IN THE HIGH COURT OF JUDICATRE AT MADRAS

Dated: 21.09.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.No.1497 of 2019

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Sakthivel .. Appellant

Vs.

1. E.Elango

2. The Branch Manager,
   The United India Insurance Company Limited,
   146/N, Kumar Complex,
   Thiruchengode Town,
   Namakkal District. .. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Award and Decree dated 18.09.2013 in M.C.O.P.No.694 of 2011 on the file of the Motor Accidents Claims Tribunal (Additional District Court), Namakkal.

For appellant : Ms.D.Jeevitha
For respondents: R-1 Notice returned with endorsement "door locked"
Mr.M.J.Vijayaraghavan for R-2

JUDGMENT

The Civil Miscellaneous Appeal is filed against the Award and decree dated 15.06.2011 passed in M.C.O.P.No.694 of 2011 on the file of the Motor Accidents Claims Tribunal (Additional District Court), Namakkal.

2. The facts in a nut-shell are:

(a) On 15.06.2011 at about 11.25 a.m., when the appellant/claimant was riding his bike bearing Registration No.TN-28-AB-4392 in Namakkal-Paramathi Main Road towards left side of the road, at that time, near Kavettipatti Kuppusamy Thottam, in the opposite direction, a 407-Tempo bearing Registration No.TN-48-F-3810, driven by its driver without observing road traffic Rules, came in a rash and negligent manner, had hit the appellant/claimant's vehicle, which had resulted in causing an accident, in which, the claimant sustained multiple and grievous injuries over his body.

(b) At the time of accident, the claimant was aged about 22 years and was working as a Computer Engineer and earning Rs.12,000/- per month. Due to the accident, the claimant had sustained multiple/grievous injuries all over his body, including fracture on his head, right cheek and laceration injuries on his right knee and left foot.

(c) Further, after the accident, the claimant was admitted in C.M.Hospital, Namakkal for first-aid and thereafter, he was shifted to Vinayaka Mission Hospital, Salem and then he was taking further treatment at Ganga Hospital, Coimbatore and the claimant was under treatment as in-patient for more than 30 days and he spent Rs.7 lakhs towards medical and other expenses.

(d) Due to the accident, the appellant/claimant lost his earning power and employment. So, his future course of life had been doomed. Further, the claimant had suffered mental shock and agony and lost his happiness. Hence, the claimant had filed the M.C.O.P. restricting his claim to Rs.15 lakhs as compensation with 12% interest per annum from the date of accident till date of deposit.

(e) The first respondent herein is the owner and the second respondent herein is the insurer of the said "407 Tempo" bearing Registration No.TN-48-F-3810 and both the first and second respondents are jointly and severally liable to pay the compensation to the appellant/claimant.

(f) The Namakkal Police has registered a case in Crime No.915/2011 under Sections 279 and 337 IPC against the driver of the "407 Tempo" bearing Registration No.TN-48-F-3810.

(g) Stating the above facts, the appellant/claimant has filed this appeal seeking for enhancement of the compensation awarded by the Tribunal.

3. The second respondent/Insurance Company has filed counter before the Tribunal, disputing the compensation claimed by the claimant at Rs.15 lakhs and especially, they denied the medical bills in proof of surgical expenses at Rs.7 lakhs.

4. The injured/claimant has filed this appeal seeking enhancement of compensation. Though the accident is not in dispute and the injuries sustained by the claimant is also in dispute, but the Insurance Company is disputing their liability to pay compensation, as also the quantum of compensation awarded by the Tribunal, since the award of compensation by the Tribunal is not 'just and fair' compensation.

5. Learned counsel for the appellant/claimant submitted that the injured/claimant was only 22 year old at the time of accident and he is a Computer Engineer and due to the accident, there has been functional disability. The Doctor has assessed the disability at 39%. Instead of adopting multiplier method, the Tribunal awarded compensation based on "%" (percentage method) and hence, the impugned Award of the Tribunal has to be interfered with.

6. It is the further submission of the learned counsel for the appellant/claimant that subsequent to the Award passed by the Tribunal, the injured/claimant had underwent certain treatment and he has produced 'discharge summary' and also medical certificate along with the medical expenses incurred by him. Though normally, without any material, the appellate Court may not interfere with the Award, but however, the claimant has claimed future medical expenses. P.W.2 Doctor has not stated in his evidence that the injured/claimant has totally recovered from the injuries. Therefore, considering the evidence of P.W.2 Doctor, and also the averments made in the claim petition, claiming future expenses and also the medical bills and the discharge summary now produced by the learned counsel for the appellant, this Court may consider for enhancement of the compensation by awarding the amount under the head 'future medical expenses'.

7. Learned counsel for the appellant/injured/claimant further submitted that the Tribunal has not awarded any amount under the head "attendant charges" as claimed by the claimant, and that the Tribunal has not awarded any amount under the head "loss of earning" and therefore, the impugned Award passed by the Tribunal may be modified, as it does not reflect

the 'just and fair' compensation and hence, the total Award passed by the Tribunal may be enhanced.

