IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2015

CORAM

THE HON'BLE MR. JUSTICE N.KIRUBAKARAN

C.M.A.No.734 of 2015

G.Neelamegam .. Appellant

Vs.

1. N.Prabu

2. Reliance General Insurance Company Limited,
G.R.Thangamaligai Upstairs, II Floor,
Near KHM Hospital,
Anna Nagar,
Chennai - 600 040. .. Respondents
(1st respondent was set ex-parte
before the Tribunal)

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 17.02.2014 made in M.A.C.T.O.P.No.578 of 2011 on the file of Motor Accident Claims Tribunal, Sub Court, Ponneri.

For the Appellant : Mr.F.Terry Chellaraja

For the Second Respondent : Mr.P.Suresh Srinivasan

JUDGMENT

The Civil Miscellaneous Appeal has been preferred by the appellant/claimant, aggrieved against the quantum of Rs.4,13,000/- as compensation for the injuries sustained by him in the accident occurred on 28.09.2011.

2. Heard Mr.Terry Chellaraja, learned counsel appearing for the appellant and Mr.P.Suresh Srinivasan, learned counsel on behalf of Mr.K.Murthy, learned counsel for the second respondent/insurance company on record.

3. The only question to be decided in this appeal is the quantum of compensation awarded by the Tribunal, as there is no appeal filed by the second respondent / Insurance Company challenging the quantum of compensation.

4. A perusal of the records would reveal that the claimant sustained injuries in the left leg and wound debridement was done and K-wire fixation was also done, suturing of muscles, for which amputation was done on his left leg. He was hospitalised from

28.09.2011 to 07.11.2011 and surgery was done on 29.09.2011, as proved by Ex.P7 - Discharge Summary. PW2 Doctor deposed that the claimant sustained 80% disability and his left leg was amputated above the left knee. Determination of 80% of the disability by the Tribunal is as per the evidence of PW2-Doctor as well as Ex.P8-Disability Certificate and therefore, the same is confirmed.

5. Though 80% of the disability was caused, the claimant lost 100% earning power as he could not continue his job as Petrol Bunk Keeper with a single leg. He cannot do any other job. Therefore, there is loss of 100% earning power.

6. The Tribunal determined the monthly income at Rs.2,000/- which is on the lower side, as per the judgment of the Hon'ble Supreme Court in Syed Saidq etc Vs. Divisional Manager, United India Insurance Company reported in AIR 2014 SC 1052. In the said decision, the Hon'ble Supreme Court determined the monthly income of a vegetable vendor at Rs.6,500/- per month and added 50% towards future prospects and determined the monthly income at Rs.9,750/-.

7. Though the learned counsel appearing for the second respondent opposed any increase in the monthly salary, considering the date of accident occurred on 28.09.2011, this Court is inclined to follow the monthly income determined by the Hon'ble Supreme Court in Syed Saidq case (stated supra), as no manual labour is expected to produce the documents to prove his monthly income as held by the Hon'ble Supreme Court in the decision reported in (2011) 13 SCC 236 (Ramchandrappa v. Manager, Royal Sundaram Alliance Co. Limited).

8. That apart the accident in Syed Saidq case occurred on 14.08.2008, whereas the accident in the present case occurred on 28.09.2011. Therefore, this Court is justified in determining the above amount. In view of that, Rs.6,500/- is taken as monthly income. 50% is added towards future prospects, since the appellant was aged about 39 years at the time of accident. Taking Rs.6,500/- as monthly income and adding 50% i.e. Rs.3,250/- towards future prospects, the total monthly income is determined as Rs.9,750/-.

9. At the time of accident, the injured was aged 39 years and as per the second schedule of the Motor Vehicles Act, the proper multiplier is 16, whereas as per the judgment of the Hon'ble Supreme Court in Sarla Verma and others Vs. Delhi Transport Corporation reported in 2002 (2) TAN MAC page 1, the multiplier for the age group 36 - 40 is "15". Adopting multiplier 15, the loss of income is arrived at Rs.9,750 x 12 x 15 = Rs. 17,55,000/-.

10. The Tribunal has awarded Rs.20,000/- towards pain and suffering and the same is very low. Considering the injuries sustained by the claimant and amputation of leg, Rs.20,000/- awarded towards pain and suffering is enhanced to Rs.50,000/-. Rs.3,000/- awarded towards medical expenses is confirmed. Rs.3,000/- was awarded towards extra nourishment and the same is enhanced to Rs.50,000/-. No amount is awarded towards loss of amenities and therefore, a sum of Rs.50,000/- is awarded for the

same. Rs.3,000/- was awarded towards Transportation and the same is enhanced to Rs.25,000/-. No amount was awarded towards attendant charges and therefore, a sum of Rs.25,000- is awarded for the said head. For future medical treatment nothing has been awarded. Therefore, for fixing artificial leg and also incur future medical expenses, a sum of Rs.50,000/- was awarded. Thus, the award amount of Rs.4,13,000/- awarded by the Tribunal is enhanced to Rs.20,08,000/-, rounded off to Rs.20,00,000/- as follows along with interest at the rate of 7.5% from the date of petition till the date of deposit.

Loss of Income	-	Rs.	17,55,000/-
Pain and suffering	-	Rs.	50,000/-
Loss of Amenities	-	Rs.	50,000/-
Medical expenses	-	Rs.	3,000/-
Transportation	-	Rs.	25,000/-
Attendant Charges	-	Rs.	25,000/-
Artificial leg and future medical expenses	-	Rs.	50,000/-
Extra Nourishment	-	Rs.	50,000/-
		Total Rs.	20,08,000/-
Rounded off to		Rs.	20,00,000/-

11. The second respondent/Insurance Company is directed to deposit the entire amount along with interest and costs, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is permitted to withdraw a sum of Rs.5,00,000/- with interest only. In the balance amount of Rs.15,00,000/-, the Tribunal is directed to deposit a sum of Rs.5,00,000/- with interest in the name of the claimant under the Kysan Vikas Patra, which will be within a period of 8 years and the balance amount of Rs.10,00,000/- with interest is directed to be deposited in a Fixed Deposit in Indian Bank, Thiruvellore Branch. The appellant is directed to withdraw the accrued interest on the Fixed Deposit once in three months from the Bank.

12. The appellant is directed to pay the appropriate court fee towards the enhanced compensation within a period of two weeks from the date of receipt of a copy of this order.

13. The appeal is allowed, accordingly. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

adl

To

1. Reliance General Insurance Company Limited,
   G.R.Thangamaligai Upstairs, II Floor,
   Near KHM Hospital,
   Anna Nagar,
   Chennai - 600 040.

2. The Subordinate Judge,
   Motor Accident Claims Tribunal,
   Sub Court, Ponneri.

1 cc to Mr.K. Moorthy, Advocate, Sr. 23594
1 cc to M/s.M. Malar, Advocate, sr. 23361

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