IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

Civil Miscellaneous Appeal No.533 of 2021

and CMP No.3911 of 2021

The Branch Manager,
Reliance General Ins. Co. Ltd.
I Floor, Dhanam Towers, 1, Binny Main Road,
Park Road, Tiruppur. ... Appellant

Vs

1. C.Lakshmanan
2. S.Gopalakrishnan ... Respondent

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order dated 31.10.2019 passed in MCOP No.79 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court at Udumalpet.

For Appellant : Mr.C.Bhuvanasundari

For Respondents : Mr.N.Umapathi, for R1
R2 – Notice Dispensed with

<u>J U D G M E N T</u>

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

The Insurance Company is on Appeal challenge is to the award passed by the Motor Accident Claims Tribunal, Udumalpet, in MCOP No.79 of 2014 granting a compensation of Rs.38,24,157/- for the injuries suffered by the claimant in a road accident that occurred on 02.09.2013.

2. According to the claimant, while he was riding his two-wheeler on the Udumalpet-Palani main road, towards Madathukulam, the Car bearing Registration No.TN-42-X-5555, driven by the first respondent in a rash and negligent manner, dashed against the Motor Cycle bearing Registration No.TN 41-W-0997 resulting in, the claimant being thrown off the vehicle. As a result of the accident, the claimant suffered several grievous injuries and his right leg was amputated above the knee. He also suffered a head injury which resulted in moderate cognitive disability and spastic dysarthria (difficulty in speech), claiming that the injuries suffered had rendered him unfit to do any job, the claimant sought for a compensation of Rs.40,00,000/-.

3. The claim was resisted by the Insurance Company/the second respondent before the Tribunal contending that the claimant had contributed to the accident. It was also contended that the claimant did not have a valid driving licence. The quantum of compensation claimed was termed as excessive.

4. At trial before the Tribunal, the claimant's wife was examined as C.W.1 and exhibits C1 to C25 were marked. One Bankaru Vignesh, employee of the Insurance Company was examined as R.W.1 and Exhibits R1 and R2 were marked.

5. On a consideration of the evidence on record particularly the

FIR which was marked as Ex.A1 and the Charge Sheet which was marked as Ex.A2, the Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of the Car driver. As a sequitur, the Tribunal held that the Insurance Company is liable to pay the compensation.

6. On the quantum, from the evidence available the Tribunal took the monthly income of the claimant at Rs.10,651/- added 30% towards future prospects and arrived at the monthly income at Rs.13,846/-. On the nature of the injuries and based on Exs.C11 and C22, the Tribunal fixed the disability at 88% adopting the multiplier method, the Tribunal arrived at the total loss of income at Rs.20,46,992/-. The Tribunal also awarded a sum of Rs.3,51,765/- towards medical expenses which were not reimbursed under the Employees State Insurance Scheme, Rs.4,400/- towards transport and Rs.25,000/- towards extra nourishment. The Tribunal to fix the monthly attender charges at Rs.6,000/- and adopted a multiplier of 18 on the assumption that the claimant would live up to 60 years and fixed at Rs.12,96,000/- towards attender charges. It also awarded Rs.1,00,000/- towards pain and suffering. Thus the total compensation awarded by the

Tribunal worked out to Rs.38,24,157/-.

7. We have heard Mrs.C.Bhuvanasundari, learned counsel appearing for the appellant Insurance Company and Mr.N.Umapathi, learned counsel appearing for the claimant. The second respondent had remained absent before the Trial Court and since the liability of the Insurance Company is not in dispute, we find no necessity to hear the owner of the car viz. the second respondent.

8. Mrs.C.Bhuvanasundari, learned counsel appearing for the appellant/Insurance Company would vehemently contend that the Tribunal erred in taking the quantum of future prospectus at 30%, according to her, the Tribunal should have adopted only 25%, since the claimant was not in a permanent job but was working in a private firm manufacturing cattle feed, as per paragraph 59.4 of the judgment in ***National Insurance Company Ltd., Vs. PranaySethi,*** reported in (***2018) 1 LW 331.*** She would also fault the Tribunal for having adopted a multiplier of 18 while determining the cost of services of an attender. She would submit that the Tribunal must have adopted 14 multiplier which it as fixed for computing the compensation for disability as per the judgment of the Hon'ble Supreme Court in ***Sarla Verma & Others v. Delhi Transport Corporation and Another,*** reported in ***(2009) 6 SCC 121***.

9. Contending contra Mr.N.Umapathi, learned counsel appearing for the claimant would submit that if it is shown that the job is a permanent job, it is only paragraph 59.3 of the judgment in ***National Insurance Company Ltd., Vs. Pranay Sethi,*** that would apply and not paragraph 59.4. Therefore, the Tribunal was right in fixing the future prospects at 30%. He would also submit that the attender charges are decided on the basis of the life expectancy of the deceased and it does not go by the multiplier suggested for fixing the quantum of compensation in cases of permanent disability.