8. Learned counsel for the second respondent/Insurance Company submitted that the accident and the injuries are not in dispute. But however, the Tribunal has awarded 'just and fair' compensation, taking into account the nature of injuries sustained by the claimant. There are no material produced by the claimant to show that the injured/claimant is not able to perform the same work as he was doing before the accident and he has not produced any acceptable proof for the loss of earning or loss of employment.

9. Learned counsel for the second respondent/Insurance Company further submitted that there is no material to show that while the injured/claimant was admitted in the hospital and only with the help of attendant, he was able to move, and therefore, this Court may not award the amount under the head 'attendant charges'.

10. Learned counsel for the second respondent-Insurance Company further submitted that the accident and injuries are not in dispute, but however, the Tribunal awarded "just" compensation, considering the nature of the injuries

sustained by the claimant. But there is no material to show that the injured/claimant is not able to perform the same work as before/as he was doing prior to the accident. He has not produced any proof for loss of earning or loss of employment. There is no material to show that while he was admitted in the hospital, only with the help of the attendant only, he was able to move and therefore, the loss of earning and the attendant charges may not be compensated for the injured/claimant.

11. Learned counsel for the second respondent/Insurance Company also submitted that the accident and injuries are not in dispute. But however, the Tribunal awarded 'just' compensation, considering the nature of injuries sustained by the appellant/injured/claimant.

12. Learned counsel for the second respondent/Insurance Company further submitted that though the claimant had claimed future medical expenses, by producing discharge summary and medical bills, but without examining the author of the document, i.e. the Doctor who issued the discharge summary, to show the authenticity of the documents/medical bills, necessary amount may not be awarded and if that has been entertained, then everyone will come forward even after disposal of the MCOP cases and therefore, the

future medical expenses may not be granted by this Court.

13. Heard both sides and perused the materials available on record.

14. Admittedly, the accident and the liability of the Insurance Company are not in dispute.

15. As far as quantum of compensation as awarded by the Tribunal is concerned, though the second respondent/Insurance Company has not denied the percentage of the disability and since the claimant has not proved the functional disability and loss of employment or alteration of employment or loss of earning capacity, the "multiplier method" need not be adopted. The Tribunal has rightly adopted 'percentage method', but however, the accident was of the year 2011 and for the relevant period, the Tribunal and this Court, in various similar cases, has awarded Rs.3,000/- per percentage of the disability. Therefore, the Award of the Tribunal under the head 'disability' is hereby raised by awarding Rs.3,000/- per percentage for 39% disability (i.e. Rs.3,000 x 39% x 12 = Rs.14,040/-).

16. As far as the amounts awarded by the Tribunal under the other

heads are concerned, there is no documentary evidence to show that regarding the loss of earning and loss of employment and also the attendant, under the circumstances, in the absence of any material, this Court cannot award the same and there is no reason to enhance the compensation awarded by the Tribunal under the other heads.

17. It is seen that the claimant had claimed compensation for Rs.2 lakhs for the future expenses at the time of filing the M.C.O.P. But, it is to be noted that the claim petition was filed for the year 2011 and the Award was passed only in 2013 and the claimant had not produced any document for the relevant period to show that he had lost income for the relevant period.

18. However, after disposal of the claim petition (i.e. MCOP) pending this appeal, the claimant had spent Rs.37,195/- in the year 2014, i.e. subsequent to the Award, he had produced discharge summary and the medical records, like cash bill etc.

19. Considering the facts and circumstances and the nature of the injuries sustained by the claimant, as also the nature of the treatment underwent by him and the evidence of the Doctor, there is no clear proof that

the claimant has recovered totally from the injuries. Therefore, under the circumstances, this Court, considering the future expenses incurred/to be incurred, and that as of now, he had incurred Rs.37,195/- subsequent to the Award of the Tribunal, and thus, in addition to the Award passed by the Tribunal, this Court being the appellate Court of fact finding, analysed the evidence and perused the records independently and thus, this Court arrives at an independent conclusion and this Court simply need not endorse the view of the Tribunal. Therefore, considering all the above aspects and also taking into account the expenses incurred by the claimant, this Court hereby now marks the medical bills incurred by the claimant as Ex.C-1 and the discharge summary is marked as Ex.C-2, as agreed upon by the learned counsel on both sides. Thus, this Court hereby awards Rs.37,195/- as future medical bills.

20. As far as the amount now awarded under the future medical expenses, the interest of 7.5% shall be awarded from the date of the medical bills till the date of deposit before the Tribunal. This amount shall be deposited by the second respondent-Insurance Company within a period of four weeks from the date of receipt of a copy of this Award.

21. With the above observations and directions, the appeal is partly

allowed, modifying the Award of the Tribunal by awarding the future medical expenses as above.

22. The appellant/Insurance Company is directed to deposit the entire award excluding the amount now awarded under the head 'future expenses' with interest @ 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 eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to calculate the above said compensation, including the interest and costs etc., after adjusting the amount, if any already withdrawn by the claimant and credit the actual amount in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others). The second respondent/Insurance Company is permitted to withdraw the excess amount, if any already deposited by them before the Tribunal. There shall be no order as to costs in the present appeal.

21.09.2023

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To

1. The Motor Accidents Claims Tribunal-cum-Additional District Court, Namakkal.

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

P.VELMURUGAN, J

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