IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.11.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. NO.2503 OF 2015

Karthick .. Appellant

Versus

1.Venkatesan
2.ICICI Lombard General Insurance Company,
Nungambakkam High Road,
Nungambakkam, Chennai - 600 034. .. Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the award and decree dated 08.10.2014 made in M.A.C.T.O.P.No.138 of 2014 on the file of the Motor Accidents Claims Tribunal [III Small Causes Court], Chennai.

For Appellant : Mr.A.Abdhul Kani

For Respondent - 2 : Ms.R.Sreevidhya

J U D G M E N T

This Civil Miscellaneous Appeal seeking enhancement of the compensation has been filed by one Karthick, who suffered multiple injuries including amputation of his right leg below knee. According to the claimant, while he was riding his motorcycle bearing Registration No.TN-18-N-9744 from his house at Vettaikaran Palayam to Redhills, on 19.11.2013, at about 9.00hours, the offending lorry driven by the first respondent's Tipper lorry bearing Registration No.TN-20-AQ-7886 in a rash and negligent manner by its driver coming on the same direction, while wrongly overtaking the claimant's motorcycle, suddenly turn the left side without giving any signal, resulting in the accident in which the claimant's leg was crushed. He had taken treatment as inpatient from 19.11.2013 to 29.11.2013 at Government Stanley Hospital.

2.P.W.2/Doctor has assessed the disability at 65% for the injuries sustained by the claimant. P.W.2 also deposed that due to muscle adherence the right leg stump looks bulky and standing activity is not possible and the stump movements from knee joint restricted by 30 degrees and he also sustained vascular injury near the stump which was treated. Doctor issued disability certificate marked as Ex.P.8 fixing at 60%. The claimant prayed for a total compensation of Rs.25,00,000/- under various heads. It was his further claim that at the time of accident, he was working as carpenter and getting a sum of Rs.500/- per day. But the Tribunal has wrongly fixed Rs.6,000/- per month as his monthly income. On this basis, the pecuniary loss was calculated as follows, namely, Rs.6000 x 12 x 18 x 60% = Rs.7,77,600/-.

3.Adding further the learned counsel for the appellant/claimant would submit that as per the ratio laid down by the Hon'ble Apex Court in the case of SYED SADIQ ETC., vs. DIVISIONAL MANAGER, UNITED INDIA INSURANCE CO.LTD. reported in 2014 [1] TNMAC 459 [SC] has forgotten to add 50% the future prospectus. He would submit that the Tribunal has also failed to consider the attendant charges where the claimant prayed for Rs.50,000/-. Finally concluding his argument, he would submit that the Tribunal has committed three infirmities; firstly, as per the ratio laid down by the Hon'ble Apex Court in the case SYED SADIQ ETC., vs. DIVISIONAL MANAGER, UNITED INDIA INSURANCE CO.LTD. reported in 2014 [1] TNMAC 459 [SC] fixing Rs.6,500/- as notional monthly income. Secondly, to add 50% towards future prospectus following the principle laid down in Syed Sadiq's case. Thirdly, the attendant charges prayed for also was wrongly denied. On this basis, he prayed for an enhancement, since the claimant is completely bedridden and unable to move in view of the amputation of his right leg below knee along with several multiple injuries sustained all over his body.

4.On the other hand, the learned counsel for the Insurance Company would submit that the question of enhancement in the present case is not fair and acceptable. The reason, she pleaded, is that the Tribunal keeping in mind that the claimant has suffered amputation of his right leg below knee had rightly accepted the disability certificate of the Doctor / P.W.2 who deposed that the injuries sustained by the claimant had resulted in 65% disability on the basis of disability certificate marked as Ex.P.2. While fixing Rs.6,000/- as notional monthly income, for 60% disability, as per the ratio laid down by the Hon'ble Apex Court judgment in Sarla Verma and Others Vs. Delhi Transport Corporation, reported in [2009 [6] SCC 121] instead of fixing the proper multiplier 17, the Tribunal has wrongly fixed the multiplier as 18. Therefore, the calculation arrived at the formula Rs.6000 x 12 x 18 x 60% is not in consequence with the ratio laid down by the Hon'ble Apex Court judgment in Sarla Verma and Others Vs. Delhi Transport Corporation, reported in [2009 [6] SCC 121]. Therefore, the calculation being wrong, the claimant has got higher compensation. Therefore, the claimant cannot ask for enhancement.

5.Adding further the learned counsel for the Insurance Company would submit that in the case of SYED SADIQ ETC., vs. DIVISIONAL MANAGER, UNITED INDIA INSURANCE CO.LTD. reported in 2014 [1] TNMAC 459 [SC] the victim sustained amputation of right leg, in addition, he had also suffered injuries to lower end of right femur and left upper arm. The Doctor had certified the disability at 24% in respect of upper limb and 85% to the lower limb and finally, the Hon'ble Apex Court has determined the disability 85% to determine the loss of income. The learned counsel for the Insurance Company has no answer with regard to the non-grant of 50% future prospectus. Again with regard to the compensation for attendant charges, she has no explanation to offer as to why the Tribunal has refused to fix on that head also.

6.Therefore, in the light of the above, since the Hon'ble Apex Court in the case of SYED SADIQ ETC., vs. DIVISIONAL MANAGER, UNITED INDIA INSURANCE CO.LTD. reported in 2014 [1] TNMAC 459 [SC] has fixed Rs.6,500/- as notional monthly income of a vegetable vendor, in the present case also the claimant being carpenter, this Court has no hesitation to fix the same amount of Rs.6,500/- as notional monthly income. However, disagreeing with the approach by the Tribunal in fixing 18 as multiplier, this Court following the ratio laid down by the Hon'ble Apex Court judgment in Sarla Verma and Others Vs. Delhi Transport Corporation, reported in [2009 [6] SCC 121] has considered 17 as the proper multiplier, accordingly the same multiplier is fixed.

7.In view of the above reasons, the Civil Miscellaneous Appeal stands allowed by fixing the notional monthly income as Rs.6500 and as such towards loss of expectation of life disability [6500 x 12 x 17 x 60% = 795600 - 777600 = 18000]; towards attendant charges Rs.25,000/-; 50% towards future prospectus [Rs.3,97,800/-], totalling granting a sum of Rs.4,40,800/- as compensation rounded off to Rs.4,41,000/-. However, there is no order as to costs.

8.It is stated by the learned Insurance Company that the entire award amount has already been deposited before the Tribunal. Therefore, the Insurance Company is directed to deposit the enhanced amount of Rs.4,41,000/- to the credit of M.A.C.T.O.P.No.138 of 2014 on the file of the Motor Accidents Claims Tribunal [III Small Causes Court], Chennai within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is open to the claimant to withdraw the same, by making necessary applications.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Presiding Officer,
The Motor Accidents Claims Tribunal,
[III Small Causes Court], Chennai.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Ms.R.Sreevidhya,, Advocate, S.R.No.64632

+1cc to Mr.A.AbdhulKani, Advocate, S.R.No.64946

C.M.A. NO.2503 OF 2015

kji(CO)
srg(10/03/2016)