IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.1160 OF 2015
AND MP.NO.1/2015
CMP.NO.2672/2016

The New India Assurance Co. Ltd.,
No.1, Bharathi Road, Arcot,
Woodlands Building, Cuddalore. ... Appellant/2nd Respondents

Versus

1.Dr.T.Ramachandrudu ..1st Respondent/Claimant
2.K.Ramesh ...2nd Respondent/1st Respondent

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.02.2015 made in M.C.O.P.No.2401 of 2011 on the file of the Motor Accident Claims Tribunal, 1st Additional Subordinate Judge, Cuddalore.

For Appellant : Mr.N.Vijayaraghavan

For Respondent-1 : Mr.R.Sivaraman

For Respondent-2 : Mr.S.I.Muthiah

J U D G M E N T

(JUDGMENT OF THE COURT WAS MADE BY M.GOVINDARAJ, J.)

Challenging the award of compensation of Rs.1,52,26,617/- passed in M.C.O.P.No.2401 of 2011 dated 20.02.2015 by the Motor Accident Claims Tribunal (I Additional Subordinate Judge) Cuddalore, the appellant insurance company has come up with the the present appeal.

2. On 06.05.2011 at about 09.00 p.m., when the claimant / first respondent was riding his motorcyle, bearing Registration No.PY01-AC-7362, on the left hand side of Cuddalore Pondy Main Road, near Periyakattukuppam, the second respondent's Car, bearing Registration No.TN41-K-4444, driven in a rash and negligent manner, hit the petitioner's vehicle from behind and caused the accident. He was admitted at Aarupadai Veedu Hospital, Pondicherry and then transferred to JIPMER hospital, Pondicherry for advanced treatment. Till now, the claimant was undergoing treatment at private hospitals. In the accident, the motorcycle was completely damaged.

3. At the time of accident, the claimant was 49 years old. He was serving as a Professor of Medicine at Aarupadai Veedu Medical College Hospital, Kirumampakkam and was earning Rs.3,00,000/- per month also earning by his private practice. He was an income tax assessee and sole bread winner of the family. Due to the accident, he was totally disabled and lost all promotional chances and bright career prospects. Therefore, he has estimated the compensation at Rs.2 Crores, along with interest at the rate of 18% per annum from the respondents.

4. Before the Tribunal, on the side of the claimant, six witnesses were examined and 27 documents were marked as Exs.P1 to P27. On the side of the respondents, the driver alone was examined as witness and no documents were marked. P.W.2 and P.W.3 are the Doctors, who have given disability certificate to the claimant.

5. The Tribunal has gone into all the issues regarding the rash and negligent driving of the driver of the Car, liability of the insurance company and the quantum of compensation. The Tribunal below on the basis of Ex.P1 - xerox copy of FIR and also on the basis of evidence of Driver has come to the conclusion that the accident had taken place due to the rash and negligent driving of the driver of the second respondent's Car.

6. In so far as the objection taken by the insurance company that the Driver was not having proper driving license and the liability of the insurance company to pay compensation were disputed, by marking Ex.P2 - driving license of the claimant, Ex.P4 - xerox copy of insurance policy, Ex.P3 - report of the Motor Vehicles Inspector for second respondent's vehicle, the claimant had discharged his liability. The second respondent's vehicle had valid insurance policy and the driver also had valid driving license was held to be proved. Therefore, the insurance company was rightly declared to be liable to pay compensation.

7. In so far as the injuries sustained by the claimant is concerned, there were lot of medical evidences produced by way of Ex.P5 - medico legal examination report, Exs.P6 and P7 - case summary and discharge record, discharge summary, Ex.P8 - O.P. records of JIPMER Hospital, Exs.P13 to P19 - disability certificate, opinion given by Doctors and Hospital were marked.

8. As per the evidence of P.W.2 and P.W.3, disability was shown as 100 %, as the claimant cannot perform any surgery thereafter and has to put under medical supervision throughout his life. In so far as the loss of earning capacity is concerned, the claimant has marked Ex.P20 - salary slip of the claimant, Ex.P21 - relieving order issued by Aarupadai Veedu Medical Collge Hospital, Kirumampakkam, Ex.P22 - salary certificate. In so far as his qualifications are concerned, the claimant has marked Ex.P23 - certificate of Master of Surgery issued by Pondicherry University, Ex.P24 - certificate of Bachelor of Medicine and Surgery issued by Anna University, Madras, Ex.P25 - Medical Registration certificate, Ex.P26 - certificate of Master of CHIRURGY Plastic Surgery (MCH) and Ex.P27 - certificate of M.S. General Surgery issued by Pondicherry University.

9. Based on all these oral and documentary evidence, the Tribunal has come to the conclusion that the claimant is entitled for compensation and fixed his disability at 83%. By invoking the multiplier 14 and deciding the monthly income of the claimant as Rs.1,20,000/- in accordance with Ex.P20, the Tribunal has arrived at the compensation of a sum of Rs.1,52,26,617/-. The Tribunal has awarded compensation under various heads as follows:

Loss of income (Rs.1,20,000 X 12 X 14 X 83% = Rs.1,67,32,800 /- less amount already received Rs.18,71,743/-)	-	Rs.1,48,61,057.00
Medical expenses	-	Rs. 1,28,560.00
Transportation	-	Rs. 10,000.00
Extra nourishment	-	Rs. 10,000.00
Damage to clothing and article	-	Rs. 2,000.00
For attendant charges	-	Rs. 15,000.00
For pain and sufferings	-	Rs. 50,000.00
Loss of amenities	-	Rs. 50,000.00
For permanent discomfort	-	Rs. 1,00,000.00
Total	-	Rs.1,52,26,617.00

Thus, the Tribunal has partly allowed the claim petition and awarded a compensation of Rs.1,52,26,617/- with future interest at the rate of 7.5% per annum from the date of numbering of the petition till the date of deposit with costs.

