IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2015

CORAM

THE HON'BLE MR. JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.M.A. No.1266 of 2015
and
M.P.No.1 of 2015

The Divisional Manager,
M/s.United India Insurance Co.Ltd.,
The Divisional Office,
Nethaji Road,
Cuddalore-607 001 ... Appellant/2nd Respondent

vs

1.Mr.S.Rajasekar
2.S.Manjula ... Respondents

Appeal against the judgement and decree dated 07.08.2013 passed by the Motor Accident Claims Tribunal, Special Subordinate Court, Cuddalore, in M.C.O.P.No.1936 of 2010.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.R.Sreedhar for R1

JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J.)

This appeal by the Insurance Company arises out of an award of the Motor Accident Claims Tribunal.

2. Heard Mr.N.Vijayaraghavan, learned counsel appearing for the appellant and Mr.R.Sreedhar, learned counsel appearing for the first respondent.

3. The first respondent suffered multiple grievous injuries in a road traffic accident that occurred on 1.10.2010. Therefore, he filed a claim petition in MCOP No.1936 of 2010, claiming compensation in a sum of Rs.30 lakhs.

4.By an award dated 7.8.2013, the Motor Accident Claims Tribunal, fixed the compensation payable at Rs.21,79,950/-. Aggrieved by the fixation, the Insurance Company has come up with the above appeal.

5.Primarily, the appeal is confined to the quantum of compensation awarded. The liability is not seriously disputed.

6. It is seen from the award of the Tribunal that the Tribunal awarded the sum of Rs.18,90,000/- towards permanent disability, Rs.50,000/- towards compensation for pain and suffering, Rs.30,000/- towards compensation for loss of income, Rs.18,000/- towards transportation, Rs.20,000/- towards extra nourishment and Rs.1,71,950/- towards medical expenses.

7. The compensation for permanent disability was worked out by the Tribunal by taking the income of the first respondent as Rs.15,000/- per month. This was done by the Tribunal on the basis of the income tax returns filed as Exs.P.11 to P.13 for the years 2008-09, 09-10 and 10-11. The net profit that the first respondent had reported in EXs.P.11 to P.13 were Rs.1,65,190/-, Rs.1,69,380/- and Rs.1,67,020/.

8. The age of the petitioner was 42 years at the time of the accident. Therefore, the Tribunal took a multiplier of 14 and the same cannot be disputed. The Doctor has indicated the percentage of disability at 75%.

9. While many of these things cannot be disputed, the actual grievance of the appellant is that in the absence of any evidence to show any reduction in the annual income after the accident, the Tribunal ought not to have fixed the compensation for permanent disability at Rs.18,90,000/-. This contention of the appellant requires serious consideration.

10. It is seen from the evidence of the Doctor, examined as P.W.2 and the disability certificate issued by him as Ex.P.25 that the first respondent suffered multiple fractures of the right femur bone. The fracture of right tibia and fibula bones and left tibia fracture have been taken by the Doctor to have resulted in the disability to the extent of about 85%.

11. But it is common knowledge that there are implant devices, in these days, to substitute the femur bones as well as the tibia. Even cancer infected femur bones and tibia are now replaced by prosthesis. The implantation of such prosthesis actually improves the ability of the injured to continue to earn the normal income.

12. According to the first respondent he was actually carrying on business in selling seed fish. He was also having a prawn culture form and a transport contract with animal husbandry department in Cuddalore. There is no evidence to show that because of these injuries, these occupations could not be carried on by him.

13. However, the disability certified by the Doctor cannot also be completely devalued. Therefore, we are of the considered view that the reduction of the monthly income from Rs.15,000/- to Rs.10,000/- by presuming that at the most the income would have been reduced by Rs.5000/- per month, would meet the ends of justice. Therefore, the amount of compensation for permanent disability is worked out as follows:

Rs.10,000/- X 12 X 14 X 75%
= Rs.12,60,000/-

As a consequence, the loss of income calculated for two months at the rate of Rs.15,000/- per month would naturally come down to Rs.20,000/- at the rate of Rs.10,000/- per month for two months.

14. In the result, the appeal is allowed and the award of the Tribunal is modified to the following effect:

Permanent disability	Rs. 12,60,000/-
Pain and suffering	Rs. 50,000/-
Loss of income	Rs. 20,000/-
Transport expenses	Rs. 18,000/-
Extra Nourishment	Rs. 20,000/-
Medical Expenses	Rs. 1,71,950/-
Total	Rs. 15,39,950/-

15. The civil miscellaneous appeal is allowed to the above extent. The Insurance Company is permitted to transfer the amount of compensation payable to the account of the first respondent through NEFT. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

msk

To

The Motor Accident Claims Tribunal,
Special Subordinate Court,
Cuddalore

+1cc to Mr.M.B.Gopalan, Advocate, S.R.No.34974
+1cc to M/s.R.Sreedhar, Advocate, S.R.No.34825

C.M.A.No.1266 of 2015

SVI(CO)
CA(11/08/2015)