IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2023

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.1726 of 2020
and
CMP.No.12781 of 2020

United India General Insurance Co. Ltd.,
Having its Divisional Office at:
Kandasamy Shopping Complex,
Chitrakoodam, No,144-B, Kalpana Road,
Udumalpet – 642 216, Tituppur District.
...Appellant

Vs.

1. N.Lakshmanasamy @ Lakshmanan

2. S.Ravi

3. A.Abbas Mohammed

4. R.Santhakumar

5. M/s. Suguna Poultry Farm Ltd.,
Having its office at No.25, Nehru Street,
Udumalpet – 642 126, Tiruppur District.

5. SBI General India Insurance Co. Ltd.,
Having its Office at "Natraj" 101, 201 & 301,
Junction of Western Express Highways &
Andheri Kurla – Road,

Andheri (East), Mumbai – 400 069. ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, as against the award and decree passed in M.C.O.P.No.385 of 2017 dated 14.02.2020 on the file of the Motor Accidents Claims Tribunal, (Special Subordinate Judge), Erode.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.N.Somasundaar, for R6
: No Appearance, for R1 to R5

JUDGMENT

This Civil Miscellaneous appeal has been filed challenging the award and decree passed in M.C.O.P.No.385 of 2017 dated 14.02.2020 on the file of the Motor Accidents Claims Tribunal(Special Subordinate Judge), Erode.

2. The case of the appellant is that, the 1st respondent filed a claim petition claiming a compensation of Rs.7,00,000/-on the ground that, on 29.02.2016 at about 06.30 pm., when the 1st respondent was driving his Maruti Omni van bearing Regn.No.TN-37-AT-1590 and after proper indication, when he swerved the van to its right, the Eicher van bearing Regn.No.TN-40-W-2034, owned by the 5th respondent insured with the 6th

respondent, driven by the 4th respondent came in the opposite direction and in order to avoid dashing against the said eicher van, when the 1st respondent stopped his vehicle, the Maxi cab bearing Regn.No.TN-32-V-7391 owned by the 3rd respondent insured with the appellant/insurance company, driven by the 2nd respondent in a rash and negligent manner came in the same direction and dashed against the Maruti Omni van driven by the 1st respondent, as a result of which, the 1st respondent sustained grievous injuries all over his body and got admitted in the hospital. Thereby, the 1st respondent filed a claim petition claiming compensation for the injuries and loss of income sustained by him. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.8,94,000/- and fastened the entire liability as against the appellant. Aggrieved with the said order, the appellant has come up with this appeal, questioning its liability.

3. Learned counsel for the appellant submitted that, the above said accident happened solely due to the rash and negligent driving of the 1st respondent/claimant. While so, merely because the FIR came to be registered as against the 2nd respondent/driver of the appellant insured vehicle, the

tribunal had fastened the entire liability as against the appellant, which is not sustainable, since FIR is not a substantive document and whatever is spoken in the FIR need not be taken at its face value and the FIR may not and need not contain all the details and it is settled law that FIR is not a conclusive proof nor is an encyclopedia for deciding the case and it is only to set the criminal law in motion and no further. Further, though the claimant claimed that at the time of accident the claimant was aged about 29 years and was doing fitter work in a private spinning mill and was earning a sum of Rs.15,000/- per month and due to the injuries sustained by him, he is unable to continue his avocation which he was carrying on before the accident, however, it is pertinent to note from the disability certificate issued by the Medical board that, the 1st respondent/ claimant sustained 30% permanent disability. While such being the case, the tribunal had adopted the multiplier method, as if the disability sustained by the claimaint is of functional in nature and awarded a compensation of Rs.6,86,000/- under the head Loss of earning power and disability, which is not sustainable. Further, the compensation awarded under other heads are also on higher side and the same has to necessarily be interfered with.

4. On the above said contentions, heard learned counsel appearing for the 6th respondent and perused the material documents placed on record.

5. Though notice was served and the names of the respondents 1 to 5 were printed in the cause list, however, none appeared on their behalf. Considering the period of pendency of this appeal, this Court is inclined to dispose of the same based on the available materials.

6. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant is with regard to the quantum of compensation awarded. It is claimed by the appellant that though the 1st respondent had sustained only a permanent disability of 30%, the tribunal had adopted multiplier method for awarding compensation under the head loss of earning power due to disability, which is not sustainable.