10. The learned counsel would further point out that the Tribunal has not awarded any amount towards loss of amenities. He would implore us to consider the fact that the claimant who was just about 42 years old at the time of the accident has to live without a limp for the rest of his life and every day to day activity would become difficult. He would also point out that the disability certificates issued by the ESI Dispensary as well as private Hospital shows that the claimant had suffered a moderate cognitive disability and hence his comprehension will be seriously affected. Therefore, according to the learned counsel though the Tribunal had adopted different multipliers while deciding the quantum of compensation and the attender charges and has adopted 30% towards future prospects, the overall compensation granted is reasonable and does not call for interference at our hands.

11. We have considered the rival submissions.

12. We find force in the first submission of the learned counsel for the Insurance Company. The Hon'ble Supreme Court had, while fixing the percentage of future prospects, taken into account the nature of the employment and the effect of a permanent job vis-à-vis a job in a private firm which cannot be termed as a permanent job. The evidence on record in the case on hand demonstrates that the claimant was working in a private cattle feed manufacturing company that too in a Municipal Town. The said avocation would not have the same advantage of a permanent job in a recognized industry or in the services of the Government, where there would be periodical increments and other benefits to the employee. That is the precise reason why the Hon'ble Supreme Court has chosen to make the difference between a permanent job and a monthly salaried job or a self-employment.

13. In the light of the evidence that is placed before us, we find that it is paragraph 59.4 of the judgment in ***National Insurance Company Ltd., Vs. Pranay Sethi,*** that would apply to the case on hand and not paragraph 59.3. Having come to the said conclusion, we will have to necessarily reduce the future prospects to 25% from 30% considering the age of the claimant. Thus calculated the loss of earning capacity would be

Rs.10,651/- +2,662 (25%) X 12 X 14 X 88/100 = Rs.19,68,193.92

rounded off to Rs.19,68,200/-.

14. On the grant of attender charges, though the learned counsel for the Insurance Company would submit that the adoption of a multiplier method is not the safest, we are unable to agree with her submissions. Considering the nature of the injuries viz. an amputation as well as the head injury which has the effect on the comprehension of the claimant, we are in entire agreement with the conclusion of the Tribunal that the claimant would need to have an attender for the rest of his life. It is also seen from the record that he was unable to depose and that his wife who had tendered evidence on his behalf. However, we cannot discount the contention of the learned counsel of the Insurance Company on the multiplier adopted by the Tribunal.

15. The judgment of the Hon'ble Supreme Court cited in ***Sarla Verma& Others v. Delhi Transport Corporation and Another,*** cited supra, had taken into account all the probabilities and fixed the multiplier depending upon the life expectancy. Therefore, the said multiplier could be safely used as a guide to fix the attender charges also. Hence we find that the fixation of 18 as multiplier for attender charges is on the higher side and it has to be reduced to 14%, thus calculated the attender charges would be Rs.6,000 X12X14= 10,08,000/-.

16. As rightly pointed out by the learned counsel appearing for the claimant, the Tribunal has not chosen to award any amount towards loss of amenities. Though it has awarded a sum of Rs.1,00,000/- towards pain and suffering. As already observed the claimant has to live without a limp for the rest of his life and he would not have the same level of comfort as he had add earlier. Hence,we deem it fit to award of a sum of Rs.75,000/- towards loss of amenities. We do not see any reason to interfere with the quantum of compensation awarded under the other heads viz. pain and suffering, medical expenses, transportation and extra nourishment.

Thus the modified compensation awarded is as follows:

Description of the Heads	***Amount (Rs.)***
Loss of earning power	19,68,200/-
Pain and suffering	1,00,000/-
Loss of amenities	75,000/-
Attender Charges	10,08,000/-
Medical Expenses	3,51,765/-
Transportation Charges	25,000/-

Extra Nourishment	4,400/-
Total	35,32,365/-

17. In view of the foregoing discussion, the Appeal is **partly allowed**. The award is modified granting a sum of Rs.35,32,365/- as compensation. Claimants would be entitled to interest at 7.5% as awarded by the Tribunal.

18. It is stated that pursuant to the order dated 03.03.2021 made in CMP No.3911 of 2021, the appellant Insurance Company has deposited 50% of the award amount with proportionate interest and costs. The claimant is permitted to withdraw the same. The Insurance Company will have 12 weeks time to deposit the balance amount as per the modified award. Parties have to bear their own costs in this Appeal. Consequently, the connected miscellaneous petition is closed.

(R.SUBRAMANIAN, J.) (R.SAKTHIVEL, J.)

28.06.2024

jv

Index: No
Internet: Yes
Speaking order
Neutral Citation: No

To

1. The Sub Court
   Motor Accident Claims Tribunal,
   Udumalpet.

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

R.SUBRAMANIAN, J.
and
R.SAKTHIVEL, J.

jv

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