BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.754 of 2017
and
C.M.P(MD) No.8071 of 2017

The Regional Manager
M/s.United India Insurance Company Ltd.,
South Raja Veethi,
Thanjavur Town and Munsif,
Thanjavur District. ..... Appellant/ 2nd Respondent

-vs-

1. Balasubramanian .... 1st Respondent /Claimant
2. Veeraselvam ... 2nd Respondent/ 1st Respondent

(The 2nd respondent remained ex-parte before the Tribunal, Hence, notice is given up)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decretal order, dated 05.01.2016 made in M.C.O.P.No.582 of 2013, on the file of the Motor Accident Claims Tribunal (Special District Court) Thanjavur.

For Appellant : Mr.B.Rajesh Saravanan
For Respondents : Mr.R.Sivasubramanian – For R1

: Given up – For R2

JUDGMENT

The present Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the negligence and the quantum of Award.

2. According to the injured claim petitioner, he was driving a two wheeler on 20.02.2012. A vehicle belonging to the first respondent came in the opposite direction and hit which has resulted in an accident and the petitioner/claimant as well as the pillion rider sustained injuries.

3. According to the claimant, there were three fractures in right leg and he has undergone seven operations and he was an inpatient for 280 days in the Government Hospital at Thanjavur.

4. According to him, he is an agriculturist and running goat farms and is also a part time driver. Hence, he prayed for a sum of Rs.32,02,500/- (Rupees Thirty Two Lakhs Two Thousand and Five Hundred only) towards compensation.

5. The Insurance Company had filed a detailed counter disputing the liability and contending that the injured claimant alone was negligent in driving his vehicle. They have further contended that the injured claimant was not having a driving license at the time of accident. They have further contended that the FIR and Charge Sheet were laid as against the injured claimant and the injured claimant as admitted before the criminal Court and paid the fine. Therefore, negligence on the part of the injured claimant stands proved. They have further disputed the quantum of compensation that was prayed for by the injured claimant.

6. The Tribunal, after considering the oral and documentary evidence, arrived at a finding that the judgment of the criminal Court is not binding upon the Tribunal. The Insurance Company has not let in any contra evidence on the side of the claimants. Therefore, the Tribunal was pleased to hold that the first respondent alone was driving the vehicle in a rash and negligent manner, which has resulted in the said accident.

7. The Tribunal further found that the injured claimant was not having valid driving license at the relevant point of time and decided to fix the negligence on his part the rate of 10%.

8. The Tribunal further found that the claimant has incurred 15% permanent disability and 30% of partial permanent disability. As far as the said 15% permanent disability, the Tribunal has awarded a sum of Rs.2,16,000/- (Rupees Two Lakhs Sixteen Thousand only) following the multiplier method. For partial disability, the Tribunal has awarded a sum of Rs.90,000/- (Rupees Ninety Thousand only) at the rate of Rs.3,000/- (Rupees Three Thousand) per percentage of the disability. For pain and sufferings, a sum of Rs.50,000/- (Rupees Fifty Thousand only) has been awarded and for loss of amenities, another sum of Rs.50,000/- (Rupees Fifty Thousand only) has been awarded and a sum of Rs.56,000/- (Rupees Fifty Six Thousand only) has been awarded by the Tribunal as attender charges. Another sum of Rs.18,000/- (Rupees Eighteen Thousand only) has been awarded by the Tribunal for having assistance after he was discharged from the hospital. A sum of Rs.5,000/- (Rupees Five Thousand only) has been awarded for loss of estate and sum of Rs.20,000/- (Rupees Twenty Thousand only) has been

awarded for Transport expenses and another sum of Rs.20,000/- (Rupees Twenty Thousand only) has been awarded as extra nourishment. Since the injured claimant was in hospital for 280 days, a sum of Rs.70,000/- (Rupees Seventy Thousand only) has been awarded for loss of income at the relevant point of time. This award is under challenge in the present appeal.

9. The learned counsel appearing for the appellant/Insurance Company has contended that the injured claimant admitted before the Criminal Court and therefore, he cannot contend that the offending vehicle viz., the vehicle belonging to the first respondent is responsible for the accident. When the negligence is upon the injured claimant himself, the Insurance Company is not liable to pay any compensation. He further contended that the claimants have not established any functional disability. The Tribunal ought not to have adopted the multiplier method for arriving at a compensation for 15% permanent disability. He further contended that the rate of interest ought not to have been awarded at the rate of 9%. He further pointed out that when the injured claimant was not having a valid driving license at the time of the accident, the Tribunal ought to have deducted 50% from the compensation and mere deduction of 10% is not legally sustainable. In the above said

grounds, the learned counsel appearing for the appellant/ Insurance Company sought for interference of this Court in the Appeal.

