IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.09.2017
CORAM:
THE HONOURABLE Dr. JUSTICE S.VIMALA
C.M.A.No.2273 of 2017
and C.M.P.No.12052 of 2017

M/s.Reliance General Insurance Company Limited,
Reliance House, 6th Floor,
Nungambakkam,
Chennai - 600 006. ... Appellant / 2nd Respondent

Versus

1. S.Kumar … 1st respondent/Petitioner
2. M.D.Kumar … 2nd respondent/1st respondent

Prayer : The appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 13.04.2016 made in M.C.O.P.No.904 of 2013 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.N.Vijayaraghavan
For Respondent No.1 : Mr.C.Munusamy

JUDGMENT

The claimant, S.Kumar, aged about 27 years, a Painter cum Artist, earning a sum of Rs.500/- per day, met with an accident that took place on 30.01.2013. Therefore, the claimant filed claim petition claiming a sum of Rs.19,00,000/= as compensation.

2. The Tribunal, on consideration of oral and documentary evidence, awarded a sum of Rs.10,69,600/- rounded off Rs.10,70,000/- as compensation, the break-up of which is as hereunder :-

Transportation, nourishing food and miscellaneous expenditure	-	Rs.	50,000/-
Medical expenses	-	Rs.	20,000/-
Attender charges	-	Rs.	20,000/-
Damages for pain, suffering and trauma	-	Rs.	50,000/-
Disability	-	Rs.	2,25,000/-
Loss of earning during the period of treatment	-	Rs.	42,000/-
Loss of earning capacity/power	-	Rs.	6,42,600/-
Loss of enjoyment of amenities	-	Rs.	20,000/-
Total	-	Rs.	10,69,600/-

Challenging the compensation awarded as excessive, the insurance company has filed this appeal.

3. It is the contention of the learned counsel appearing for the appellant Insurance Company that the award is high and the amount awarded towards disability and loss of earning capacity is not justified. There is no injury to the extent of affecting the loss of earning capacity. Even assuming that it has resulted in loss of earning capacity, it would not affect his loss of earning capacity permanently and, therefore, the multiplier method ought not to have been adopted while quantifying the compensation awarded towards loss of earning capacity.

4. A perusal of the award passed by the Tribunal reveals that the claimant is aged 27 years and he is a painter and artist and he has been earning a sum of Rs.500/- per day. The nature of the injury suffered are fracture in the right hip, there is mal union after the healing of the wound and there is shortening of right leg to the extent of 1 ½ inch, there is restriction in the movement of right hip at 80 degree. The doctor has assessed the disability at 80%. However, the Tribunal has fixed the disability at 75%, having regard to the margin of error at 5% and awarded disablement compensation at Rs.2,25,000/-, i.e., at the rate of Rs.3,000/- per percentage of disability. However, this Court feels that the disablement compensation should have been awarded at Rs.2,000/- per percentage. Accordingly, the compensation under the head disablement compensation is modified and, accordingly, a sum of Rs.1,50,000/- is granted at Rs.2,000/- per percentage of disability.

5. Insofar as the loss of earning capacity is concerned, there was no document to prove the income of the claimant at Rs.500/- per day. Hence, the Tribunal has fixed the notional income at Rs.7,000/- p.m. Based on Ex.P4-Medical records, the Tribunal has fixed the age of the claimant at 27 year. Considering the nature of the injury suffered, the treatment period and the impact of the disability on the future earning capacity of the claimant and further considering the avocation of the claimant being that of painter and artist, the Tribunal has fixed the functional disability at 30% and relying upon the decision of the Supreme Court in Reshma & Ors. vs. Madhan Mohan & Ors. (2013 (1) TNMAC 481 (SC), wherein, it was held that 50% of income has to be taken as future prospectus, fixing the age of the claimant at 27 years, the Tribunal has taken 50% of the income as future prospectus and has adopted multiplier of 17 and awarded the compensation towards loss of earning capacity at Rs.6,42,600/- (Rs.10,500 x 12 x 17). Not only the fixation of age and income of the claimant is as per the well established

legal precedents, even the adoption of multiplier is based on the ratio laid down in Sarla Verma's case (2009 (4) MLJ 997). Therefore, the finding recorded by the Tribunal and the consequent award of compensation under the head loss of earning capacity does not warrant interference and, accordingly, the same is confirmed.

6. Considering the loss of earning during the period of treatment ranging to six months, the compensation towards loss of earning during treatment period has been quantified at Rs.42,000/-, which is also justifiable and cannot be said to be excessive and, accordingly, the same is also confirmed.

7. Considering the nature of injuries and period of treatment, the Tribunal has awarded compensation towards pain and suffering at Rs.50,000/-, Medical Expenses at Rs.20,000/-, transport and extra nourishment at Rs.50,000/- and loss of amenities at Rs.20,000/-. It is to be noted that considering the percentage of disability and the impact of the injury on the future life of the claimant, the Tribunal has awarded only a sum of Rs.20,000/- towards loss of enjoyment of amenities, though a higher compensation could be awarded. This Court enhances the compensation by Rs.20,000/- under the head loss of enjoyment of amenities. Further, the claimant underwent surgeries at least for five times and the award of Rs.20,000/- towards medical expenses is inadequate. The compensation awarded under the head medical expenses is enhanced by Rs.35,000/-. A sum of Rs.20,000/- is awarded under the head attendant charges.

8. Accordingly, while the compensation awarded is confirmed, however, the same is restructured as hereunder :-

Transportation, nourishing food and miscellaneous expenditure	-	Rs.	50,000/-
Medical expenses	-	Rs.	55,000/-
Attender charges	-	Rs.	40,000/-
Damages for pain, suffering and trauma	-	Rs.	50,000/-
Disability	-	Rs.	1,50,000/-
Loss of earning during the period of treatment	-	Rs.	42,000/-
Loss of earning capacity/power	-	Rs.	6,42,600/-
Loss of enjoyment of amenities	-	Rs.	40,000/-
Total	-	Rs.10,69,600/-	
Rounded off	-	Rs.10,70,000/-	

9. For the reasons stated above, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 13.04.2016 made in M.C.O.P.No.904 of 2013 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai. No costs.

Consequently, connected miscellaneous petition is closed.

10. The Insurance Company is directed to deposit the entire amount of compensation awarded by the Tribunal, 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 within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To
1. The Motor Accident Claims Tribunal,
II Court of Small Causes,
Chennai.

copy to
The Section Officer
VR Section
High Court, Madras

+1 cc to M/s.M.B.Gopalan Associates N.Vijayaraghavan Advocate sr 64610
+1 cc to Mr.C.Munusamy Advocate sr 63986

ssv(co)
aa15/03/2018