IN THE JUDICATE OF MADRAS HIGH COURT

DATE : 04.08.2017

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THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.M.A.No.2639 of 2016
and
C.M.P.Nos.18808 of 2016 & C.M.P.No.9867 of 2017

The Managing,
M/s.TATA AIG General Insurance Company Limited.,
1st Floor, May Flower, E-Castle,
No.72, Dr.Balasundaram Road,
Coimbatore-641 018. ... Appellant

Vs.

1.Mr.Munisamy

2.M/s.Achutha Engineering Pvt. Ltd.,
3-CL, Electrical & Electronics Industrial Estate,
Hosur Taluk, Krishnagiri District. ... Respondents

Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.02.2016 in M.C.O.P.No.198 of 2014 passed by the Motor Accidents Claims Tribunal (Subordinate Court), Hosur.

For Appellant : Mr.M.B.Raghavan
For Respondents : Mr.Kukund R.Pandiya (For R1)

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JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J.,)

Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Su-Court), Hosur, in and by award dated 26.02.2016 in M.C.O.P.No.198 of 2014, the Insurance Company has come forward with the present appeal, contending that the compensation amount awarded by the Tribunal is highly excessive.

2.Since the present appeal has been filed challenging the quantum of compensation alone, it is not necessary for this Court to deal with the other aspects of the award passed by the Tribunal.

3.The 1st respondent herein is the claimant before the

Tribunal. So far as the quantum of compensation is concerned, it is the case of the claimant that he is a Barber by avocation and he was also running a Men's Beauty Parlour. On 01.01.20014, while he was riding his motorcyle bearing Reg.No.TN-70-H-1431, with his friend Vasanthkumar as pillion rider, from Sikaripalayam to Begepalli, near M.g.Road junction, the rider of another motorcyle bearing Reg.No.TN-24-T-2305, which belongs to the 2nd respondent herein and insured with the appellant/Insurance company, came in a rash and negligent manner and dash against the motorcyle of the claimant, thus, caused the accident, as a result of which the claimant fell down and sustained head injuries and other injuries. Hence, the claimant made a claim for a sum of Rs.60 lakhs as compensation.

4.The claim made by the claimant was opposed by the Insurance Company by filing a counter affidavit, contending that the accident had occurred only due to the rash and negligent act of the claimant.

5.Before the Tribunal, in order to prove his case, the claimant examined himself as P.W.1, besides examining one Dr.M.Devendran as P.W.2 and marked twelve documents as Ex.P.1 to Ex.P.12. On the side of the Insurance Company, neither oral nor documentary evidence was adduced.

6.The Tribunal, after analysing the entire evidence, has passed an award for a sum of Rs.24,46,200/- to the claimant. The breakup details of the compensation amount awarded by the Tribunal are as follows_

(1)Loss of Income	=Rs.20,41,200/-
(2)Pain & Sufferings	=Rs. 1,00,000/-
(3)Medical Expenses	=Rs. 50,000/-
(4)Future Medical Expenses	=Rs. 25,000/-
(5)Extranurishment	=Rs. 15,000/-
(6)Transportation	=Rs. 15,000/-
(7)Attenders Charges	=Rs. 1,00,000/-
(8)Loss of comfort, frustration, loss of Expectation of life, loss of Marriage prospectus	=Rs. 1,00,000/-
Total	=Rs.24,46,200/-

Aggrieved over the quantum of compensation awarded by the Tribunal, the Insurance Company has filed the present appeal.

7.Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel for the 1st respondent/claimant and perused the materials available on record.

8.From a perusal of the materials available on record, it is seen that in order to prove the disability suffered by the claimant, on the side of the claimant one Dr.Devendran was examined as P.W.2, who had adduced evidence that the victim/claimant sustained head injury and he underwent surgery in his head. P.W.2-Doctor has assessed the disability suffered by the claimant at 70%. The Tribunal, on the basis of the materials available on record, has fixed the monthly income of the deceased as Rs.9,000/- and thereafter, by adding 50% amount towards future prospects, arrived at a sum of Rs.13,500/- as loss of monthly income. Thereafter, by applying multiplier 18 and taking the percentage of disability suffering by the claimant at 70%, the Tribunal has awarded a sum of Rs.20,41,200/- as loss of income.

9.Now, it is the main grievance of the learned counsel appearing for the appellant/Insurance Company that 70% disability fixed by the Tribunal is on the higher side; therefore, by reducing the percentage of disability fixed by the Tribunal, the compensation amount has to be recalculated.

10.From a perusal of the materials available on record, We are of the opinion that as contended by the learned counsel for the appellant/Insurance Company, 70% disability fixed by the Tribunal appears to be on the higher side. Considering the nature of injuries sustained by the claimant, this Court is of the opinion that by fixing 60% disability, the compensation amount has to be recalculated. If 60% disability is taken, the total loss of income works out to Rs.17,49,600/- (13,500 x 12 x 18 x 60% = 17,49,600/-. Except this modification, the compensation amounts awarded by the tribunal under other heads remain unaltered. Consequently, the total compensation amount of Rs.24,46,200/- awarded by the Tribunal is hereby modified/reduced to Rs.21,54,600/-. The breakup details of the modified/reduced compensation amount are as follows_

(1)Loss of Income	=Rs.17,49,600/-
(2)Pain & Sufferings	=Rs. 1,00,000/-
(3)Medical Expenses	=Rs. 50,000/-
(4)Future Medical Expenses	=Rs. 25,000/-
(5)Extranurishment	=Rs. 15,000/-
(6)Transportation	=Rs. 15,000/-
(7)Attenders Charges	=Rs. 1,00,000/-
(8)Loss of comfort, frustration, loss of Expectation of life, loss of Marriage prospectus	=Rs. 1,00,000/-
Total	=Rs.21,54,600/-

11.In fine, the appeal is partly allowed and the total compensation amount of Rs.24,46,200/- awarded by the Tribunal is modified/reduced to Rs.21,54,600/-. The Insurance Company is directed to deposited the entire modified compensation amount, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this Court. On such deposit, the claimant is entitled to withdraw the same, by necessary application before the Tribunal. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssv

To,

The Motor Accidents Claims Tribunal,
(Subordinate Court), Hosur.

+ 1 cc to Mr.Mukund R. Pandiyan, Advocate Sr.56930
+ 1 cc to Mr.N. Vijayaraghavan, Advocate SR.56124

C.M.A.No.2639 of 2016
and
Connected MPs

RJ(CO)
EU(26/09/2017)