10. Per contra, the learned counsel appearing for the first respondent had contended that the Insurance Company has not let in any evidence whatsoever to fix the liability upon the injured claimant. The order passed by the Criminal Court is not binding upon the Tribunal and therefore, independent evidence has to be let in before the Tribunal to establish that the claimant himself was responsible for the accident. He further contended that being an agriculturist, he would not be in a position to continue his work any further, in view of the disability and therefore, the Tribunal was right in adopting the multiplier method. Therefore, he prayed for sustaining the award passed by the Tribunal.

11. I have carefully considered the submissions made by the learned counsel on either side.

12. As far as the main ground of the learned counsel appearing for the appellant relating to the negligence on the part of the claimant is concerned,

he primarily relied upon the judgment of the criminal Court, in which, the injured claimant is said to have paid fine. However, document has not been marked. That apart, the judgment of the criminal Court is not binding upon the Tribunal and if the Insurance Company wants to establish that the injured claimant himself was responsible for the accident, they should have let in independent evidence before the Tribunal. In the present case, the Insurance Company has not marked any document or examined anyone on their side to establish that the injured claimant himself was responsible for the accident. Therefore, this Court is constrained to confirm the finding of the Tribunal that the offending vehicle belonging to the first respondent is alone responsible for the said accident.

13. The learned counsel appearing for the appellant has pointed out that when there is no plea relating to functional disability, the Tribunal ought not to have adopted the multiplier method. It is seen from the nature of injuries and the avocation of the claimant, this Court is of the view that the Tribunal was not correct in adopting the multiplier method. Therefore, in view of the fact that the Tribunal has fixed the permanent disability at 45%, the total loss of income for the permanent disability arising out of the said disability can be

fixed at Rs.1,35,000/- (Rupees One Lakh and Thirty Five Thousand only) (45%x 3000). Therefore, the amount awarded by the Tribunal under the head of permanent disability and the partial permanent disability are hereby set aside and in the said place, this Court is inclined to award a sum of Rs.1,35,000/- (Rupees One Lakh Thirty Five Thousand only). As far as the other heads are concerned, considering the fact that the injured claimant has been in hospital for 280 days, this Court is not inclined to interfere in anyone of the other heads.

14. The learned counsel appearing for the appellant had contended that the injured claimant was not having any valid driving licence at the relevant point of time and hence, more percentage ought to have been deducted from the award amount. In the present case, the entire negligence has been fixed upon the vehicle belonging to the first respondent herein. The Tribunal has already deducted 10% towards not holding of the driving license. Therefore, this Court is of the view that the said 10% deduction would be suffice and no interference is called for from this Court for the said deduction. In view of the above said facts the award is modified to the following effect.

15. The Tribunal has, however, fixed the rate of interest at the rate of 9% for the said relevant period. This Court is of the view that it is on the higher side and the rate of interest is fixed only to 7.5% per annum.

16. In view of the above said deliberations, the quantum of the award can be classified as follows:

(i) The permanent disability of 45%x3000 = Rs.1,35,000/-

(ii) Pain and sufferings : Rs.50,000/-

(iii) Loss of amenities : Rs.50,000/-

(iv) Attender Charges : Rs.56,000/-

(v) Additional Attender Charges (3 months after discharge) : Rs.18,000/-

(vi) Loss of estate : Rs.5,000/-

(vii) Transport Expenses : Rs.20,000/-

(viii) Extra Nourishment : Rs.20,000/-

(ix) Loss of income while the claimant was in hospital at the rate of Rs.250 per day: Rs.70,000/-

Total : Rs.4,24,000/-

17. Out of Rs.4,24,000/- (Rupees Four Lakhs and Twenty Four Thousand only), 10% deduction should be made towards not holding of driving license. Therefore, the total compensation amount would come to Rs.3,81,600/- (Rupees Three Lakhs Eighty One Thousand and Six Hundred only). The said amount will carry interest at the rate of Rs.7.5% per annum from 03.06.2013 onwards. In view of the above said modification of the award the Tribunal is directed to refund the excess amount along with the accrued interest to the Insurance Company.

18. In view of the above said facts, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

23.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Motor Accident Claims Tribunal
(Special District Court)
Thanjavur.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

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