IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 361 of 2015
&
M.P. No. 1 of 2015

The Divisional Manager,
United India Insurance Co. Ltd.,
Ranipet. ..Appellant/ 2nd Respondent

Vs.

1. Karthi 1st Respondent/ Claimant

2. Venkatesan
(set exparte notice
may be dispense with 2nd Respondent/ 1st Respondent

Prayer: Civil Miscellaneous Appeal filed u/s 173 of MV Act as against the judgment and decree dated 24.04.2012 passed in M.C.O.P. No. 305 of 2009 by the Motor Accidents Claims Tribunal (Sub Court) at Cheyyar.

For Appellant :: Mr.T. Ravichandran

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the award of Rs.7 lakhs granted in favour of the 1st respondent/claimant for the injuries sustained by him in the accident, which occurred on 03.06.2009.

2. Heard Mr.T. Ravichandran, learned counsel for the appellant, who would submit that the Tribunal fixed the disability at 70% for the amputation of right leg below knee whereas as per Workmen's Compensation Act, 1923, for amputation of leg below knee, the percentage fixed is only 50%. Hence, according to the learned counsel, the percentage of disability fixed by the Tribunal is on the higher side and seeks modification of the award on this ground.

3. However, a close scrutiny of the records would reveal that the 1st respondent sustained injuries in his right leg resulting in amputation of right leg below knee. The 1st respondent

is an agricultural coolie, aged about 21 years and therefore, on account of amputation, loss of income would be 100%. But, this Court confirms the disability determined by the Tribunal at 70%, as it is based on medical records as well as the evidence of P.W.7, Orthopaedic Surgeon, thereby, negativing the contention raised by the learned counsel for the appellant.

4. Though it was claimed that the 1st respondent/claimant was earning Rs.6,000/- per month, the Tribunal took Rs.4,500/- alone as monthly income. But, considering the fact that the accident occurred on 03.06.2009, this Court is the view that the amount of Rs.6000/- claimed as monthly income of the claimant is reasonable and the Tribunal should have taken the said amount as the monthly income. Hence, this Court re-determines the monthly income of the claimant as Rs.6000/- in consonance with the judgment of the Honourable Apex Court rendered in Syed Sadiq Vs. Divisional Manager, United India Insurance Company Limited reported in 2014 (1) TN MAC 459(SC) wherein, for a vegetable vendor, who sustained injuries, in the accident, which occurred in the year 2008, a sum of Rs.6500/- was fixed as monthly income and 50% was added towards "Future Prospects". However, this Court, only re-determines the monthly income at Rs.6000/- without adding "Future Prospects". As per the judgment rendered in Sarla Verma's case (2009 (2) TN MAC (1) SC), the appropriate multiplier, as per the age of the claimant, namely, 21 years, is 18. Therefore, taking the monthly income as Rs.6000/-, disability at 70% and applying the above said multiplier, "Loss of Income due to Disability" is calculated as follows:

Loss of Income due to disability :: Rs.6000 x 12 x 18 x 70/100

:: Rs.9,07,200/-

5. It is seen from the records that the claimant underwent treatment, initially, in Government Hospital, Cheyyar and thereafter, as an in-patient, in Government Hospital, Chennai for 45 days, during which time, steel rod was implanted through surgery. Subsequently, again, he was admitted in CMC, Vellore, from 03.08.2009 to 16.08.2009 for 14 days. Therefore, Rs.30,000/- awarded towards "Pain and Suffering" is too low and a sum of Rs.50,000/- under the said head would be reasonable and accordingly, Rs.50,000/- is awarded towards "Pain and Suffering". Likewise, Rs.3000/- towards "Extra Nourishment" and Rs.2000/- awarded towards "Transportation Charges" are negligible amounts and therefore, this Court awards Rs.25,000/- towards "Extra Nourishment" and Rs.20,000/- towards "Transporation Charges". As the claimant was admitted as an in-patient in Government Hospital, Chennai, for 45 days and again, admitted in CMC, Vellore, for 14 days, a sum of Rs.20,000/- is awarded towards "Attendant Charges".

The sum of Rs.22,137/- awarded towards "Medical Expenses", based on Ex-P8 is confirmed. No amount was awarded towards "Future Medical Expenses" and therefore, a sum of Rs.50,000/- is awarded towards "Future Medical Expenses" as well as for "artificial limb". It is impossible for a person, who lost one of his legs, to get married as no girl would come forward to marry him. Since, the chances of the claimant getting married are very bleak, he has to be compensated towards "Loss of Marital Prospects". Hence, a sum of Rs.50,000/- is awarded towards the same. In all, a sum of Rs.11,44,337/-, rounded off, to Rs.11,50,000/- is awarded as compensation together with interest @ 7.5% per annum.

6. Even though the Insurance company has filed this appeal against the award of Rs.7 lakhs, considering the amputation of leg of the claimant, an agricultural coolie, aged about 21 years, re-appreciating the evidence on record in proper perspective, applying the latest law, and invoking Order XLI Rule 33 CPC, this Court has enhanced the compensation payable to the claimant from Rs.7 lakhs to Rs.11,50,000/-, even in the absence of any appeal/cross-appeal by the claimant, at the admission stage itself, without notice to the claimant, in an endeavour to award just and reasonable compensation. But, When benefit is to accrue to the 1st respondent, there is no need to issue notice to the 1st respondent. Further, an appeal is a continuation of original proceedings and this Court is bound to re-appreciate evidence and award just compensation, as contemplated under the Act. Besides, the provisions of Motor Vehicles Act are beneficial in nature, which aim at consoling, comforting and compensating the victims of road accidents. Hence, the compensation awarded by the Tribunal, to the tune of Rs.7 lakhs is enhanced to Rs.11,50,000/-.

7. The appellant Insurance Company is directed to deposit the entire amount, as per the modified award passed by this Court, with interest and costs, afte deducting the amount already deposited, if any, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is permitted to withdraw only 50% of the deposited amount and the remaining 50%, shall be re-invested in any one of the Nationalised Banks, in interest bearing Fixed Deposit, at least for a period of 3 years. The 1st respondent/claimant is permitted to withdraw interest accruing on such deposit once in two months. The claimant shall pay the appropriate court-fee for the enhanced amount before the Tribunal.

7. In the result, the Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is modified, as indicated above. No costs. Connected M.P. is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

nv

To

1. The MACT (Sub Court), Cheyyar.

2. Karthi
S/o. Ramasamy
25/9 Road Street
Asthinapuram Village
Peranamallur Post
Vandavasi TK

1 cc to Mr.T. Ravichandran, Advocate, Sr. 12672

C.M.A. No. 361 of 2015

KJI (CO)
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