IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.3374 of 2017

R.Muniammal ... Appellant/Petitioner

versus

1. R.Abubakker

2. ICICI Lombard General Insurance Company Limited, Chottabai Centre, 2nd Floor, No.140, Nungambakkam High Road, Chennai - 600 034. ... Respondents/Respondents

(R1 remained ex parte before the Tribunal)

Appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 14.07.2017 passed in M.C.O.P.No.2774 of 2015 by the learned IV Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai - 104.

For Appellant : M/s.C.Richard Suresh Kumar

For R1 : Ex parte

For R2 : M/s.R.Sreevidhya

JUDGMENT

The claimant, Muniammal, aged 40 years, a coolie, earning a sum of Rs.15,000/-, who met with an accident on 05.03.2015, filed a claim petition for compensation, claiming a sum of Rs.20,00,000/-, in M.C.O.P.No.2774 of 2015 before the Motor Accident Claims Tribunal at Chennai.

2. On 05.03.2015, while the petitioner/appellant was walking on the left side of GST Road on the Tambaram to Chengelpet side, a two wheeler bearing Reg.No.TN19M 1940 came in a rash and negligent manner and hit against the petitioner/appellant. The petitioner/appellant originally sustained multiple grevious injuries, which led to permanent disablement and affected her earing capacity.

3. The claim was resisted by the Insurance Company on the ground that the claimant herself was responsible for the accient and therefore, the Insurance Company is not liable to pay compensation.

4. The Tribunal, on consideration of materials, held that the driver of the two wheeler was responsible for the accident and therefore, the Insurance Company is liable to pay compensation. The Tribunal passed an award for a sum of Rs.1,37,500/- under the following break up details:

Disability	-	Rs. 78,000/-
Pain and suffering	-	Rs. 26,000/-
Extra nourishment	-	Rs. 2,600/-
Transport to Hospital	-	Rs. 2,600/-
Damages to clothes	-	Rs. 500/-
Attender charges	-	Rs. 3,800/-
Medical expenses	-	Rs. 5,000/-
Future medical expenses	-	Rs. 3,000/-
Loss of income	-	Rs. 13,000/-
Loss of amenities	-	Rs. 3,000/-
Total	-	Rs.1,37,500/-

Challenging the award as inadequate, the claimant has preferred this appeal.

5. The main contention raised by the petitioner/appellant is that it is a fit case for application of multiplier method for quantification of compensation, but, the Tribunal has committed a mistake in awarding disability compensation at the rate of Rs.3,000/- per percentage of disability and quantified the compensation at Rs.78,000/=. It is further contended that loss of income should have been considered at least for a period of four months to the extent of Rs.26,000/- and therefore, the award of Rs.13,000/- towards loss of income, is inadequate.

6. The learned counsel appearing for the second respondent/Insurance Company pointed out that the claimant suffered only Grade-I CPD fracture on left leg, for which, the petitioner was treated with Conservative Management. Therefore, there was no disability at all no interference is warranted with the compensation awarded by the Tribunal.

7. The learned counsel appearing for the petitioner/appellant pointed out that the claimant suffered fracture of both bones in one leg and the percentage of disablement was certified by the Medical Board and not by a single Doctor. Just because there was no surgery, it cannot be stated that there was no permanent disablement.

8. Having regard to the age of the petitioner (as 40 years) and having regard to the nature of avocation (Agriculturist) and injury sustained by the petitioner would have an impact upon her earning capacity and that the physical disablement atleast should be considered equivalent to functional disablement. However, the Tribunal, without proper appreciation of the injuries suffered by the claimant, has adopted percentage method for quantification, which, in the facts and circumstances of the case, is erroneous. The proper method would have been adoption of multiplier method for calculating the loss of earning capacity.

9. The nature of disability and the nature of evidence adduced would go to show that the claimant would have definitely suffered loss of earning capacity. The records reveal that the disability is assessed at 26%. Accordingly, this Court, while fixing the income of the claimant at Rs.6,500/= based on the ratio laid down in Syed Sadiq's case (2014 (1) TANMAC 459), following the ratio laid down in Sarla Verma's case (2009 (5) LW 561), adopts multiplier of 15 and, accordingly, the disability compensation is quantified at Rs.3,04,200 (Rs.6500 X 12 X 15 X 26%).

10. Insofar as loss of income is concerned, considering the injuries sustained by the claimant and the treatment period and also the impact of the injury on the earning capacity of the claimant, this Court feels that compensation should have been awarded atleast for a period of four months. Accordingly, compensation under the head loss of income is awarded at Rs.26,000/=, i.e., for a period of four months.

11. Insofar as the compensation awarded under the other heads are concerned, the amounts so awarded are just and reasonable keeping in mind the injuries suffered and the treatment period and, therefore, no interference is warranted with the compensation awarded on those heads.

12. Accordingly, the award passed by the Tribunal is modified and restructed as follows:

Disability (Rs.6500 x 12 x 15 x 26%)	-	Rs.3,04,200/-
Pain and suffering	-	Rs. 26,000/-
Extra nourishment	-	Rs. 2,600/-
Transport to Hospital	-	Rs. 2,600/-
Damages to clothes	-	Rs. 500/-
Attender charges	-	Rs. 3,800/-
Medical expenses	-	Rs. 5,000/-
Future medical expenses	-	Rs. 3,000/-
Loss of income	-	Rs. 26,000/-
Loss of amenities	-	Rs. 3,000/-
Total	-	Rs.3,76,700/-

13. The Civil Miscellaneous Appeal is allowed, enhancing the compensation from Rs.1,37,500/- to Rs.3,76,700/-, which is payable by the Insurance Company along with interest at the rate of 7.5% p.a. from the date of numbering the petition till the date of deposit. The appellant is directed to pay the court fee, if any, on the enhanced compensation before receiving a copy of the judgment. No costs.

14. The Insurance Company is directed to deposit the enhanced amount of Rs.3,76,700/-, less the amount, fi any, already deposited, along with interest at the rate of 7.5% p.a. from the date of numbering the petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal shall transfer the same directly to the savings bank account of the appellant/claimant through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ogy/GLN

To
1. The Judge,
The Motor Accident Claims Tribunal
Court of Small Causes-IV,
Chennai - 104.

+1cc to M/s.C.Richard Suresh Kumar, Advocate sr.no.92093

C.M.A.No.3374 of 2017

rr(co)
nr 14/05/2018