IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2017

CORAM

THE HON'BLE DR.JUSTICE.S.VIMALA

Civil Miscellaneous Appeal No.2173 of 2015
and M.P.No.1 of 2015

The United India Insurance Co. Ltd.,
No.134 Third Party Claims Cell,
HUP Greams Road, Chennai - 6 .. Appellant / R-2 before the Tribunal

Vs

1. V.Malliga .. R-1 / claimant
2. Mrs. M.Nirmala .. R-2 / owner of the auto

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1989, to set-aside the decree and Judgment, dated 25.09.2014 made in MCOP No.4848 of 2011 on the file of Motor Accident Claims Tribunal (VI Court of Small Causes) Chennai.

For Appellant : Mr. A.Dhiraviyanathan
For Respondents: Mr. T.G.Ravichandran, for R-1,
No Appearance, for R-2.

JUDGMENT

This Appeal has been filed by the Insurance Company, challenging the quantum of compensation awarded to the injured / claimant.

2. The injured, Malliga, aged 47, a tailor by profession, earning a sum of Rs.10,000/- per month, suffered injuries in an accident that took place on 08.11.2009. According to the claimant, she suffered crush injuries in her right foot and multiple injuries all over the body, which had resulted in permanent disablement, reflected upon her ability to earn and therefore, she has suffered loss of earning capacity and loss of enjoyment of amenities in life. So stating, the injured has filed the claim petition claiming compensation of Rs.1,00,000/- as compensation.

3. It is the case of the claimant that, on 08.01.2009, at about 18.30 hours, when the claimant was carefully walking near Saravana Theater from west to east, an auto bearing Registration No.TN05-C-5104, which was coming from north to south, came in a rash and negligent manner and caused injuries to the claimant.

4. The Tribunal, on a consideration of the materials placed before it, has quantified the compensation under various heads amounting to Rs.1,99,500/- and the breakup details are as under:-

Medical Expenses	-	Rs. 5,000/-
Disability of 30% at the rate of Rs.3,000/- per percentage	-	Rs. 90,000/-
Loss of income for 3 months (3 x 6,500)	-	Rs. 19,500/-
Transportation	-	Rs. 5,000/-
Extra nourishment	-	Rs. 5,000/-
Attendant charges	-	Rs. 5,000/-
Damage to clothes	-	Rs. 5,000/-
Loss of amenities	-	Rs. 20,000/-
Pain and sufferings	-	Rs. 20,000/-
Loss of expectation of life	-	Rs. 25,000/-
		Rs.1,99,500/-

5. Aggrieved over the quantum of compensation awarded, the Insurance Company has preferred this Appeal.

6. The learned counsel appearing for the appellant / Insurance Company would submit that there is no scope for awarding compensation of Rs.90,000/- rating the compensation at Rs.3,000/- per percentage and that on any count the fixation of disablement at 30% itself is unjustified, as there was no disablement at all. In other words, it is contended that the evidence of the Doctor, who has certified the disability at 55% has not been believed by the Claims Tribunal and therefore, the disability ought not to have been fixed at 30% also.

6.1. This contention requires examination of evidence adduced by the claimant as well as Doctor. According to the claimant, she suffered crush injury over the right foot and that has the direct and heavy impact upon her earning capacity, as a tailor. The Doctor, who has examined before the Tribunal, has stated that the disability was near to 55%. The Tribunal has passed comments on the evidence of the Doctor, by stating that the evaluation of disability is only based on physical impairment, i.e., the medical aspect of disability and that the Doctor did not consider the social, psychological, vocational activities of the claimant and therefore, the disability certificate is defective. It is also pointed out that the manual for Doctors to evaluate the permanent physical impairment has criticized the present method of disability evaluation. The Tribunal has not chosen to consider the social and psychological impact on the claimant and did not enhance the percentage of disablement. Instead, relying upon the medical condition alone, the percentage of disablement has been taken at a lower level, (considering the nature of injury). The Tribunal has not chosen to award loss of earning capacity using multiplier method, but has chosen to award only the disablement compensation relying upon the decision reported in 2013 (2) TN MAC 583 (National Insurance Company v. G.Ramesh and Yoshuva). Therefore, the award passed by the Claims Tribunal cannot be faulted with.

7. It is relevant to point out that the loss of earning capacity has not been calculated by using the multiplier method of quantification, even though it is alleged that the claimant was a tailor by profession and the injury over the right foot would have a direct impact upon her earning capacity. Under such circumstances, the award of Rs.90,000/- cannot be said to be excessive.

8. So far as the other heads of damages are concerned, a perusal of the award would go to show that the loss of expectation of life has been estimated at Rs.25,000/-. The details of the claim furnished would go to show that the claimant was aged 47, at the time of accident, and there was an injury over the right foot, which is a crush injury, which could never lead to loss of expectation of life. Therefore, the award at Rs.25,000/- towards loss of expectation of life is unwarranted and it has no basis. Therefore, the award is liable to be reduced by Rs.25,000/-.

9. In the result, the Appeal is partly-allowed, by reducing the quantum of compensation from Rs.1,99,500/- to Rs.1,74,500/-, which is payable with interest at 7.5% per annum from th date of petition till the date of deposit. The appellant / Insurance Company shall deposit the entire amount of compensation, less the amount already deposited, as determined by this Court, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the amount to the Savings Bank Account of the major claimant through RTGS. No costs. Consequently, the connected MP is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//
Sub Assistant Registrar

srk

To

1. Motor Accident Claims Tribunal
   (VI Court of Small Causes) Chennai.

2. The Section Officer,
   V.R.Section, Madras High Court,
   Chennai - 104.

+ 1 cc to M/s. A. Dhiraviyanathan, Advocate SR.54252
+ 1 cc to M/s. T.G. Ravichandran, Advocate SR.54144

C.M.A.2173 of 2015
& M.P.No.1 of 2015

PPA(CO)
EU(06/12/2017)