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D. SAMPATH

v.

UNITED INDIA INSURANCE CO. LTD. & ANR.
(Civil Appeal No. 7824 of 2011)

B.

SEPTEMBER 13, 2011

[G.S. SINGHVI AND H.L. DATTU, JJ.]

Motor Vehicles Act, 1988 – Compensation – Assessment of – Motor vehicle accident – According to the doctor, the pillion rider suffered 75% disability – Tribunal quantified the compensation payable by the Insurance Company at a sum of Rs. 3,50,000/- – High Court enhanced the compensation to Rs. 4,90,000/-, while arriving at the loss of earning capacity in a sum of Rs. 8,16,000/- and reducing the disability to 50% – On appeal, held: High Court erred in reducing the disability to 50% while calculating the loss of income – While making disability assessment, there is an element of guess work, but that guess work must have reasonable nexus to the available material/evidence and the quantification made – The Court has the discretion to accept either totally or partially or reject the Certificate so produced and marked in the trial but, that, can be done only by assigning cogent and acceptable reasons – Thus, disability suffered by the claimant is taken at 75% and keeping in view the loss of earning capacity of the claimant assessed by the High Court, the loss of earning capacity of the claimant is arrived at Rs. 6,12,000/- – Insurance Company directed to deposit the sum of Rs.6,12,000/- with 6% accrued interest.

A pillion rider of a motor cycle (insured with respondent-Insurance Company) along with the driver met with an accident due to oil spill on the road. The pillion rider and the driver sustained injuries and were treated in the hospital. The doctor assessed that the pillion rider suffered 75% disability. The pillion rider filed

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a claim petition. The Tribunal quantified the compensation payable by the Insurance Company at a sum of Rs. 3,50,000/-. The High Court enhanced the compensation to Rs. 4,90,000/-. It arrived at the loss of earning capacity in a sum of Rs. 8,16,000/- while reduced the disability to 50%. Therefore, the appellant filed the instant appeal.

Partly allowing the appeal, the Court

HELD: 1 While making disability assessment, there is an element of guess work, but that guess work again must have reasonable nexus to the available material/evidence and the quantification made. In the instant case, the claimant had not only examined himself to sustain the claim made in the petition but also PW-3-doctor, who stated that the claimant suffered 75% disability, by referring to the Disability Certificate issued by a competent doctor who had treated the claimant. Though the doctor was cross-examined at length by the advocate for the Insurance Company, but nothing adverse to the interest of the claimant is elicited. Therefore, the Tribunal rightly accepted the evidence of the doctor-PW-3. However, the High Court took 50% disability into account while calculating the loss of income and committed the said mistake. It is not said that under all circumstances, the court has to blindly accept the Disability Certificate produced by the claimant. The Court has the discretion to accept either totally or partially or reject the Certificate so produced and marked in the trial but that can be done only by assigning cogent and acceptable reasons. In this view of the matter, the disability suffered by the claimant is taken at 75% and the loss of income of the claimant is calculated keeping in view the loss of earning capacity of the claimant assessed by the High Court. The loss of earning capacity of the claimant is arrived at Rs. 6,12,000/- . The Insurance Company is directed to deposit a sum

A of Rs.6,12,000/- after deducting the amount already paid or deposited with accrued interest of 6% from the date of filing of the claim petition till its payment before the Tribunal within two months from today. [Paras 5 and 6] [423-G-H; 424-A-E]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7824 of 2011.

C From the Judgment & Order dated 12.04.2010 of the High Court of Judicature at Madras in Civil Miscellaneous Appeal No. 2098 of 2002.

Vivek Sharma, P.B. Suresh. Temple Law Firm for the Appellant.

D K.L. Nandwani for the Respondent.

The Judgment of the Court was delivered by

H.L. DATTU, J. 1. Leave granted.

E 2. This appeal is directed against the Judgment and Order passed by the High Court of Judicature at Madras in Civil Miscellaneous Appeal No. 2099 of 2002 dated 12.04.2010. By the impugned judgment, the Court has modified the compensation awarded by the Motor Accident Claims Tribunal, Chennai (for short, "the Tribunal") in MCOP No.1971 of 1998
F dated 12.02.2002.

G 3. The facts are not in dispute. Claimant was a pillion rider of a motor cycle which was driven by one A. Sridhar. It met with an accident due to oil spill on the road on 14.01.1998 at about 7.10 P.M. The claimant and the driver of the vehicle sustained injuries. Both of them were treated in the hospital for the injuries sustained by them. The vehicle was insured with United India Insurance Company Ltd. – respondent No.1 by the owner of the vehicle – respondent No.2. The claimant filed
H claim petition before the Tribunal inter-alia requesting to award

compensation at a sum of `12,00,000/- (Rupees Twelve lakhs only) under various heads. Claimant had examined himself as PW-2 and other witnesses, including Dr. J.R.R. Thiagarajan – PW-3, who had assessed the disability sustained by the claimant at 75%. The Tribunal, after considering the various factors, including the medical evidence, had quantified the compensation payable by the Insurance Company at a sum of Rs.3,50,000/-. Being aggrieved by the compensation so awarded by the Tribunal, the claimant had preferred Civil Miscellaneous Appeal No.2099 of 2002, before the High Court of judicature at Madras. The Court, after re-considering the claim of the claimant and re-appreciating the evidence on record, has enhanced the compensation to Rs.4,90,000/- from Rs.3,50,000/- awarded by the Tribunal. It is this judgment and order which is called in question in this appeal.

4. We have heard learned counsel for the parties to the lis and perused the records.

5. We do not intend to disturb the judgment and order passed by the High Court except to a limited extent. The High Court, while assessing the compensation payable to the claimant, has arrived at the loss of earning capacity in a sum of Rs. 8,16,000/- and, thereafter, though the Doctor has assessed 75% disability, has taken into account 50% disability while calculating the loss of income without any rhyme or reason. In our view, this is a mistake committed by the High Court. It is no doubt true that, while making assessment, there is an element of guess work, but that guess work again must have reasonable nexus to the available material/evidence and the quantification made. In the instant case, the claimant had not only examined himself to sustain the claim made in the petition but also Dr. J.R.R. Thiagarajan, PW-3, who has stated that the claimant has suffered 75% disability, by referring to the Disability Certificate issued by a competent Doctor who had treated the claimant. Though the Doctor is cross-examined at length by learned Advocate for the Insurance Company, nothing

- A adverse to the interest of the claimant is elicited. Therefore, the Tribunal has rightly accepted the evidence of the Doctor-PW-3. However, the High Court has taken 50% disability into account while calculating the loss of income. This, in our view, is the mistake committed by the High Court. We hastened to
- B add that we are not saying that under all circumstances, the Court has to blindly accept the Disability Certificate produced by the claimant. The Court has the discretion to accept either totally or partially or reject the Certificate so produced and marked in the trial but, that, can be done only by assigning
- C cogent and acceptable reasons. In this view of the matter, we take the disability suffered by the claimant at 75% and calculate the loss of income of the claimant keeping in view the loss of earning capacity of the claimant assessed by the High Court. Accordingly, we arrive at the loss of earning capacity of the
- D claimant at Rs. 6,12,000/-.

6. In the result, the appeal is partly allowed. We direct the Insurance Company to deposit a sum of Rs. 6,12,000/- after deducting the amount already paid or deposited with accrued interest of 6% from the date of filing of the claim petition till its
- E payment before the Tribunal within two months from today. On such deposit, the Tribunal is directed to release the amount to the claimant. No order as to costs.

N.J.

Appeal partly allowed.