In the High Court of Judicature at Madras

Dated : 25.4.2024

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1469 of 2022
& CMP.No.10907 of 2022

The Manager, United India
Insurance Co.Ltd.,
Katpadi Road, Vellore now at
Motor Third Party Service Hub,
45 Ft.Road Extension,
Balaji Nagar, Puducherry-11. ...Appellant

Vs

1.T.Ganesan
2.Kumar ...Respondents

APPEAL under Section 173 of the Motor Vehicles Act, 1988 against the fair and decretal orders dated 23.11.2021 in M.C.O.P.No. 135 of 2019 passed by the Additional District Court (FTC) (Motor Accidents Claims Tribunal), Vellore.

For Appellant	:	Mr.P.Sankaranarayanan
For R1	:	Mr.C.Prabhakaran

JUDGMENT

This is an appeal filed by the Insurance Company questioning the quantum of compensation determined by the Additional District Court (FTC) (Motor Accidents Claims Tribunal), Vellore (for short, the Tribunal below) in the award dated 23.11.2021 in M.C.O.P.No.135 of 2019.

2. The facts leading to filing of this appeal are as follows :

(i) When the first respondent/claimant was riding a two wheeler on 24.7.2018 from Thiruvalam to Ponnai Road at about 8 AM and when the vehicle was going near George House, the offending vehicle namely the ambassador car, which was owned by the second respondent herein and insured with the appellant - Insurance Company, was driven in a rash and negligent manner by the driver of the vehicle and dashed against the two wheeler driven by the first respondent/claimant. As a result, the first respondent/claimant sustained grievous injuries, which ultimately led to the amputation of his right leg above the knee.

(ii) It was under those circumstances the claim petition came to be filed before the Tribunal below seeking for compensation. The Insurance Company filed a counter to the claim petition. The Tribunal below, on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to the conclusion that the accident had taken place only due to the rash and negligent driving by the driver of the offending vehicle.

(iii) Having rendered such a finding, the Tribunal below proceeded to determine the compensation under various heads and the total compensation was fixed at Rs.29,50,114/-, which was rounded off to Rs.29,50,120/- in the following manner :

S. No	*Head*	*amount*
1	*Pecuniary loss*	*Rs. 26,92,800/-*
2	*Pain & Sufferings*	*Rs. 30,000/-*
3	*Transportation*	*Rs. 5,000/-*
4	*Extra nourishment*	*Rs. 20,000/-*
5	*Medical expenses*	*Rs. 1,47,064/-*
6	*Attender charges*	*Rs. 5,250/-*
7	*Loss of future prospects*	*Rs. 50,000/-*
	Total	*Rs. 29,50,114/-*
	Rounded to	*Rs. 29,50,120/-*

(iv) The above compensation was directed to be paid by the appellant - Insurance Company together with interest at the rate of 7.5% per annum from the date of filing the claim petition till realization. Aggrieved by the quantum of compensation fixed by the Tribunal below, the Insurance Company filed this appeal before this Court.

3. Heard the learned counsel for the appellant and the learned counsel appearing for the first respondent. Though notice was sent to the second respondent, it was returned with the endorsement 'always door locked'.

4. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record. This Court has also carefully gone through the award passed by the Tribunal below.

5. The learned counsel for the appellant has questioned the multiplier method that was adopted by the Tribunal below on the ground that the first respondent/claimant was, admittedly, doing a

supervisor job, that therefore, even though he suffered an amputation above the knee on the right leg, he can always perform the job with the help of artificial limb and that the accident has not resulted in complete functional disability for the first respondent/claimant.

6. The next issue that was raised by the learned counsel for the appellant is that the injury that was sustained by the first respondent/ claimant is a scheduled injury under the provisions of the Workmen's Compensation Act wherein for amputation, the disability has been fixed at 60% whereas the Medical Board fixed the permanent disability at 80%, which requires interference of this Court.

7. The learned counsel for the appellant has further submitted that the so-called salary slip, which was marked as Ex.P.5, for which, P.W.2 was examined, is highly questionable, that there was no proof to show that the salary slip was, in fact, given by the concerned establishment and that P.W.2 had not produced any evidence before the Tribunal below as to under what capacity, he had deposed before the Tribunal below while producing the salary slip.

8. In the alternative, the learned counsel for the appellant has submitted that even if the salary slip is taken to be correct, the Tribunal below went wrong in fixing the monthly salary of the first respondent/claimant at Rs.16,500/- without making any deduction towards conveyance and special allowance and that therefore, if at all Ex.P.5 is relied upon, only a sum of Rs.14,000/-, at the best, can be taken to be the monthly income.

