IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.NOs.2565 and 3624 of 2011

Solomonraj ... Appellant in CMA.No.2565 of 2011 and 1st respondent in CMA.No. 3624 of 2011

Vs.

1.Revathy ... 1st respondent in CMA.No.2565 of 2011 and 2nd respondent in CMA.No.3624 of 2011

2.The Divisional Manager,
The United India Insurance Co. Ltd.,
No.46, Katpadi Salai,
Vellore. ... 2nd respondent in CMA.No.2565 of 2011 and appellant in CMA.No.3624 of 2011

Prayer in CMA No.2565 of 2011: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 against the decree and judgment dated 27.01.2011 made in M.A.C.T.O.P.No.460 of 2005 on the file of Motor Accident Claims Tribunal, (Additional Sub Court), Thiruvannamalai.

Prayer in CMA No.3624 of 2011: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 against the decree and judgment dated 27.01.2011 made in M.A.C.T.O.P.No.460 of 2005 on the file of Motor Accident Claims Tribunal, (Additional Sub Court), Thiruvannamalai.

For Appellant : Mr.F.Terry Chellaraja (Appellant in CMA.No.2565 of 2011 and first respondent in CMA.No.3624 of 2011)

For Respondent: Mr.M.Krishnamoorthy (Appellant in CMA.No.3624 of 2011 and second respondent in CMA.No.2565 of 2011)

COMMON JUDGMENT

C.M.A.No.2565 of 2011 has been preferred, aggrieved with the award of Rs.18,22,800/-, by the appellant/claimant, who sustained injuries, in the accident, which occurred on 06.12.2004, leading to amputation of his right hand above the knee. C.M.A.No.3624 of 2011 has been preferred by the Insurance Company, against the quantum of compensation awarded by the Tribunal.

2. Heard Mr.F.Terry Chellaraja, learned counsel appearing for the appellant in CMA.No.2565 of 2011 and Mr.M.Krishnamoorthy, learned counsel appearing for the appel1lant in CMA.No.3624 of 2011.

3. The only question to be decided in both appeals is with regard to the quantum of compensation.

4. The claimant, aged about 32 years, who was working in Army, earning a sum of Rs.9,152/- as a monthly salary. Since the right hand was amputated, the Tribunal assessed the disability at 90%, based on the evidence of P.W.2 Doctor and medical records including Ex.P15 disability certificate. Since the claimant was earning a sum of Rs.9,152/- per month, the Tribunal took monthly income at Rs.10,000/- and taking multiplier 16, as he has got 16 years of balance service in Army and determined the loss of income at 90% and awarded Rs.17,28,000/-. However, it is seen that though Rs.10,000/- was taken as monthly income, no future prospects was added as per the Judgment of Hon'ble Supreme Court in Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1, and therefore along with Rs.9,152/- monthly income, Rs.4,576/- added as 50% future prospects and the monthly income at Rs.13,728/-.

5. Though Mr.M.Krishnamoorthy, learned counsel appearing for the appellant would point out that now the claimant is getting Rs.2,000/- as disability pension and the same is required to be deducted from the monthly income determined, considering the fact that the claimant has got future prospects even after the retirement from Army service, he would have earned more money by getting civil employment, the deduction of Rs.2,000/- sought for by Mr.M.Krishnamoorthy is rejected. At the same time, the contention of Mr.F.Terry Chellaraja, for adding future prospects at 100%, relying upon the judgment of Hon'ble Supreme Court in VIMAL KANWAR & OTHERS Vs. KISHORE DAN & OTHERS, reported in 2013(1) TNMAC 641(SC), is also rejected, for the simple reason that case was a death case and 30 years of service was left by the deceased. Therefore, following the Judgment in SARALA VERMA(supra), this Court takes 50% only towards future prospects and the monthly income is determined as follows:-

Rs.9,152/- + 50% = 13,728/-

6. P.W.2 Doctor deposed that 80% disability is sustained by the claimant for amputation of right hand above the knee and for fractures in the chest bone and left hand, 10% was added and 90% was taken as disability. Though 90% disability is caused to the claimant, the loss of earning power is 100%, with one hand, the claimant may not do any normal work and it is impossible for him to get any employment. Therefore, the loss of avocation and loss of income is 100%. Since the claimant has 16 years of service left in the Army, the Tribunal had rightly adopted the service multiplier at 16 and the same is confirmed. The loss of income is calculated as follows:-

Rs.9,152/- + 50% x 12 x 16 = Rs.26,35,776/-.

7. Further, a sum of Rs.5,000/- was awarded towards transportation is too low and the same is enhanced to Rs.15,000/-, Rs.5,000/- awarded towards extra-nourishment is enhanced to Rs.25,000/-, Rs.5,000/- awarded towards attender charges is enhanced to Rs.10,000/-. A sum of Rs.25,000/- was awarded towards pain and suffering and Rs.54,801/- was awarded towards medical expenses as per Ex.P14 which are also confirmed. Since no amount was awarded towards loss of amenities, a sum of Rs.25,000/- is awarded towards loss of amenities. Thus, a sum of Rs.18,22,800/- awarded by the Tribunal is enhanced to Rs.27,90,657/- rounded to Rs.27,90,000/- along with interest at the rate of 7.5% p.a.

8. Though the claim is restricted, re-appreciating the evidence on record, this Court as an appellate Court redetermined the compensation at the above amount, invoking under Order 41 Rule 33 to award just and reasonable compensation. The claimant is directed to pay the additional Court fee before this Court for the enhanced compensation, within a period of two weeks from the date of receipt of a copy of this order.

9. The Insurance Company is directed to deposit the entire award amount along with interest at the rate of 7.5% p.a. and costs, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw only a sum of Rs.15,00,000/- within one week. The balance amount shall be deposited in an interest bearing fixed deposit in any one of the Nationalized Bank, at least for six years. The claimant is permitted to withdraw interest accruing on such deposit once in two months.

10. In the result, C.M.A.No.2526 of 2011 filed by the claimant is allowed. No costs. C.M.A.No.3624 of 2011 filed by the Insurance Company is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rrg

To
1The Motor Accident Claims Tribunal,
(Additional Sub Court),
Thiruvannamalai.

+ 1 cc to M/s. Malar, Advocate SR.14979
+ 1 cc to Mr.M.Krishnamoorthy, Advocate SR.14793

Copy to: The Section Officer, VR Section, High Court, Madras.

SV(CO)
EU 15.04.2015

C.M.A.NOs.2565 & 3624 of 2011