IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 01.09.2017

CORAM

THE HON'BLE MR. JUSTICE R.SUBBIAH
and
THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.Nos.2934 and 3007 of 2014
and
MP.No.1 of 2014

CMA.No.2934 of 2014

B.Vinoth Kumar ..Appellant

..vs..

1. P.Venkatesan

2. Royal Sundaram Alliance Insurance Co. Ltd.
Sorrento Buildings,
No.6, 1st Floor, L.B.Road
Adyar, Chennai - 600 020. ..Respondents

CMA.No.3007 of 2014

Royal Sundaram Alliance Insurance Co. Ltd.
Sorrento Buildings,
No.6, 1st Floor, L.B.Road
Adyar, Chennai - 600 020. ..Appellant

..vs..

1. B.Vinoth Kumar

2. P.Venkatesan ..Respondents

COMMON PRAYER: Civil Miscellaneous Appeals have been filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 10.04.2014 passed by the Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai in MCOP.No.1860 of 2011.

CMA.No.2934 of 2014
For Appellant : Mr.K.Babu
For R2 : Mr.M.Krishnamoorthy

CMA.No.3007 of 2014
For Appellant : Mr.M.Krishnamoorthy
For R1 : Mr.K.Babu

COMMON JUDGMENT

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

These two appeals are filed by the claimant as well as the insurance company against the award and decreetal order dated 10.04.2014, passed by the Motor Accidents Claims Tribunal, (IV Court of Small Causes) Chennai ('the Tribunal' for brevity) in MCOP.No.1860 of 2011.

2.Being not satisfied with the quantum of compensation awarded by the Tribunal, the claimant filed CMA.No.2934 of 2014 seeking enhancement of compensation, whereas, CMA.No.3007 of 2014 is filed by the insurance company on the ground that the compensation awarded by the Tribunal is extremely on the higher side.

3.Since both these appeals arise out of one and the same award, they are disposed of by this common judgment.

4.The necessary facts for disposal of these appeals are as under:

On 04.01.2011 at about 21.45 hours, while the claimant was riding a motor cycle bearing Regn.No.TN04 Q 2323 on the Porur to Kundrathur Road from South to North direction, a lorry bearing Regn.No.TN73 A 8925 owned by one P.Venkatesan (who is the first respondent in CMA.No.2934/2014 and the second respondent in CMA.No.3007/2014) and insured with the appellant in CMA.No.3007/2014 insurance company, came behind the motor cycle in a rash and negligent manner and hit the same, pursuant to which, the claimant lost his balance and fell down and suffered grievous injuries leading to amputation of both legs above knee. Hence, he filed a petition before the Tribunal, claiming a sum of Rs.1,00,00,000/- as compensation.

5.Denying the averments made in the claim petition, the insurance company filed its counter.

6.The claimant, in order to prove the claim made before the Tribunal, examined himself as P.W.1, besides examining five witnesses as P.W.2 to P.W.6. and marked Exs.P1 to P23 documents, whereas, the insurance company neither examined any witness nor marked any document.

7.The Tribunal, after analysing the evidence adduced before the same, came to a conclusion that the accident had occurred due to the rash and negligent driving of the driver of the lorry and consequently, awarded a sum of Rs.36,88,500/- as compensation under the different heads, which read as follows:

Transport to Hospital	-	Rs. 1,50,000/-
Extra nourishment	-	Rs. 1,00,000/-

Damages to clothes	-	Rs. 1,000/-
Medical expenses	-	Rs. 7,59,470/-
Artificial limb charges	-	Rs. 1,50,000/-
Shock and mental agony	-	Rs. 1,00,000/-
Loss of marital life and social status	-	Rs. 1,00,000/-
Loss of expectation of life	-	Rs. 1,00,000/-
Loss of amenities	-	Rs. 1,00,000/-
Loss of future prospects	-	Rs. 1,00,000/-
Attender charges	-	Rs. 1,00,000/-
Pain and suffering	-	Rs. 2,00,000/-
Disability	-	Rs.17,28,000/-
Total	-	Rs.36,88,470/-

Rounded off at Rs.36,88,500/-

Aggrieved over the same, the claimant/injured as well as the insurance company filed the respective appeals before this Court.