10. Challenging the award, the insurance company has filed the present appeal on the grounds that the claim is not bonafide and the compensation was erroneously awarded believing the staff witnesses, such as P.W.2 and P.W.3 and without considering the opportunity of continuing the practice as a medical practitioner by the claimant. The huge compensation awarded by the Tribunal was without credible evidence and his disablement was not proved properly. The income of the claimant was also not proved by filing Income Tax assessment and the multiplier method adopted by the Tribunal is erroneous.

11. We have heard the rival contentions of the learned counsel appearing on either side and perused the materials available on record.

12. At the outset, the accident and the liability of the appellant insurance company is not disputed. It is also an admitted fact that the claimant is a qualified Doctor and possessed P.G. degree in Medicine and Specialist in Plastic Surgery. The salary issued by the employer Aarupadai Veedu Medical College and Hospital reveals that monthly income was Rs.1,20,000/-, after deduction of income tax and other dues. The evidence of witnesses clearly elaborated the physical disability suffered by the claimant and the period of medical treatment from the date of accident i.e., 06.05.2011 till date proves the seriousness for the injuries and this Court also come to the conclusion that the disability certificate issued by the Doctors is credible and acceptable.

13. In so far as the compensation is concerned, the monthly income fixed by the Tribunal is based on the salary slip and a Doctor with such qualification, no doubt, will be paid such a salary. The claimant was aged 49 years at the time of accident. Therefore, as per the judgment of the Hon'ble Supreme Court, he was given 30% towards future prospects, which has been rightly applied by the Tribunal. But the Tribunal has not applied the income tax deduction properly. Therefore, this Court has calculated the income tax deductions as per the rates that was prevailing during the period of accident i.e., 2011-2012. Accordingly, income tax is calculated as under:

Annual income Rs.1,56,000 /- X 12 (including future prospects Rs.1,20,000/- + Rs.36,000/-)	=	Rs.	18,72,000.00
Deduction: Exemption under Section 80, 80CCC, 80CCD (The aggregate of deductions shall not exceed Rs.1,00,000/-)	=	Rs.	1,00,000.00
		Rs.	17,72,000.00

Tax rate:

Upto Rs.1,80,000/-	Nil		
Rs.1,80,001 /- to Rs.5,00,000/-	10%	Rs.	32,000.00
Rs.5,00,001 /- to Rs.8,00,000/-	20%	Rs.	60,000.00
Rs.8,00,001 /- and above	30%	Rs.	2,91,600.00
		Rs.	3,83,600.00
Education Cess 2%		Rs.	7,672.00
Higher Education Cess 1%		Rs.	3,836.00
	(-)	Rs.	3,95,108.00
Annual income		Rs.	14,76,892.00
Rs.14,76,892 X 14		Rs.	2,06,76,488.00

14. The annual income is arrived at Rs.14,76,892 /-. In so far as the disability is concerned, the appellant insurance company would contend that the claimant is a Medical Practitioner. The evidence given by P.W.2 and P.W.3 is naturally will have some bias in favour of him and therefore, the percentage of disability given by the Doctor at 83% cannot be duly relied on and the claimant himself has let in evidence as P.W.1. He has chances of practicing in future and therefore, considering the injuries, the disability cannot be more than 50% and would forcibly insists that the disability shall be fixed at 50%.

15. The contention raised by the appellant insurance company cannot be disregarded as a whole. However, considering the arguments advanced by the learned counsel on either side, this Court is of the opinion that the disability can be safely fixed at 65%. Taking the permanent disability as 65%, instead of 83%, the loss of income is calculated as Rs.2,06,76,488 X 65/100 = 1,34,39,717/-. The loss of income is arrived at Rs.1,34,39,717/-. In respect of compensation awarded under the head transportation, we are of the opinion that it can be enhanced to Rs.20,000/- instead of Rs.10,000/- and the attendant charges at Rs.20,000/- instead of Rs.15,000/-. In so far as the other heads are concerned, there is no interference. In so far as the compensation towards disability is concerned, this Court awards a sum of Rs.3,000/- for the disability. The total compensation as such is arrived at Rs.1,39,20,277/- rounded of to Rs.1,39,20,300/-.

16. The appellant insurance company has already deposited a sum of Rs.75,00,000/-. Therefore, we direct that the appellant insurance company shall deposit the balance amount with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, after deducting a sum of Rs.75,00,000/- which has already been deposited. The appellant is directed to make such deposit within a period of eight weeks from the date of receipt of a copy of this order.

17. In the result, the Civil Miscellaneous Appeal is allowed in part. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

TK

To
1.The 1st Additional Subordinate Judge,
Motor Accident Claims Tribunal
Cuddalore.

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

+1cc to Mr.N.Vijayaraghavan,Advocate sr.18113

+1cc to Mr.N.Damodaran,Advocate sr.17633

C.M.A.NO.1160 OF 2015

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ss(19/6/2017)