.P.No.12888 of 2020

United India Insurance Company Limited,
No.19/2, Navrang Plaza,
IInd Floor, Opp. LGB Petrol Bunk,
Karur – 639 002. .. Appellant

Vs.

1.Vadivel

2.Mogan .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.02.2020 made in M.C.O.P.No.374 of 2017 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Dharmapuri.

For Appellant : Mr.C.Paranthaman

For R1 : Mr.D.Ramesh Kumar

For R2 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the award dated 13.02.2020 made in M.C.O.P.No.374 of 2017 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Dharmapuri, challenging the liability and quantum.

2.The appellant herein is the 2nd respondent in M.C.O.P.No.374 of 2017 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Dharmapuri. The 1st respondent herein filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the road accident that occurred on 29.04.2017.

3.The Tribunal considering the oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver-cum-owner of the Tata Ace, the 2nd respondent herein and directed the appellant-Insurance Company to pay a sum of Rs.3,30,033/- as compensation to the 1st respondent.

4.The learned counsel for the appellant/Insurance Company would contend that at the time of accident, the insured vehicle bearing Registration No.TN 47 Z 1482 had no valid fitness certificate and the driver of the vehicle had plied the same without valid fitness certificate and therefore, the appellant is not liable to pay any compensation to 1st respondent. The 1st respondent also contributed to the accident since, he has not marked the driving license and insurance particulars and the FIR registered against the driver of the insured vehicle was closed as mistake of fact as per the evidence of police official based on the final report. The Tribunal accepted the disability certificate issued by the Medical Board and awarded compensation for 10% disability by adopting multiplier method. In addition to awarding compensation for disability by adopting multiplier method, the Tribunal also has awarded compensation for loss of earning capacity, for which the 1st respondent is not entitled to. The compensation awarded under other heads are exaggerated and prayed for setting aside the award of the Tribunal.

5.The learned counsel for the 1st respondent / claimant would contend that the accident has occurred only due to negligent driving by the driver of the insured vehicle and the Tribunal considering the same, rightly held that the accident occurred only due to rash and negligent driving by the driver-cum-owner of the Tata Ace vehicle. The Medical Board, Dharmapuri examined the 1st respondent and certified that the 1st respondent suffered 10% permanent disability and the Tribunal considering the same, has awarded compensation for disability by adopting multiplier method and the same is not excessive. The 1st respondent has taken treatment at two different hospitals, due to which, he has not attended his work for the said period and hence, the compensation awarded by the Tribunal for loss of earning is reasonable. The Tribunal considering the nature of injuries sustained, disability suffered and period of treatment taken by the 1st respondent has awarded a sum of Rs.3,30,033/- as compensation to the 1st respondent which is not excessive and prayed for dismissal of the appeal.

6.Though notice has been served on 2nd respondent and his name is printed in the cause list, there is no representation for him.

7.Heard Mr.C.Paranthaman, learned counsel for appellant and Mr.D.Ramesh Kumar, learned counsel for 1st respondent and perused the materials on record.

8.From the materials on record, it is seen that it is the contention of the learned counsel for appellant that on the date of accident, the insured vehicle plied without valid fitness certificate and hence, the appellant-Insurance Company is not liable to pay compensation.

9.The appellant – Insurance Company, being the insurer of the Tata Ace vehicle belonging to 2nd respondent is not entitled to raise new grounds in the appeal without any pleadings in the counter statement.

10.It is well accepted principle of law that a party to the proceeding is not permitted to raise new ground in the appeal without there being any pleading. Therefore, the above said ground raised by the appellant that on the date of accident, the insured vehicle plied without valid fitness certificate is not acceptable.

11.It is the further case of the appellant that the 1st respondent also contributed to the accident since, he has not marked the driving license and insurance particulars and the FIR registered against the driver of the insured vehicle was closed as mistake of fact as per the evidence of police official based on the final report. As far as this contention is concerned, the 1st respondent has lodged a complaint against the 2nd respondent, based on which FIR was registered against the 2nd respondent, which was marked as Ex.P1 and also the 1st respondent appeared before the Tribunal and deposed as P.W.1. Further, the 2nd respondent has not appeared before the Tribunal, but remained exparte. The Tribunal considering the said facts, held that the accident has occurred only due to rash and negligent driving by 2nd respondent and the said finding does not need any interference by this Court.

12.From the available materials, it is seen that in the accident, the 1st respondent sustained fracture at right leg knee, grievous injury inside chest and fracture of right hip bone. For the injuries sustained by the 1st respondent in the accident, he has taken treatment in the Ganga Medical Center Hospital, Coimbatore and also at DNV Ortho Care Hospital, Dharmapuri and produced Exs.P2 & P6 / discharge summaries to that effect. The Medical Board, Dharmapuri examined the 1st respondent and certified that the 1st respondent suffered 10% permanent physical disability and issued disability certificate, which was marked as Ex.C1. At the time of accident, the 1st respondent was aged 35 years and was said to be working as Mason. On clinical examination of the 1st respondent, the Medical Board found that the 1st respondent would find difficulty in walking, to sit cross legged. The Tribunal considering Ex.C1 / disability certificate and the findings of the Medical Board, adopted multiplier method and awarded compensation for disability. For application of multiplier method in injury cases, the relevant judgments are as follows:

