IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M. DHANDAPANI

Civil Miscellaneous Appeal No.4268 of 2019
CMP.No.24145 of 2019

The Branch Manager,
National Insurance Company Ltd.,
Branch Office, Anuradha Complex,
Bangalore Road,
Opp. To Raja Theatre,
Krishnagiri. ... Appellant

Vs.

1. Kantha @ Muniammal
2. K.Rajesh ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 15.02.2019 made in MCOP. No.206 of 2017 on the file of the Motor Accident Claims Tribunal (Special Sub Court) Krishnagiri.

For Appellant : M/s.D.Bhaskaran

For Respondents : Ms.L.Manisha R1
R2 – No appearance

JUDGMENT

This appeal has been filed seeking to quash the judgment and decree dated 15.02.2019 made in MCOP. No.206 of 2017 on the file of the Motor Accident Claims Tribunal (Special Sub Court) Krishnagiri questioning the quantum and liability.

2. It is the case of the claimant that on 08.12.2010 at about 8.10 AM the first respondent was travelling as a coolie in the Eicher Lorry bearing Reg. No.TN 37 B 7310 along with other coolies, driven by its driver, in a rash and negligent manner. To avoid hitting on an auto which was going in front of the lorry, the driver of the lorry applied sudden break, due to which, the lorry was capsized. The first respondent and other passengers sustained injuries. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, awarded a sum of Rs.5,67,400/- under the following heads:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of earning power	4,91,400
2.	Transportation, Nutrition and attender charges	15,000
3.	Pain and sufferings	30,000
4.	Loss of amenities and enjoyment of life	30,000
5.	Damages to clothes	1,000
6.	total	5,67,400

The Tribunal directed the above compensation to be paid with interest at the rate of 7.5% p.a.

4. The Insurance company aggrieved over the award by the Tribunal, has filed the present appeal questioning their liability and quantum.

5. The learned counsel for the appellant fairly submitted that as per the insurance policy, two load man is permissible to travel in the lorry. However, in respect of quantum compensation, the Tribunal has awarded huge compensation, which requires to interfere with. The claimant sustained only a fracture injury and no medical records has been

produced before the Tribunal. Even then, the Tribunal has arrived at that there was a functional disability and applied the multiplier method and awarded compensation, which is too high. The other heads awarded by the tribunal are also highly excessive, which needs to be interfered with.

6. Per contra, the learned counsel for the respondent submitted that the after considering the entire materials and witnesses, the Tribunal awarded compensation to the claimant, which is just and proper and the same does not need interference.

7. Heard the learned counsel for the appellant and the learned counsel for the first respondent and perused the materials available on record.

8. The short issue that arises for consideration in the present appeal is as to whether the insurance company can be saddled with the liability. There is no dispute with regard to the fact that as per the policy, two persons/coolie/load man are entitled to travel in the lorry. Hence, with regard to the liability, the present appeal is rejected.

9. In respect of quantum, the Tribunal has applied multiplier method for disability, which needs to be interfered with. The claimant has sustained fracture injury and the Tribunal has assessed the disability at 30% as Partial permanent disability. As per the decision rendered by the Hon'ble Apex Court in the case of *Rajkumar Vs. Ajaykumar, in the absence of functional disability,* the multiplier method adopted by the Tribunal is set aside. The accident had happened in the year 2010 and the disability assessed is at 30%. The head loss of earning power is modified as follows:

= 30% X 4000/- = 1,20,000/-

Further, the Tribunal has awarded Rs.15,000/- and Rs.30,000/- towards Transportation, Nutrition, attender charges and pain and sufferings respectively, which has to be modified and the Tribunal has not awarded any compensation in respect of loss of income during treatment period. This Court is inclined to award a sum of Rs.8000/- per month and this Court is not inclined to award compensation for loss of amenities.

10. The award passed by the Tribunal is modified as follows:

Heads	*Amount awarded by the Tribunal (Rs.)*	*Modified Award Amount (Rs.)*
Loss of earning power	4,91,400	**1,20,000**
Transportation, Nutrition and attender charges	15,000	**20,000**
Pain and sufferings	30,000	**40,000** **(except attender charges)**
Loss of amenities and enjoyment of life	30,000	**...........**
Damages to clothes	1,000	**1,000**
Loss of income during treatment period	......	**24,000 (8000X 3 months)**
Attender charges	....	**10,000**
total	5,67,400	**2,15,000**

11. The compensation awarded by the Tribunal at Rs.5,67,400/- is reduced to Rs. 2,15,000/-. The liability fixed by the Tribunal is confirmed. The appellant insurance company is directed to deposit the entire award amount as ordered by this Court, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim

petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. Upon receipt of such payment, the Tribunal is directed to deposit the amount along with interest to the bank account of the claimant through RTGS within a period of two weeks thereafter. No costs.

28.11.2024

Speaking Judgment/Non-speaking Judgment
Index :Yes/No
Neutral citation: Yes/No
rli

To

Motor Accident Claims Tribunal (Subordinate Judge No.1)

Krishnagiri.

M.DHANDAPANI.,J
rli

Civil Miscellaneous Appeal No.4268 of 2019

28.11.2024