

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 749 of 2015

&

M.P. No. 1 of 2015

The Manager,

The New India Assurance Co. Ltd.,

No.66, W.P. Road,

Trichy.

...Appellant/2nd Respondent

Vs.

1. Saroja

2. Padmini

(2nd respondent herein was set ex parte by the Court below and hence, notice in this appeal against her may be dispensed with.)

...Respondents/Petitioner/1st Respondent.

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 24.09.2012, passed in M.C.O.P. No. 580 of 2010 by the Motor Accidents Claims Tribunal (Prl. District Court), Perambalur.

For Appellant :: Mr.K. Padmanabhan

For Respondents:: Mr.C. Prabakaran for R1
R2 Ex parte

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.5,54,320/- passed by the Motor Accidents Claims Tribunal (Prl. District Court), Perambalur, in favour of the 1st respondent/claimant, for the injuries sustained by her in the accident, which occurred on 12.10.2010.

2. Heard Mr.K. Padmanabhan, learned counsel for the appellant and Mr.C. Prabakaran, learned counsel for the 1st respondent.

3. It is contended by the learned counsel for the appellant that the claimant sustained only crush injury in her right

leg and the disability assessed at 43%, in no way, interferes with her earning capacity and therefore, application of multiplier is unwarranted. Further, he pointed out that taking Rs.3000/- as monthly income, applying multiplier 11, for 43% disability, if "loss of income due to disability" is calculated, it would be Rs. 1,70,280/-, but, the Tribunal, by mistake, calculated as Rs.3,96,000/- and therefore, the learned counsel seeks reduction of the award amount.

4. However, Mr.C. Prabakaran, learned counsel for the claimant, would support the award passed by the Tribunal.

5. It is evident from the records that the claimant sustained crush injury to her right foot and based on the evidence of the Doctor, P.W.2, who deposed that due to the said injury, skin grafting was done to the right foot of the claimant, resulting in restriction in movement of her right foot and that she finds it difficult to squat, sit cross-legged, stand for a long time and walk, the disability was rightly assessed by the Tribunal at 43%, which cannot be interfered with.

6. Though the accident occurred on 12.10.2010, the Tribunal determined the monthly income at Rs.3000/-. Even, as per the judgment of the Honourable Apex Court rendered in New India Assurance Company Limited V. Smt.Kalpna and Others reported in 2007 (1) Supreme 514, for a home-maker, "Monthly contribution to the family" after deduction towards "Personal Expenses" was taken as Rs.3000/- and the accident, in that case, pertains to the year 1998. Whereas in this case, the date of accident is 12.10.2010 and following the said judgment, this Court determines the monthly income of the injured at Rs.4500/- and "Loss of Income due to disability" is calculated thus:

Monthly Income :: Rs.4500/-
Applying multiplier 11 and taking disability at 43%,
"Loss of Income due to disability" :: Rs.4500 x 12 x 11 x 43%
:: Rs.2,55,420/-

As far as other amounts are concerned, the sum of Rs.25,000/- awarded towards "Pain and Suffering", Rs.1,18,320/- awarded towards "Medical Expenses", Rs.10,000/- awarded towards "Nutrition" and Rs.5000/- awarded towards "Transportation Charges" are quite reasonable and they are hereby confirmed. Totally, a sum of Rs. 4,13,740/- is payable as compensation to the 1st respondent/claimant and the rate of interest awarded by the Tribunal at 7.5% per annum remains intact.

7. The appellant is directed to deposit the entire amount, if not already deposited, as per the modified award passed by this

Court, with interest and costs, 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 1st respondent/claimant is permitted to withdraw the entire amount, as per the award passed by this Court, within a period of two weeks thereafter. If the appellant had already deposited the entire amount, as per the award passed by the Tribunal, then the balance amount, lying in deposit before the Tribunal, shall be refunded to them.

8. In the result, the Civil Miscellaneous Appeal is partly allowed, reducing the award passed by the Tribunal, to the tune of Rs. 5,54,320/- to Rs.4,13,740/-. No costs. Connected M.P. is closed.

nv

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

The MACT (Prl. District Court),
Perambalur.

+ 1 cc to M/s.C.Prabakaran, Advocate SR 19966

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