

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.11.2016

CORAM:

THE HON'BLE Mr. JUSTICE N.SESHASAYEE

C.M.A.No.2826 of 2009
and M.P.No.1 of 2009

Royal Sundaram Alliance Insurance Co. Ltd.,
46, Whites Road,
Chennai - 600 014 Appellant/2nd Respondent

Vs

1. S.Saraswathi 1st respondent/Petitioner
2.K.N.Jayaramaraju 2nd respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgement and Decree made in MACT O.P.No.1845 of 2004 on the file of the Motor Accidents Claims Tribunal Additional District Judge, (Fast Track Court No.2, Chennai) dated 24.12.2008.

For Appellant : Mr.M.B.Gopalan
For Respondents : Mr.T.G.Balachandran for R1
R2 - Exparte

J U D G M E N T

The second respondent / insurance company in M.C.O.P. No.1845 of 2004 on the file of Motor Accidents Claim Tribunal (Fast Track Court No.2), Chennai has preferred this appeal, challenging the quantum of compensation awarded, vide Order dated 24.12.2008, to injured first respondent herein in a road accident.

2. Ms. Saraswathi, a young lady aged 32 years, a B.Sc graduate and an employee in a private concern besides being an agent of Life Insurance Corporation of India, met with an accident and sustained injuries on 03-02-2004 when the two wheeler that she was riding was knocked down by a lorry bearing no: TN 09M 7733, belonging to the second respondent (first respondent before the Tribunal). In the said accident, she is stated to have suffered extensive injuries to her right leg and right hand where she suffered fractures and was admitted as an in-patient on three occasions, at first instance for 43 days, second instance for 4 days and third for 3 days, for her treatment. She was surgically treated for correcting her fracture. For the injuries

she suffered, she claimed a compensation of Rs.10,00,000/- before the Tribunal but the Tribunal on considering the evidentiary material before it passed an award for Rs.4,72,408/- payable with interest at 9%. In arriving at the award amount, the Tribunal has reckoned the monthly income of the injured at Rs.10,000/-p.m. as against the assertion of the claimant that she was earning Rs.15,000/-p.m. On the head of permanent disability while the Doctor (PW2) has assessed it at 45% (Refer: Ex.P-24 Disability certificate), the Tribunal has fixed the total functional liability at 15% and applied a multiplier of 17. In fact, the Tribunal appear to have merely applied Schedule II of Motor Vehicles Act, 1988, which has relevance only to a claim under section 163-A and not to a claim under Section 166. The other heads of compensation essentially included loss of earning capacity of Rs.60,000/- for six months, besides medical expenses including future medical expenses.

3. Before this Court, the learned counsel for the appellant argued that the Tribunal was wrong in fixing the monthly income of the deceased and should not have adopted multiplier method.

4. Per contra the learned counsel for the first respondent / claimant would argue that this is a case, where the claimant had suffered major injuries on her right leg and that she was only 31 years at the relevant time. Her martial life was also seriously affected and the adverse impact of her injuries on her pursuit to her profession was substantial. Justly and very appropriately the Tribunal has adopted the multiplier method.

5.This Court is aware of the ratio laid down in Rajkumar Vs Ajaykumar & another [2011 ACJ 1(SC)] where the Hon'ble Supreme Court has declared the law and laid down the parameters for quantifying the value of permanent disability arising out of a road accident in money terms. The Tribunal has more or less adopted the same method even though it might have referred to the Second Schedule of MV Act for guidance. Ex.P.19 Income Tax return pertain to her salary income that the claimant was earning Rs.9,000/- p.m. It shows that her taxable income was Rs.69,392/-, which approximately comes to Rs.5,600/-p.m.

6.The learned counsel for the appellant argued that the victim has earned commission as an agent of Life Insurance Corporation Agent. Ex.P.18, is the appointment order given by the claimant's employer, where the monthly salary is stated to be Rs.6,000/-. However, since the employer was not examined, taking into consideration her additional qualification, the Tribunal fixed the monthly income of the claimant at Rs.10,000/-. This Court is of the considered view that the amount given is not excessive as the claimant was engaged in dual avocation.

7. The only other head where the appellant raised objection is regarding the award amount of Rs.25,000/- for the future medical expenses of the claimant. This Court does not consider it to be inappropriate or excessive. A healthy woman, for no fault of hers was forced to suffer injury to her leg and P.W.2, the doctor who assessed her disability has deposed that the claimant struggles to walk and sit etc. This may have an impact on her posture and gait which in the long run may lead to problem in her lower back which necessarily requires to be medically attended. Therefore, even this ground of objection by the appellant, cannot be entertained.

8. In conclusion I find no merit in the appeal and the same is dismissed without costs. The appellant is directed to deposit the award amount, less any amount already deposited, with interest at 9% from the date of claim petition till the date of payment within six weeks from the date of receipt of the copy of the order whereupon the claimant is free to withdraw the same forthwith. Consequently the Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsi2

To :

The Additional District Judge,
Motor Accident Claims Tribunal
Fast Track Court No.2,
Chennai.

+1cc to Mr.M.B.Gopalan, Advocate Sr.70039
+1cc to Mr.T.G.Balachandran, Advocate Sr.69036[31/01/2017]

C.M.A.No.2826 of 2009

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srg 25/01/2017