IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 04.03.2024	Pronounced on 22.03.2024

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1481 of 2020
and
C.M.P.Nos.10833 of 2020 & 14124 of 2021

The Branch Manager
Reliance General Ins. Co. Ltd.,
Shri Lakshmi Complex, 1st Floor,
Bharathi Street, Omalur Main Road,
Salem 636 004. ... Appellant

Vs.

1.S.Anthony Raj
S/o.Santhiyagoo
35/36, Vasaga Salai Cross Street
Ponnammapettai, Salem 636 007

2.Kavitha
W/o.Mohanraj
Door No.152, Chinnamuthalpatti
Namakkal District. ... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Decree and Judgment dated 18th September 2019 passed in MCOP.No.2057 of 2011 by the Motor Accident Claims Tribunal, Special Sub Court No.2, Salem.

For Appellant : Ms.C.Bhuvanasundari

For Respondents : Mr.M.R.Thangavel (for R1)

JUDGMENT

The Appeal has been filed against the Decree and Judgment dated 18th September 2019 passed in MCOP.No.2057 of 2011 by the Motor Accident Claims Tribunal, Special Sub Court No.2, Salem.

2.The Insurance Company is the Appellant herein. Challenging the award passed in MCOP.No.2057 of 2011 by the Motor Accident Claims Tribunal, Special Sub Court No.2, Salem, the Insurance Company preferred this Appeal on the point of quantum of compensation only. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3.Heard the learned counsel for the Insurance Company and the learned counsel for the claim Petitioner.

4.The factum of the accident, manner of the accident, rash and negligent driving on the part of the driver of the 1st Respondent's vehicle, insured with the

2nd Respondent are not under challenge in this Appeal. Accordingly, the finding rendered by the Tribunal that the accident taken place due to the rash and negligent driving of the driver of the 1st Respondent's vehicle, insured with the 2nd Respondent are hereby confirmed.

5.During trial, on the side of the claim Petitioners, PW1 was examined & Ex.P.1 to Ex.P.24 were marked and on the side of the Respondents none was examined and no document was marked.

6.Learned counsel for the Insurance Company contended that the compensation awarded by the Tribunal towards pain and sufferings and loss of amenities are exorbitant and also contended that Ex.P.23/Disability certificate issued by the Medical Board at Salem is doubtful.

7.Heard the learned counsel for the Insurance Company and the learned counsel for the claim Petitioner.

8.After hearing the learned counsel for the Insurance Company, it appears that the first Respondent/claim Petitioner was willing to appear before this Medical board at Salem Government Medical College Hospital and this Court has received a communication by way of report from the Regional Medical Board, Salem, fixing the disability at 65%, including all the records as well as documents to show that the disability. After receipt of the above said report, learned counsel for the Insurance Company would contend that the present Medical Board's report need not be looked into and the earlier report in Ex.P23, issued by the District Medical Board at Tirunelveli, fixing 60% as disability can be considered. This Court is unable to appreciate the said contention of the learned counsel for the Insurance Company, since only at the instance of the Insurance Company, the claim Petitioner/1st Respondent was willing to appear before the Medical Board at Salem.

9.From the discharge summaries, Ex.P.9 & Ex.P.10, it is seen that the Petitioner has taken treatment as inpatient at Salem Vidhya Hospital from 31.05.2011 to 06.06.2011, wherein he underwent surgery on 02.06.2011, again he readmitted in the hospital and he has taken treatment as inpatient from 05.09.2011 to 07.09.2011, wherein on 05.09.2011 he underwent a surgery.

Therefore, the Doctors of Welfare Board of differently abled person at Tirunelveli Medical College Hospital assessed the disability of the claim Petitioner and fixed the disability at 60%. The said certificate was marked as Ex.P.6. During the argument, the said disability certificate was disputed by the learned counsel for the Insurance Company and the same was rejected for the reasons stated supra.