9. Per contra, the learned counsel appearing for the first respondent/claimant has submitted that the Tribunal below had properly applied the multiplier method in this case, considered the disability suffered by the claimant, took 80% permanent disability to be the functional disability and rightly calculated the compensation under the head 'pecuniary loss'. He has further submitted that the compensation that was fixed under some of the other heads are on the lower side and that they require enhancement and therefore, requested this Court to exercise its jurisdiction under Order XLI Rule 33 of the Civil Procedure Code.

10. The first issue is with regard to the percentage of disability that was fixed by the Medical Board while giving the disability certificate under Ex.C.1. Admittedly, the disability suffered by the first respondent/claimant is a scheduled disability under the Workmen's Compensation Act, which provides for only 60% for amputation. Therefore, this Court can safely fix the permanent disability at 60%.

11. The next ground to be gone into is regarding the monthly salary. Considering the evidence of P.W.2 and Ex.P.5, which was marked through him, this Court does not find any reason to disbelieve the same. Hence, this Court is inclined to act upon the salary slip marked as Ex.P.5. It is seen that the gross salary of the first respondent/claimant was mentioned as Rs.16,500/- for the month of January 2018. Out of this gross salary, there are at least two heads, which are not payable on a regular basis and hence, this Court is inclined to fix the monthly salary of the first respondent/claimant at Rs.14,000/-.

12. The Tribunal below fixed a sum of Rs.50,000/- separately

under the head 'loss of future prospects'. Considering the age of the first respondent/claimant, he will be entitled to 40% towards future prospects. Hence, the same can be added along with the monthly salary while calculating the pecuniary loss (Rs.14,000/- + 40% of 14,000/- = Rs.19,600/-) and there is no need to fix the compensation separately under the head 'loss of future prospects'.

13. In the light of the above discussions, the total compensation that can be fixed under the head 'loss of earning/pecuniary loss' is Rs.23,99,040/- (Rs.19,600/- X 12 X 17 X 60%). In so far as the head 'pain and sufferings' is concerned, it is seen that the first respondent/ claimant took treatment as an inpatient for nearly 21 days at Vellore CMC Hospital and his right leg was also amputated above the knee. Hence, this Court is inclined to enhance the compensation under this head from Rs.30,000/- to Rs.50,000/-. For the very same reason, the compensation awarded under the head 'transportation charges' is enhanced to Rs.10,000/-.

14. In addition, the compensation awarded under the head 'extra nourishment' is enhanced to Rs.25,000/-. The compensation

awarded under the head 'attender charges' is also enhanced to Rs.15,000/-. The Tribunal below had not awarded any amount under the head 'loss of amenities'. Hence, this Court is inclined to fix a sum of Rs.15,000/- under this head.

15. In view of all the above, the total compensation fixed by the Tribunal below is modified as follows :

S. No	*Head*	*amount*
1	*Loss of earning/ Pecuniary loss*	*Rs. 23,99,040/-*
2	*Pain & Sufferings*	*Rs. 50,000/-*
3	*Transportation charges*	*Rs. 10,000/-*
4	*Extra nourishment*	*Rs. 25,000/-*
5	*Medical expenses*	*Rs. 1,47,064/-*
6	*Attender charges*	*Rs. 15,000/-*
7	*Loss of amenities*	*Rs. 15,000/-*
	Total	*Rs. 26,61,104/-*
	Rounded off to	*Rs. 26,61,110/-*

16. In the result, the total compensation fixed by the Tribunal below at Rs.29,50,120/- is reduced to Rs.26,61,110/-, which would carry interest at the rate of 7.5% per annum from the date of claim petition. It is brought to the notice of this Court that the entire compensation amount that was fixed by the Tribunal below has

already been deposited by the appellant - Insurance Company to the credit of the bank account of the Tribunal below. Hence, the total compensation amount that has been now fixed by this Court in this judgment along with interest is permitted to be withdrawn by the first respondent/ claimant. The balance amount lying to the credit of the bank account of the Tribunal below shall be permitted to be withdrawn by the appellant - Insurance Company.

17. The above civil miscellaneous appeal is partly allowed in the above terms. No costs. Consequently, the connected CMP is closed.

25.4.2024

To
The Additional District Court (FTC)
(Motor Accidents Claims Tribunal),
Vellore, Vellore District.

RS

N.ANAND VENKATESH,J

RS

C.M.A.No.1469 of 2022 &
CMP.No.10907 of 2022

25.4.2024