IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 12.01.2024	Pronounced on 08.02.2024

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1807 of 2020
and
C.M.P.No.13290 of 2020

United India Insurance Company Ltd.,
104-A, Sri Ranga Building
Peramanur Main Road
Salem 636 007 ... Appellant

Vs.

1.Ravi, aged 42, S/o.Chinnu
No.3 A, Panangkadu
Narosothipatti, Salem 636 004

2.Irfan Basha, S/o.Ameer Basha
No.1/270-C, Gandhi Nagar
Sanniyasigundu Road
Salem 636 015 ... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award and Decree dated 04.02.2020 made in MCOP.No.1885 of 2018 on the file of the Motor Accident Claims Tribunal (Special Sub Court No.2), Salem.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.S.P.Yuaraj (for R1)

JUDGMENT

The Appeal has been filed against the Award and Decree dated 04.02.2020 made in MCOP.No.1885 of 2018 on the file of 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.1885 of 2018 on the file of 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 the trial, on the side of the claim Petitioners, PW1 & PW2 were examined & Ex.P.1 to Ex.P.16 were marked and on the side of the Respondents, RW1 was examined and Ex.R1 & Ex.R.2 were marked.

6.Learned counsel for the Insurance Company would contend that the injury sustained by the claim Petitioner has not resulted any loss of earning power and therefore, the Tribunal has committed error in adopting multiplier method.

7.Learned counsel for the claim Petitioner made his submission in support of the Award passed by the Tribunal.

8.Pursuant to the order passed by this Court, the Medical Board, Salem assessed the disability of the claim Petitioner at 44%. As per the medical records, the claim Petitioner sustained the following injuries:

1. Fracture SOH left side
2. Fracture left scapula
3. Fracture left femur
4. Fracture right trochanter
5. Fracture right acetabulum
6. Fracture left 3rd, 4th metacarpal bone

and due to the injuries sustained by him in the accident, he is not able to walk & sit cross legged, not able to stand for more than half an hour and walking on steps, not able to do any work with shortened left. The Medical Board has assessed the disability as permanent and fixed it at 44% and also observed that polytrauma sequelae and functional impairment. Hence, the Tribunal by holding that the injuries sustained by the claim Petitioner resulted in loss of earning capacity, rightly applied multiplier method by following the decision of the Hon'ble Apex Court in the case of ***Rajkumar Vs. Ajaykumar & another*** reported in ***2010 (2) TNMAC 581 SC.***

9.As per Ex.P.8/copy of ID card and Ex.P.9/copy of Aadhar card, the date of birth of the claim Petitioner is 01.01.1976 and the date of accident is 15.09.2018 and therefore, the age of the claim Petitioner at the time of accident is 42 years and therefore, as per the judgment of the Hon'ble Supreme Court in

Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in ***2009 (2) TNMAC 1 (SC)***, right multiplier is '14' and the same was rightly applied by the Tribunal. The Tribunal has added 25% towards future prospects, the same is hereby confirmed. The Tribunal has fixed the notional income as Rs.11,000/- per month. The same is also hereby confirmed. Hence, the pecuniary loss sustained by the claim Petitioner is re-assessed as follows:

[Rs.11,000/- + (25% of 11,000/-)] x 12 x 14 x 44 % = Rs.10,16,400/-

10.The Tribunal has awarded a sum of Rs.5,12,565/- towards medical expenses, a sum of Rs.75,000/- each towards pain & sufferings and loss of amenities, a sum of Rs.9,900/- towards loss of earning during the period of treatment, a sum of Rs.50,000/- towards future medical treatment, a sum of Rs.10,000/- towards transportation charges, a sum of Rs.25,000/- towards nutrition charges, a sum of Rs.15,000/- towards attender charges and a sum of Rs.1,000/- towards damages to clothes. The same are in accordance with law and the same are hereby confirmed.

S.No	*Head*	*Amount (Rs.)*
1	Pecuniary loss	1016400
2	Pain and sufferings	75000

S.No	Head	Amount (Rs.)
3	Loss of amenities	75000
4	Medical expenses	512565
5	Loss of income during treatment period	9900
6	Future medical expenses	50000
7	Transportation charges	10000
8	Nutrition charges	25000
9	Attender charges	15000
10	Damages to clothes	1000
	Total	1789865
	Rounded off	1789900

In total, the claim Petitioner is entitled to a sum of Rs.17,89,900/- (Rupees Seventeen lakh eighty nine thousand and nine hundred only) and the interest awarded by the Tribunal at the rate of 7.5% per annum is also confirmed.

11.In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, reducing the compensation from Rs.22,51,865/- to Rs.17,89,900/- to the extent indicated above. Consequently, connected Miscellaneous Petition is closed.

(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 proportionate 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.

08.02.2024

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.1807 of 2020
and
C.M.P.No.13290 of 2020

Dated: 08.02.2024