8.Learned counsel for the claimant/appellant in CMA.No.2934/2014 urged that the award passed by the Tribunal is inadequate and insufficient looking at the facts and circumstances of the case. He assailed the said award of the Tribunal firstly on the ground that the Tribunal erred in fixing a sum of Rs.8,000/- as the monthly income of the injured. According to the learned counsel, the claimant/injured was working as Store Keeper in M/s.Unilink Pharma (P) Ltd, Porur and was earning a sum of Rs.12,000/-. To substantiate the same, he produced Ex.P8-salary slip and Ex.P12-original identity card issued by the employer before the Tribunal. Considering the same, the Tribunal ought to have taken the entire income earned by the claimant at the time of accident. Learned counsel also showed his discontent to the compensation of Rs.1,50,000/- awarded by the Tribunal towards artificial limb charges, though the claimant produced Ex.P6-bill for purchase of artificial limb to the tune of Rs.10,23,600/- and examined PW3-staff of the artificial limb company, which, the Tribunal has not considered. Learned counsel further contended that the Tribunal erred in not awarding any compensation towards future medical expenses. Therefore, learned counsel prayed that the compensation awarded by the Tribunal has to be enhanced and the appeal filed by the insurance company has to be dismissed.

9.On the contrary, learned counsel for the insurance company/ appellant in CMA.No.3007 of 2014 contended that there is absolutely no evidence adduced on the side of the claimant/injured to show that he had lost his job, due to the grievous injuries sustained in the accident. According to the learned counsel, one S.Balaji, who was working as Purchaser in the company, in which, the injured was working as Store Keeper, was examined as P.W.2 to support the evidence of P.W.1/injured with regard to his avocation and salary, however, his evidence did not whisper anything about the continuance or discontinuance of the job by the injured after the accident. As such, the Tribunal ought not to have taken Rs.8,000/- as the monthly income of the injured and ought not to have fixed the permanent disability of the injured at 100%, which resulted in awarding of exorbitant sum of Rs.17,28,000/- under the head "disability". Therefore, learned counsel prayed that the compensation awarded by the Tribunal has to be reduced by making proper assessment.

10.We have given our anxious considerations to the submissions of the learned counsel for the parties and also perused the records.

11.There is no dispute with regard to the liability of the insurance company to pay compensation to the claimant. What is disputed herein is with regard to the quantum of compensation awarded by the Tribunal.

12.On a perusal of the award, it could be seen that the Tribunal awarded a total compensation of Rs.36,88,500/- for the grievous injuries sustained by the claimant in the accident that had occurred on 04.01.2011. According to the claimant/injured, who examined himself as P.W.1, his both legs above knee were amputated due to the grievous injuries sustained in the accident. The same is corroborated by Ex.P2-Discharge summary issued by Sri Ramachandra Medical Centre, wherein, the injured has taken treatment for the grievous injuries suffered by him, apart from Exs.P10 and P11-photographs of the claimant. P.W.6-Doctor assessed the disability of the claimant at 140% and issued Ex.P19-disability certificate. Taking into account the said oral and documentary evidence, the Tribunal fixed the disability at 100%.

13.P.W.1/claimant further deposed in his evidence that he was working as Store Keeper in M/s.Unilink Pharma (P) Ltd, Porur and was earning a sum of Rs.12,000/- per month at the time of accident. To substantiate the same, he examined P.W.2, who was working as Purchaser in the said Company and marked Ex.P8-salary slip and Ex.P12-Identity card issued by the employer, which would undoubtedly, go to prove the employment and the income earned by the injured before the accident. However, there is no evidence to show that the claimant continued to work in the said company after the accident. Even the evidence of P.W.2 would not disclose anything about the continuance of the job by the claimant after the accident. Considering the fact that the amputation of both legs of the claimant would definitely cause some hindrance to his avocation, we do not accept the contention of the learned counsel for the claimant that the Tribunal ought to have taken the entire income earned by the claimant at the time of accident. At the same time, we do not find any error in fixing a sum of Rs.8,000/- as the monthly income of the claimant by the Tribunal.

14.That apart, the Tribunal, taking note of the age of the claimant, who was 29 years at the time of accident, adopted the multiplier '18' and assessed the compensation under the head "loss of pecuniary benefits" at Rs.17,28,000/- (Rs.8,000/- x 12 x 18 x 100%), which, in our view, is just and reasonable and the same is hereby confirmed.

