IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 02.02.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.1856 of 2014

E.Ramanatham .. Appellant/Petitioner

versus

1.S.Babu
(was set exparte in the Trial Court)
Notice may be dispensed with

2. Sriram General Insurance Company Limited,
No.66, Thirumalai Pillai Road,
T.Nagar, Chennai 600 017. .. Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 29.07.2013 made in MACT O.P.No.1779 of 2011 on the file of VI Judge, Small Causes Court (Motor Accidents Claims Tribunal) at Chennai.

For appellant : Mr.K.Suryanarayanan
for Mr. T.Senthil Murugan

For Respondent : R1-Exparte
R2-Mr.Dhakshinamorrthy

J U D G M E N T

Challenging the quantum of compensation awarded by the Claims Tribunal, in M.C.O.P.No.1779 of 2011, dated 29.07.2013, the claimant has come forward with this Civil Miscellaneous Appeal.

2. The claimant, Ramanathan, working as Office Assistant in Government Veterinary Hospital, Chengalpet, Kanchipuram District, earning a sum of Rs.15,000/- met with an accident on 12.03.2011 due to which he sustained fractures and multiple injuries all over the body. Hence, he filed a claim petition in M.C.O.P.No.1779 of 2011, before the Motor Accident Claims Tribunal, Chennai seeking compensation in a sum of Rs.10,00,000/-.

3. The Tribunal, on considering the oral and documentary evidence has awarded a sum of Rs.7,01,189.50/- as compensation with interest @ 7.5% per annum from the date of petition till the date of deposit. The break-up details of the same are as under:

Loss of income for one month	-	Rs. 15,000/-
Transportation	-	Rs. 5,000/-
Extra nourishment & Damage to clothes	-	Rs. 10,000/-
Medical Expenses	-	Rs.2,00,189.50
Pain and suffering	-	Rs. 25,000/-
Disability of 50% at the rate of Rs.1,000/- per percentage	-	Rs. 50,000/-
Loss of Future Earning Power	-	Rs.3,96,000/-
Total compensation is fixed at	-	Rs.7,01,189.50/-

4. The learned counsel for the appellant submits that the amount of compensation awarded by the Tribunal is very low and the same has to be enhanced. It is further submitted that though the doctor has assessed the disability @ 60%, the tribunal has fixed the disability only @ 20% for quantifying the loss of future earnings. It is further submitted that monthly income fixed by the Claims Tribunal is very low. The learned counsel for the appellant relied upon the decision of this Court in New India Assurance Co. Ltd., Versus K.S.Jothi Arumugam reported in 2014 (1) TNMAC 210 wherein it is held that depending upon the facts and circumstances of case, Tribunal/Court can award compensation under both heads i.e., Permanent disability and Loss of earning capacity, having regard to nature and extent of disability.

5. The learned counsel appearing for the second respondent Insurance Company submitted that the Tribunal, on consideration of oral and documentary evidence has rightly awarded compensation and the same need not be interfered with.

6. This Court gave its anxious consideration to the contentions advanced by the learned counsel for the parties and also perused the materials available on record as also the order passed by the Tribunal.

7. A perusal of the award reveals that the Tribunal, taking into consideration Ex.P-9, Pay certificate has fixed a sum of Rs.15,000/- as monthly income for calculating loss of future earning power instead of Rs.17,000/- as the pay certificate pertains to the year 2012, whereas the accident happened in the year 2011. Considering the nature of injury sustained by the

claimant, for the computation of disability compensation, disability has been fixed at 50% and adopting Rs.1,000/- per percentage of disability, compensation has been awarded at Rs.20,000/- towards 50% disability. Though it is the contention of the claimant that while the doctor has fixed the disability at 60%, the Tribunal has fixed the disability only at 50% and, therefore, the same needs reconsideration. This Court, on a perusal of the entire materials available on record is of the considered view that the Tribunal, appreciating all the injuries sustained by the claimant, has fixed the functional disability at 50%, though the disability has been assessed by the doctor at 60%, which cannot be said to be arbitrary or unreasonable and, accordingly the fixation is confirmed. Further, considering the injuries suffered, the Tribunal has rightly adopted Rs.1,000/- per percentage and has quantified the amount and, therefore, the same does not warrant any interference.

8. Insofar as the loss of earning power is concerned, the Tribunal assessed the functional disability of the claimant at 20% on the basis of the injury sustained by the claimant and taking the salary of the claimant at Rs.15,000/- and adopting a multiplier of 11, the Tribunal has quantified the loss of future earning power at Rs. 3,96,000/- (15,000x12x11x20%). Though it is contended that the income has been fixed on the lower side, however, the Tribunal has fixed the income based on the pay certificate, Ex.P-9, which reflects the monthly income of the claimant as of the year 2012. However, the accident having happened in the year 2011, the Tribunal has fixed the income at Rs.15,000/-, which cannot be said to be erroneous. That being the case, the act of the Tribunal in fixing the income based on the materials available on record cannot be said to be erroneous and the quantification consequent thereto does not warrant any interference and, accordingly, the same is confirmed.

9. Insofar as the compensation awarded under the head transport expenses, extra nourishment and pain and suffering is concerned, this Court finds that the compensation awarded on those heads are very meagre. Accordingly, this Court enhances the compensation under the above three heads by Rs.20,000/-, Rs.5,000/- and Rs.15000/- respectively. It is seen from the order that no compensation has been awarded under the head attendant charges. In view of the injuries suffered by the claimant, the period of treatment and hospitalization, this Court awards a sum of Rs.25,000/- towards attendant charges. However, insofar as the amounts awarded towards pain and sufferings, medical expenses as well as the loss of income for one month stands confirmed.

10. Accordingly, the compensation awarded by the Tribunal is enhanced on certain heads and the following compensation is awarded to the claimant, which will carry interest at 7.5% per

annum from the date of petition till date of deposit, less the interest for the default period :-

Loss of income for one month	-	Rs. 15,000/-
Transportation	-	Rs. 25,000/-
Extra nourishment & Damage to clothes	-	Rs. 25,000/-
Medical Expenses	-	Rs.2,00,189.50
Pain and suffering	-	Rs. 40,000/-
Disability of 50% at the rate of Rs.1,000/- per percentage	-	Rs. 50,000/-
Attendant Charges	-	Rs. 25,000/-
Loss of Future Earning Power	-	Rs.3,96,000/-
Total	-	Rs.7,76,189.50/-

11. In the result, this appeal is partly allowed enhancing the compensation from Rs.7,01,200/- to Rs. 7,76,190/- with interest at 7.5% p.a. from the date of petition till date of deposit.

12. The 2nd respondent/insurance company is directed to deposit the entire compensation amount enhanced by this Court as above, less the amount if any, already deposited, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, to the credit of claim petition, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the same directly to the Bank Account of the claimant through RTGS, within a period of two weeks thereafter. The Court fee due shall be paid by the Claimant, before obtaining copy of the Judgment.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

arr/GLN

To
The Presiding Officer
Motor Accident Claims Tribunal
VI Judge Small Causes Judge
Chennai

copy to

The Section Officer
VR Section High Court Madras

C.M.A. No.1856 of 2014

mg(co)
aa19/03/2018