10.The learned counsel for the Insurance Company draw my attention to column No.5 of the disability certificate, which is self explanatory. The same is usefully extracted as follows:

> *"Nature of injuries: AC jt dislocation ® Gr 2 Brachial Plexus injury ® (Not mentioned in AR Copy/Wound Certificate/Discharge summary) (Follow up OP records available)"*

Hence, the contention of the Insurance Company with regard to disability certificate is deprecated.

11.On perusal of the order passed by the learned Tribunal, I find that as per Ex.P.17/Aadhar Card, the claim Petitioner's date of birth was 08.04.1982 and the accident was taken place on 31.05.2011 and therefore, on the date of accident, the claim Petitioner completed 29 years.

12.As per Ex.P.6/disability certificate, the claim Petitioner is said to have been suffered 60% permanent disability, now the Regional Medical Board at Salem Medical College Hospital fixed the disability at 65%. Hence, this Court taken the disability fixed by the Regional Medical Board of Salem and accordingly fixed the disability at 65% as functional disability.

13.Taking into consideration the oral and documentary evidences, the Tribunal has rightly come to the conclusion that the injuries sustained by the claim Petitioner resulted in functional disability, as it satisfied the test laid down by the Hon'ble Apex Court in the case of ***Rajkumar Vs. Ajaykumar & another*** reported in ***2010 (2) TNMAC 581 SC*** and adopted multiplier method, the same is also confirmed.. The Tribunal has fixed the notional income at Rs.6,500/-, added 40% towards future prospects, adopted 17 as multiplier. The same are hereby confirmed. Accordingly the pecuniary loss reassessed as follows:

[Rs.6,500/- + (40% of 6,500/-)] x 12 x 17 x 65 % = Rs.12,06,660/-

14.As per Ex.P.14(s)/Medical Bills, the Tribunal has awarded a sum of Rs.28,048/- towards Medical expenses, a sum of Rs.39,000/- towards temporary loss of earning, a sum of Rs.10,000/- towards transportation charges, a sum of Rs.20,000/- towards nutrition expenses, a sum of Rs.21,000/- towards attender charges and a sum of Rs.500/- towards damages to clothes. The same are hereby confirmed.

15.The Tribunal has awarded a sum of Rs.1,00,000/- towards pain and sufferings and a sum of Rs.1,50,000/- towards loss of amenities, the same are hereby reduced to Rs.50,000/- and Rs.25,000/- respectively.

S.No	*Head*	*Amount (Rs.)*
1	Pecuniary loss	1206660
2	Pain and sufferings	50000
3	Loss of amenities	25000
4	Medical expenses	28048
5	Loss of income during treatment period	39000
6	Transportation charges	10000
7	Nutrition charges	20000
8	Attender charges	21000
9	Damages to clothes	500
	Total	1400208
	Rounded off	1400200

In total, the claim Petitioner is entitled to a sum of Rs.14,00,200/- (Rupees fourteen lakh and two hundred only) and the interest awarded by the Tribunal at the rate of 7.5% per annum is also confirmed.

16.In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, reducing the compensation from Rs.14,82,388/- to Rs.14,00,200/- to the extent indicated above. Consequently, connected Miscellaneous Petitions are closed. No costs.

(ii) the Insurance Company is directed to deposit the reduced award amount, with interest and costs before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) on such deposit being made, the claim Petitioner is permitted to withdraw the reduced award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the Insurance Company is permitted to withdraw the excess amount already deposited before the Tribunal, less the reduced award amount, if any, with accrued interest.

22.03.2024

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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To
The Presiding Officer
Motor Accident Claims Tribunal (Special Sub Court No.2)
Salem.

RMT.TEEKAA RAMAN.J,

sai

Pre-delivery Judgment made in

C.M.A.No.1481 of 2020
and
C.M.P.Nos.10833 of 2020 & 14124 of 2021

Dated: 22.03.2024