13.In ***Rajkumar Vs. Ajaykumar*** reported in [***2011 (1) SCC 343***], wherein the Hon'ble Apex Court has held that disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (`Disabilities Act' for short). But if any of the disabilities enumerated in section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

14.In **Civil Appeal No.7223 of 2010**, [**Yadava Kumar Vs. The Divisional Manager, National Ins. Co. Ltd., and another**], wherein the Hon'ble Apex Court held that in this case, the appellant has sustained a fracture of distal end of left radius with fracture of left ulnar styloid process and fracture distal end of right radius with mild diastosis and soft tissues swelling around wrist joint. The doctor has assessed the disability at 33% in respect of the right upper limb and 21% towards left upper limb and 20% in respect of the whole body, which prevents the appellant from painting in view of multiple injuries sustained by him.

14(i).The Hon'ble High Court while granting compensation refused to award any amount towards loss of future earning. Though that point was specifically urged before the Hon'ble High Court, the Hon'ble High Court refused any compensation towards loss of future earning by, inter alia, holding that: "We are of the view that, the said submission has no force for the reason that, the appellant has not produced an iota of document to substantiate his stand."

14(ii).While assessing compensation in accident cases, the High Court or the Tribunal must take a reasonably compassionate view of things. It cannot be disputed that the appellant being a painter has to earn his livelihood by virtue of physical work. The nature of injuries which he admittedly suffered, and about which the evidence of PW-2 is quite adequate, amply demonstrates that carrying those injuries he is bound to suffer loss of earning capacity as a painter and a consequential loss of income is the natural outcome.

14(iii).It goes without saying that in matters of determination of compensation both the Tribunal and the Court are statutorily charged with a responsibility of fixing a `just compensation'. It is obviously true that determination of a just compensation cannot be equated to a bonanza. At the same time the concept of `just compensation' obviously suggests application of fair and equitable principles and a reasonable approach on the part of the Tribunals and Courts. This reasonableness on the part of the Tribunal and Court must be on a large peripheral field. Both the Courts and Tribunals in the matter of this exercise should be guided by principles of good conscience so that the ultimate result become just and equitable.

15.From a perusal of the observations of the Hon'ble Apex Court, if a person suffers from permanent disability either partial or total, after the period of treatment and recuperation and if it affects his performance to attend to his duties and bodily functions, depending upon the age, work or avocation and the impact and effect of the disability, etc., the Tribunal / Court is justified in invoking multiplier method while calculating compensation.

16.This Court is also conscious of the fact that the object of the fact namely ordering of just compensation. In the course of said exercise, the compensation should neither be bonanza nor should it be pittance (or) modicum.

17.It is also pertinent to note that as Mason, due to the post effects of the fracture, the injured would have difficulties in bending and lifting of objects and while doing his work by climbing on ladder. Therefore, one cannot deny the fact that the injured will not be in a position to do the work as he did before. Hence, adoption of multiplier method by the Tribunal appears to te proper and acceptable.

18.Further, it is seen from the award of the Tribunal that in addition to awarding compensation by adopting multiplier method, the Tribunal also awarded compensation for loss of earning for four months at the rate of Rs.6,000/- per month and the same is not certainly not correct. When compensation is awarded for disability by adopting multiplier method, the compensation for loss of earning did not arise. Therefore, the compensation awarded by the Tribunal for loss of earning is hereby set aside. Further, the compensation awarded by the Tribunal towards extra nourishment also seems to be on the higher side and hence, the same is reduced to Rs.20,000/-. The amounts awarded by the Tribunal under other heads appears to be reasonable and hence, they do not need any interference by this Court. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	1,15,200/-	1,15,200/-	Confirmed
2.	Loss of earning	24,000/-	-	Set aside
3.	Pain and sufferings	35,000/-	35,000/-	Confirmed
4.	Extra nourishment	30,000/-	20,000/-	Reduced
5.	Attendant charges	10,000/-	10,000/-	Confirmed
6.	Medical expenses	1,04,833/-	1,04,833/-	Confirmed
7.	Transportation	10,000/-	10,000/-	Confirmed
8.	Damages to clothes	1,000/-	1,000/-	Confirmed
	Total	**Rs.3,30,033/-**	**Rs.2,96,033/-**	**Reduced by Rs.34,000/-**

19.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,30,033/- is hereby reduced to Rs.2,96,033/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.374 of 2017 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Dharmapuri. On such deposit, the 1st respondent is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any already withdrawn by making necessary cheque application before the Tribunal. The appellant-Insurance Company is permitted to withdraw the excess amount lying in the credit of M.C.O.P.No.374 of 2017, if the entire award amount has been already deposited by them. Consequently the connected Miscellaneous Petition is closed. No costs.

19.06.2023

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Index : Yes / No
Internet : Yes / No

R.KALAIMATHI, J.

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To

1.The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Dharmapuri.

2.The Section Officer,
VR Section, High Court,
Madras.

C.M.A.No.1755 of 2020

19.06.2023