IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2015

C O R A M

THE HONOURABLE Ms.JUSTICE K.B.K.VASUKI

C.M.A.No.3704 of 2011

United India Insurance Company Ltd.,
Branch Manager,
3, Giriram Building,
Gobi Main Road, Gobi Taluk ...Appellant/2nd Respondent

Vs.

1. K.B.Anandhan
2. P.K.Gopalakrishnan ... Respondents/Petitioner 1st Respondent

PRAYER:
Civil Miscellaneous Appeal filed U/s. 173 of Motor Vehicles Act 1988 against the judgment and decree, dated 06.02.2006 passed in M.C.O.P.No.140 of 2004, on the file of the Motor Accidents Claims Tribunal, First Additional Sub Court, Gobichettipalayam.

For Appellant : Mr.S.Arunkumar

For Respondent-1 : Mr.Ma.P.Thangavel

For Respondent-2 : Mr.M.Guruprasad

JUDGEMENT

The second respondent/Insurer before the Tribunal, is the appellant herein.

2. The present Appeal is filed assailing the award of compensation of Rs.11,87,460/-, to the injured/claimant.

3. The Tribunal, on the basis of the findings that the injured was aged about 33 years, and was earning Rs.7,500/- as monthly income and sustained injuries over head, hand and leg, and was under treatment for more than two months and sustained 50% disability, awarded compensation of Rs.11,87,460/- under the following heads:-

i.	Loss of income	:	Rs.7,65,000/-
ii.	Medical Expenses	:	Rs.2,67,000/-
iii.	Transport to Hospital	:	Rs.17,460/-

iv.	Room Rent	:	Rs.8,000/-
v.	Pain and suffering	:	Rs.1,20,000/-
vi.	Extra nourishment	:	Rs.10,000/-
	Total	:	Rs.11,87,460/-

4. The Insurance Company in this Appeal raised serious objection only with regard to the quantum of compensation awarded under the head "Loss of income".

5. The Tribunal, on the basis of the averments raised in the Claim Petition, and, on the basis of the evidence of the petitioner as P.W.1, fixed his monthly income at Rs.7,500/- and determined loss of future earning power with reference to 50% disability assessed by the Doctor by applying the multiplier method. Such method, according to the learned counsel for the Insurance Company has resulted in awarding exorbitant amount for Loss of future income, and the same needs reduction. It is contended by the learned counsel for the Insurance Company that the injured, having failed to prove the nature of his avocation as Interior Decorator, and, having failed to prove his total incapacity for discharging his work with the help of his employees, is not entitled to claim compensation towards loss of earning power by equating the physical disability to functional disability.

6. On the other hand, the learned counsel appearing for the first respondent/claimant has pointed out the failure on the part of the Tribunal to award any amount towards loss of income during the treatment period, loss of amenities, loss of marriage prospects. The learned counsel for the claimant has also, in support of his contention that the claimants are entitled to defend the award passed by the Tribunal in the Appeal filed by the Insurer, placed reliance on the decision of the Hon'ble Supreme Court reported in (2011) 2 TN MAC 313 (SC) in re (Ranjana Prakash and others Vs. Divisional Manager and another) wherein, it is held that in an Appeal filed by the Insurer, if the High Court proposes to reduce the award, the claimants can certainly entitled to defend the award passed by the Tribunal by pointing out errors and omissions in the award, even in the absence of any Appeal or Cross-Objection.

7. Heard the rival submissions made on either side. Upon such submissions, the moot points that arise for consideration in this Appeal are:-

i) Whether the compensation awarded towards the Loss of Income is exorbitant or not? as contended by the appellant herein.

and

ii) Whether the Tribunal has failed to award compensation towards the loss of income during the treatment period, loss of amenities, loss of marriage prospects? as contended by the first respondent/claimant.

8. Insofar as the First Point is concerned, this Court finds greater force in the argument advanced on the side of the Insurance Company. As rightly pointed out by the learned counsel appearing for the appellant, the claimant has not adduced any evidence to show nature of avocation of making cement articles like window, door frame, water tank, flower pot, etc., It is admitted by the claimant that he had been carrying on the job by engaging 10 to 15 employees, and he lost his business because of his physical inability. Both aspects was not proved. When there are 10 to 15 employees, the business could be continued through his employees and no physical labour of the claimant is required to carry on the job. In that event, 50% of the functional disability assessed by the Doctor and the determination of loss of earning capacity on the basis of the same, cannot be accepted. Even assuming it to be true that the business could not be carried on in the same manner, as before, the functional disability can be drawn at 25% for his inability to supervise the same fully, and the loss of earning can be accordingly assessed as "7,500 x 12 x 17 x 25 = Rs.3,82,500/-." Point No.I is accordingly, answered.

9. As regards the Second Point, as Hon'ble Apex Court in the judgment rendered in Ranjana Prakash's case, cited supra, relied on by the learned counsel for the first respondent/claimant, clearly held that the claimant is entitled to defend the impugned award in the Appeal preferred by the Insurer, on any other grounds. Relying on the same, it is contended on the side of the claimant that this Court, while reducing the compensation awarded under the head loss of future earnings, can award reasonable amount for 'loss of income during treatment period, and the same can be reasonably fixed at Rs.30,000/- i.e., Rs.7,500/- per month. for four months. This Court finds bona fide in the stand so taken by the claimant and Point No.(ii) is accordingly answered.

10. For the reasons discussed above, this Court is inclined to modify the impugned award as follows:-

i.	Loss of earning (7,500 x 12 x 17 x 25 = Rs.3,82,500/)	:	Rs.3,82,500/-
ii.	Medical expenses	:	Rs.2,67,000/-
iii.	Transport to Hospital	:	Rs. 17,460/-
iv.	Pain and Suffering	:	Rs.1,20,000/
v.	Room Rent	:	Rs. 8,000/-

vi.	Extra nourishment	:	Rs. 20,000/-
vii.	Loss of income during treatment: (monthly salary, Rs.7,500x 4 months)	:	Rs. 30,000/-
viii)	Loss of amenities	:	Rs.1,00,000/-
	Total	:	Rs.9,44,960/-

The said amount of Rs.9,44,960/- is payable with interest at 9% p.a. from the date of Petition till date of payment.

11. In the result, the compensation of Rs.11,87,460/- awarded by the Tribunal is modified to Rs.9,44,960/- payable with interest at 9% p.a. from the date of Petition till date of payment. As the appellant/Insurance Company already deposited the compensation amount awarded by the Tribunal, the first respondent/claimant is permitted to withdraw the compensation, as awarded by this Court, viz., Rs.9,44,960/- with interest and cost by filing separate Cheque Petition before the Tribunal and the Insurance Company is permitted to withdraw the excess amount with interest.

12. The Civil Miscellaneous Appeal is accordingly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
(First Additional Sub Judge, Gobichettipalayam.

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

+ 1 cc to Mr.Ma.P. Thangavel, Advocate Sr.43012
+ 1 cc to Mr.S. Arunkumar, Advocate Sr.43178
+ 1 cc to Mr.M. Guruprasad, Advocate SR.43015

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