15.It is an admitted fact that on account of the injuries sustained by the claimant, his both legs above knee were amputated. As such, artificial limbs would be absolutely necessary for leading somewhat normal life. The Tribunal awarded only a sum of Rs.1,50,000/- towards artificial limb charges, whereas, the claimant/P.W.1 has stated in his evidence that he spent a sum of Rs.10,23,600/- for purchase of artificial limbs. In support of his evidence, he examined P.W.3, who was the staff of an artificial limb company and produced Ex.P6-bill dated 30.08.2017, which would go to show that the claimant has paid a sum of Rs.10,23,600/- for purchase of artificial limbs, the details of which are as follows:

04/07/2011	-	Rs.4,00,000/-
08/08/2011	-	Rs.5,00,000/-
30/08/2011	-	Rs.1,23,000/-
30/08/2011	-	Rs. 600/-
		....
Total	-	Rs.10,23,600/-
		....

Relying on the aforesaid evidence, the Tribunal ought to have awarded the entire amount mentioned in Ex.P6 bill, but it has not done so and awarded only a sum of Rs.1,50,000/- as compensation towards artificial limb charges. In our opinion, the claimant, who had lost both his legs amputated above the knee, could definitely confront difficulties in carrying out his normal day today work. Therefore, the award of Rs.1,50,000/- passed by the Tribunal is hereby enhanced to Rs.10,23,600/- under this count.

16.As regards the compensation awarded by the Tribunal under the other conventional damages, the Tribunal awarded Rs.1,50,000/- towards transport to hospital, Rs.1,00,000/- towards extra nourishment, Rs.1000/- towards damages to clothes, Rs.7,59,470/- towards medical expenses, Rs.1,00,000/- towards shock and mental agony, Rs.1,00,000/- towards loss of marital life, Rs.1,00,000/- towards loss of expectation of life, Rs.1,00,000/- towards loss of amenities, Rs.1,00,000/- towards loss of future prospects, Rs.1,00,000/- towards attender charges and Rs.2,00,000/- towards pain and suffering. In our view, the Courts are enjoined with the duty to award compensation, which is just, reasonable, adequate and within the contemplation of the Act. It is beyond cavil of doubt that no amount of compensation would restore the loss of limb, much less the damage caused to the body frame. In the case on hand, having considered the fact that the claimant sustained grievous injuries in the accident resulting in amputation of both legs above knee, with which, he has to live for his entire life time and also taking note of the oral and documentary evidence adduced by the parties, we do not find any good reason to interfere with the same.

17.In view of the above discussion, the compensation of Rs.36,88,500/- awarded by the Tribunal is hereby enhanced to Rs.45,62,100/-, the details of which, read as under:

Transport to Hospital	-	Rs. 1,50,000/-
Extra nourishment	-	Rs. 1,00,000/-
Damages to clothes	-	Rs. 1,000/-
Medical expenses	-	Rs. 7,59,470/-
Artificial limb charges	-	Rs.10,23,600/-
Shock and mental agony	-	Rs. 1,00,000/-
Loss of marital life and social status	-	Rs. 1,00,000/-
Loss of expectation of life	-	Rs. 1,00,000/-
Loss of amenities	-	Rs. 1,00,000/-
Loss of future prospects	-	Rs. 1,00,000/-
Attender charges	-	Rs. 1,00,000/-
Pain and suffering	-	Rs. 2,00,000/-
Disability	-	Rs.17,28,000/-
Total	-	Rs.45,62,070/-

Rounded off at Rs.45,62,100/-

18.The insurance company/appellant in CMA.No.3007/2014 is directed to deposit the aforesaid modified compensation amount, after deducting the amount already deposited, if any, along with proportionate interest at 7.5%p.a, and costs, to the credit of MCOP.No.1860/2011 on the file of the Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant/appellant in CMA.No.2934 of 2014 is permitted to withdraw the compensation amount lying in the deposit.

19.In the result, CMA.No.2934 of 2014 is allowed in part. CMA.No.3007 of 2014 is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

rk

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To
1 The Motor Accidents Claims Tribunal,
IV Small Causes Court, Chennai.

2 The Section Officer,
VR Section,
High Court, Madras

+1cc to M/s.M.Krishnamoorthy, Advocate Sr.no.63241
+1cc to Mr.M.Krishnamoorthy, Advocate Sr.No.63196 dt.21.12.2017

C.M.A.Nos.2934 and 3007 of 2014

GMI(CO)
sm:12.12.2017