IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 14.12.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A. NO. 829 OF 2016
AND
C.M.P. NO. 6702 OF 2016

The Branch Manager
Cholamandalam MS General
Insurance Co. Ltd., Pondicherry. .. Appellant/2nd Respondent

- Vs -

1. Sakthivel
2. Babuji ..Respondents/claimant,1st respondent

Civil Miscellaneous Appeal filed u/s 173 of the Motor Vehicles Act 1988 against the judgment and decree dated 6.9.2014 passed by the Motor Accident Claims Tribunal (Addl. Sub Judge), Puducherry, made in MCOP No.100 of 2013.

For Appellant : Ms. C.Harini for
Mr. N.vijayaraghavan
For Respondents : Mr. T.Ananthasekar for R-1

JUDGMENT
(DELIVERED BY S.VIMALA, J.)

The claimant, Sakthivel, aged 29 years, proprietor of S.S. Pet Bottle Manufacturing Unit, alleged to be earning a sum of Rs.80,000/= per month, met with an accident on 30.11.2012 in which he is stated to have suffered fracture of shaft of left femur, compound grade III B Bimalleolar Left Ankle, crush injury over (with skin loss) left foot heel region.

2. The claimant filed a claim petition claiming compensation in a sum of Rs.30,00,000/=. The Tribunal, considering the oral and documentary evidence, awarded a sum of Rs.22,49,250/- the break up of which is as hereunder :-

| | | |
|---|---|---|
| Loss of Earning Power | - | Rs.17,28,000/- |
| Pain & Sufferings | - | Rs. 20,000/- |
| Medical Expenses | - | Rs. 4,21,250/- |
| Nourishment | - | Rs. 10,000/- |
| Transportation | - | Rs. 10,000/- |
| Attendant Charges | - | Rs. 10,000/- |
| Future Medical Expenses | - | Rs. 25,000/- |
| Loss of Amenities | - | Rs. 25,000/- |
| Total | - | Rs.22,49,250/- |

Challenging the said award as disproportionate to the injuries suffered, the insurance company has preferred the present appeal.

3. Learned counsel appearing for the insurance company contends that the monthly income fixed at Rs.20,000/- is without any basis and in the absence of any documentary evidence, the Tribunal ought to have reasonably fixed the monthly income at Rs.12,000/-, keeping in mind the nature of employment and the likely income that would be derived from that employment.

4. Per contra, learned counsel appearing for the respondent/claimant submits that the Tribunal on an overall consideration of the avocation of the injured has arrived at the likely income that would be earned by the claimant and has, conservatively fixed the monthly income at Rs.20,000/- and, therefore, no interference is called for with the award passed by the Tribunal.

5. A cursory look at the records reveal that no document has been filed to prove the income of the claimant. However, only the statement of accounts has been produced on the side of the claimant to substantiate the claim. It is trite that statement of accounts cannot be taken as conclusive proof regarding the monthly income earned by a person. Considering the nature of employment in which the claimant was engaged, this Court feels Rs.12,000/= could be fixed as the proper and appropriate income per month. Therefore, loss of earning capacity should be calculated by adding 40% towards the future prospective increase in income along with the monthly income of the claimant.

6. Yet another contention advanced on behalf of the appellant is that for the age group of 25 to 30, the multiplier to be adopted is 17 and not 18, which is not objected to by the learned counsel for the respondent/claimant. Accordingly, in view of the decision reported in Sarla Verma's case, the proper multiplier to be adopted is 17. Adopting the multiplier of 17,

the loss of earning is quantified at Rs.13,70,880/- (Rs.12000 X 40% X 12 X 17).

7. Learned counsel appearing for the claimant submits that even if there is a reduction on account of loss of earning capacity, considering the nature of injuries and the number of surgeries performed, compensation towards pain and suffering should be enhanced, as the claimant was under continuous treatment for 15 days and, thereafter, surgery for fracture was performed and, thereafter, plastic surgery to cover the disfiguration was also performed.

8. The above contention advanced by the learned counsel for the claimant merits acceptance. Accordingly, this Court is of the considered view that the compensation under the head pain and suffering should be enhanced from Rs.20,000/= to Rs.1,00,000/=.

9. Insofar as the compensation awarded under all the other heads are concerned, this Court finds that the compensation awarded under those heads are just and reasonable and, no interference is called for with the award passed by the Tribunal on those heads.

10. In the result, the appeal is allowed in part reducing the quantum of compensation awarded from Rs.22,49,250/= to Rs.19,72,130/=. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

11. It is submitted that the entire compensation awarded by the Tribunal has been deposited along with interest of which the claimants were permitted to withdraw 50% of the compensation amount. The claimants are entitled to the balance portion of the compensation as fixed by this Court above and the resultant excess amount lying in deposit shall be paid back to the insurance company. The Tribunal is directed to transfer the portion of the compensation as ordered by this Court above to the bank account of the claimants through RTGS within a period of two weeks from the date of receipt of a copy of this order.



Sd/-
Assistant Registrar(CS-iv)

//True Copy//

Sub Assistant Registrar

GLN

To
Additional Sub Judge
(Motor Accident Claims Tribunal)
Puducherry.

2. The Section Officer,
V.R. Section, High Court, Madras.(2 copies)

+1cc to Mr.N.VIJAYARAGHAVAN, Advocate, S.R.No.89776
+1cc to Mr.T.ANANTHASEKAR Advocate, S.R.No. 89124

C.M.A. NO.829 OF 2016

KJI(CO)
TR(21/02/2018)