IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.03.2017
CORAM:
THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.1271 OF 2015
AND M.P.NO.1 OF 2015
AND CROS.OBJ.NO.86 OF 2015

M/s.New India Assurance Co. Ltd.,
Branch Office
D/No.29, 1st Floor, Ram Complex,
Paramathi Road,
Namakkal Taluk and District. ... Appellant in CMA/ 1st Respondent in Cross Objection /2nd Respondent in MCOP

Versus

1.Dr.Rashmi ...1st Respondent in CMA/Cross Objector/ Petitioner in MCOP

2.P.Rajkumar ...2nd Respondent in Cross Objection/1st Respondent in MCOP

PRAYER in CMA.No.1271/2015: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.11.2014 passed in M.C.O.P.No.1162 of 2013 by the Motor Accidents Claims Tribunal (Additional District Judge) Namakkal District.

Prayer in Cross Objection No.86/2015:It is prayed to enhance the Compensation awarded in the Judgment and decree dated 07.11.2014 made in MCOP.No.1162/2013 on the file of the MACT/Additional District Court/Namakkal by allowing this Cross-Objection with interest and Cost.

For Appellant : Mr.J.Chandran
For Respondent-1: Mr.P.Thangavel

J U D G M E N T

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

Challenging the quantum compensation awarded by the Motor Accidents Claims Tribunal (Additional District Judge) Namakkal, in M.C.O.P.No.1162 of 2013, dated 07.11.2014, the insurance company has preferred the above appeal.

2. Even though the appeal was filed against the negligence aspect as well as the quantum towards an injury, is excessive, the appellant insurance company has restricted its arguments in respect of quantum alone.

3. The admitted facts are that the victim was working as a Dentist and she had suffered (i) segmental fracture shaft of right femur and (ii) undisplaced fracture base of left 5th metacarpal. The injury was proved by Ex.P13 - wound certificate and Ex.P14 - discharge summary. It was substantiated accordingly by oral evidence also. It was contended that in view of the fracture on the hand, the injured could not perform her duties as usual and therefore, she has lost the earning capacity. The Tribunal fixed 45% disability. Ex.P17 is the proof of educational qualification and the registration of Clinic was proved by Ex.P19. Exs.P20 and P21 are the income tax returns for the year 2011-2012 and 2012-2013. The injured has relied on the income tax return filed by her for the year 2012-2013 for enhancement of the compensation. But from the records it is seen that the date of accident was 08.04.2013, whereas, the income tax return relied on by the claimant was filed on 03.12.2013, showing higher income i.e., after the date of accident. Therefore, we are not inclined to rely on the document, which came into existence after the date of accident. Therefore, we find that the income fixed by the Tribunal at Rs.2,00,000/- per annum is reasonable and does not require any interference and accordingly, the same is confirmed.

4. However, it is stated that the injured was 32 years at the time of accident. But the Tribunal has computed the compensation applying multiplier 17 instead of 16, which is applicable for the get group between 31 and 35. Therefore, the multiplier applied by the Tribunal is erroneous and this Court deem it fit to apply multiplier 16. The Tribunal has awarded a sum of Rs.50,000/- towards pain and suffering which is reduced to Rs.30,000/- and Rs.50,000/- towards loss of amenities which we reduce it to Rs.40,000/-. Accordingly, after reworking, the compensation is arrived at Rs.16,61,969.00 and the same reads as under:

Loss of future earning (Rs.2,00,000 X 16 X 45/100)	-	Rs.14,40,000.00
Medical bills	-	Rs. 1,21,969
Transport charges	-	Rs. 10,000.00
Pain and sufferings	-	Rs. 30,000.00
Extra nourishment	-	Rs. 10,000.00
Attender charges	-	Rs. 10,000.00
Loss of amenities	-	Rs. 40,000.00
Total	-	**Rs.16,61,969.00**

The first respondent/claimant is entitled to receive the modified compensation of Rs.16,61,969/- with interest at the rate of 7.5% per annum. The difference between the compensation originally awarded by the Tribunal and the reduced compensation now calculated by this Court is Rs.1,20,000/-.

5. The learned counsel appearing for the appellant insurance company would submit that they have deposited the entire award amount and the first respondent / claimant was also permitted to withdraw 50% of the same.

6. Consequent to the reduction in the quantum of compensation, M/s.New India Assurance Company Limited, is permitted to seek for refund of the balance amount, from the deposit, with proportionate interest.

7. The first respondent / claimant is permitted to withdraw the award amount with proportionate interest, at the rate of 7.5% per annum, from the date of claim till deposit, and costs, if not withdrawn earlier.

8. In the result, the Civil Miscellaneous Appeal is allowed in part as indicated above. The cross objection filed by the first respondent/ claimant for enhancement of compensation is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Judge,
Motor Accidents Claims Tribunal
Namakkal District

2.The Section Officer
VR Section
High Court, Madras

+1 cc to M/s.Ma.P.Thangavel Advocate sr 16145
+1 cc to M/s.J.Chandran Advocate sr 16098

C.M.A.NO.1271 OF 2015

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