

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.12.2017

CORAM

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

C.M.A. NO. 1903 OF 2014

AND

M.P. NO.1 OF 2014 & M.P. NO.1 OF 2015

M/s.Royal Sundaram Alliance
Insurance Co. Ltd.
No.45 & 46, Whites Road
Chennai 600 014. ... Appellant/2nd Respondent

- Vs -

1. L.Nagaraj ...R1/Petitioner
2. P.R.Rajendra Kumar ...R2/ Respondent 1

Civil Miscellaneous Appeal filed u/s 173 of the Motor Vehicles Act against the judgment and decree dated 21.11.2013 passed by the Motor Accident Claims Tribunal, Special Subordinate Judge, Krishnagiri, made in MCOP No.14 of 2013.

For Appellant : Mr. N.Vijayaraghavan

For Respondents: Ms. K.Prasanna for
Mr. Mukund R.Pandian for R-1
No Appearance for R-2

JUDGMENT

(DELIVERED BY S.VIMALA, J.)

The present appeal has been preferred by the insurance company challenging the quantum of compensation awarded by the Tribunal.

2. The injured, Nagaraj, aged 32 years, employed as a driver and earning a sum of Rs.6,000/- per month apart from getting bata, met with an accident on 25.7.06, while travelling in the bus from Velankanni to Ernakulam, the lorry, bearing Registration No.TN-39-AD-5301, driven in a rash and negligent manner, came and dashed against the bus, in which the injured suffered grievous injuries. Further, the fracture suffered by the injured prevented the injured from carrying his avocation as a driver to eke his livelihood. Therefore, the the injured

filed claim petition claiming compensation in a sum of Rs.30,00,000/=.

2. The Tribunal, considering the oral and documentary evidence, awarded a sum of Rs.22,19,612/= under various heads, the break up of which is as hereunder :-

Loss of Earning capacity	-	Rs.11,52,000/-
Pain & Suffering	-	Rs. 1,50,000/-
Nutrition & Transportation	-	Rs. 50,000/-
Medical Expenses	-	Rs. 3,48,612/-
Loss of enjoyment of social life-	Rs.	75,000/-
Discomfort & Frustration		
Loss of Income	-	Rs. 1,44,000/-
Attender Charges	-	Rs. 1,00,000/-
Medical Expenses	-	Rs. 2,00,000/-

Total	-	Rs.22,19,612/-

3. The above compensation awarded by the Tribunal is challenged by the appellant by filing the present appeal on the ground that the compensation awarded is exorbitant.

3. Learned counsel appearing for the appellant submits that the compensation awarded under the head loss of enjoyment of social life, discomfort and frustration at Rs.75,000/= is not only impermissible, but is on the higher side and liable to be deleted. It is further contended that the future medical expenses awarded at Rs.2,00,000/= is also exorbitant and the same is to be scaled down to Rs.1,00,000/-. It is further submitted that the amount of compensation awarded under the head pain & suffering at Rs.1,50,000/- is also liable to be reduced.

4. Per contra, learned counsel appearing for the claimant submits that the Tribunal has taken the loss of earning capacity at 100% and fixing the monthly income of the injured at Rs.6,000/-, though has awarded compensation, however, has not taken into consideration the future prospective increase in income of the injured. It is submitted that the future prospective increase in income should be taken at 40% in view of the Constitution Bench judgment of the Supreme Court in National Insurance Co. Ltd. - Vs - Pranay Sethi (2017 (13) SCALE 12). If the said ratio is applied to this case, the monthly income of the injured would be Rs.8,400/= and the loss of earning capacity would be Rs.16,12,800/=.

5. This Court gave its anxious consideration to the contentions advanced by the learned counsel on either side and perused the materials available on record as also the decision on which reliance has been placed.

6. So far as the compensation awarded under the head pain and sufferings is concerned, the records reveal that the injured was hospitalised in four spells and several surgeries have been performed. The injured would have gone through unbearable pain and sufferings during the abovesaid surgeries and, therefore, the compensation awarded under the said head cannot be said to be excessive.

7. However, insofar as the compensation of Rs.75,000/- awarded under the head loss of enjoyment of social life, discomfort and frustration is concerned, the award under the said head is unsustainable and is liable to be set aside.

8. Though it is contended by the learned counsel for the claimant that future prospective increase in income has not been considered and, therefore, the compensation under the head loss of earning capacity needs to be enhanced, however, this Court is not inclined to increase the same, as it is evident from the records that no proof have been adduced to substantiate the monthly income of the claimant. In such a scenario, the Tribunal has accepted the monthly income stated to have been received by the claimant and on the basis of the same, has quantified the compensation. The monthly income stated to have been received by the claimant is on the higher side and, therefore, any reduction thereon and addition of the same towards the future prospective increase in income would not in any way alter the compensation awarded by the Tribunal. Accordingly, the compensation awarded by the Tribunal under the head loss of earning capacity is confirmed.

9. From a perusal of the award, it is seen that future medical expenses has been awarded at Rs.2,00,000/=. However, no justifiable reasoning has been given by the Tribunal warranting award of such high amount of compensation. The said compensation has been awarded without any material available on record. Further, there is no evidence with regard to the future medical expenses that is likely to be sustained, though the injuries suffered by the claimant reveals that the injuries would need future medical attention. In such view of the matter, this Court feels that an amount of Rs.1,00,000/- would be a justifiable compensation under the head future medical expenses. Accordingly, the compensation awarded by the Tribunal under the head future medical expenses is modified from Rs.2,00,000/- to Rs.1,00,000/-.

10. Accordingly, the award passed by the Tribunal is modified by awarding a compensation of Rs.20,44,612/- as under :-

Loss of Earning capacity	-	Rs.11,52,000/-
Pain & Suffering	-	Rs. 1,50,000/-
Nutrition & Transportation	-	Rs. 50,000/-
Medical Expenses	-	Rs. 3,48,612/-
Loss of Income	-	Rs. 1,44,000/-
Attender Charges	-	Rs. 1,00,000/-
Medical Expenses	-	Rs. 1,00,000/-

Total	-	Rs.20,44,612/-

11. The appeal is allowed in part with the aforesaid modification. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

12. The appellant/insurance company is directed to deposit the entire amount as awarded by this Court above along with interest at 7.5% p.a. from the date of claim petition till date of deposit, less the amount, if any, already deposited, to the credit of the claim petition within a period of four weeks from the date of receipt of this order. On such deposit being made, the Tribunal is directed to transfer the same to the bank account of the claimant through RTGS within a period of two weeks thereafter.

13. After passing of the above order, learned counsel appearing for the claimant submitted that the claimant intends to prefer cross-objection. If at all the claimant intended to prefer any cross objection, the same should have been filed before the disposal of this case. However, this Court is not expressing any opinion on the same and the claimant shall work out his remedies in a manner known to law.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

GLN

To

1.Special Subordinate Judge
(Motor Accident Claims Tribunal)
Krishnagiri.

+1 cc to Mr.N.Vijaraghavan Advocate sr 91723
+1 cc to Mr.Mukund R.Pandian Advocate sr 90956

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