7. A perusal of Exs.C1 & C3, Disability certificates and Ex.P7, wound certificate makes it clear that, due to the accident, the 1st respondent

sustained Right Tibia shaft segmental fracture with fibula fracture, right foot compound grade III A medical cunieform fracture and contused laceration wound with exposed bone and muscles medial aspect of foot and this document would clearly prove that the 1st respondent can resume his job after his treatment and that the said injury sustained by him would not have any impact on the job performed by the claimant as also his earning capacity. Further, no oral or documentary evidence was submitted by the 1st respondent to show that he was discontinued from his job and only if the 1st respondent is not able to perform his avocation which he was carrying on before the accident, then the Tribunal can very well adopt the multiplier method for awarding compensation. In the absence of any proof, a compensation of Rs.6,86,000/- awarded by the tribunal under the head "Loss of Earning Capacity and disability" by considering the disability sustained by the claimant as functional disability is wholly perverse and not sustainable and the same requires to be interfered with.

8. Hence, considering the deposition made by CW1, Doctor and also taking into account the nature of injuries suffered by the 1st respondent, this

Court fixes the disability sustained by the 1st respondent at the rate of 30% and fixes a sum of Rs.5,000/- per percentage of disability. Therefore, the amount under the head of "Permanent disability and Loss of Earning capacity" stands modified to a sum of Rs.1,50,000/- (30% x Rs.5,000/- = Rs.1,50,000/-).

9. Similarly, though the 1st respondent had claimed that he is working in a private spinning mill and was earning a sum of Rs.15,000/- per month, however, except the oral submission, no other documentary evidence has been submitted by the claimant to prove his monthly income. Hence, this Court fixes the monthly income of the 1st respondent as Rs.10,000/- and awards a compensation of Rs.30,000/- (for three months) under the head loss of earning.

10. Insofar as the compensation awarded under the heads Transport to hospital, Extra nourishment and attender charges are concerned, the said compensation awarded are on the lower side and the same has to be interfered with.

11. Insofar as the negligence fixed by the Tribunal is concerned, the FIR for the above said accident came to be registered as against the driver of the appellant insured vehicle and further, the 1st respondent/claimant examined himself as P.W.1 and deposed that the accident had happened due to the rash and negligent driving of the driver of the appellant insured vehicle, however, in order to disprove the same, the appellant has not examined any eye-witness to the occurrence. In the absence of any contra evidence to the submission of the 1st respondent, the Tribunal had arrived at a conclusion that as insurer of the offending vehicle, the insurance company is liable to compensate the claimant, in which this Court does not find any fault with and is not inclined to interfere with the same.

12. Insofar as the compensation awarded under the other heads are concerned, the said compensation awarded are just and reasonable and no interference is warranted with the same.

13. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Loss of earnings	-	**30,000/- (granted)**
Transport to hospital	9,000/-	**20,000/- (enhanced)**
Extra nourishment	8,000/-	**20,000/- (enhanced)**
Attender charges	8,000/-	**20,000/- (enhanced)**
Future medical expenses	-	-
Damages for clothes & articles	2,000/-	2,000/-
Medical expenses	1,06,000/-	1,06,000/-
Pain and sufferings	75,000/-	75,000/-
Permanent Disability & Loss of earning power	**6,86,000/-**	**1,50,000/- (reduced)**
Total	**Rs.8,94,000/-**	**Rs.4,23,000/-**

14. Accordingly, the appeal is allowed in the aforesaid terms and the impugned award of the Tribunal is modified by reducing the compensation amount from **Rs.8,94,000/-** to **Rs.4,23,000/-**. The appellant-insurance company is directed to deposit the above said amount awarded by this Court to the credit of M.C.O.P.No.385 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any, already deposited,

within a period of four weeks (4) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the 1st respondent/claimant through RTGS within a period of two (2) weeks thereafter. If any excess amount is deposited by the appellant/insurance company, they are entitled to withdraw the same by way of filing necessary application. There shall be no order as to costs in the present appeal. Consequently, the connected Miscellaneous petition is closed.

22.12.2023

skt

NCC : Yes/No
Index : Yes/No
Speaking order : Yes/No

To:

1. The Motor Accidents Claims Tribunal, (Special Subordinate Judge), Erode.

2. The Section Officer, V.R.Section, High Court, Madras.

M.DHANDAPANI, J.

skt

C.M.A.No.1726 of 2020
and
CMP.No.12781 of 2020

22.12.2023