

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2018

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.113 of 2018

Cholamandalam MS General
Insurance Company Limited
Dare House, 2nd Floor
NSC Bose Road
Chennai 600 001

... Appellant/2nd Respondent

-Vs-

1. Sivasankaran
S/o Kannupaiyan

2. R.Manivannan ... Respondents/Petitioner & 1st Respondent

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the order and decretal order dated 07.03.2016 made in M.C.O.P.No.2286 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Dharmapuri.

For Appellant :: Mr.R.Mohan Babu for
Mr.N.Vijayaraghavan

For Respondents:: Mr.V.Sakkarapani for R1/Caveator

JUDGMENT

(Judgment of the Court was made by N.KIRUBAKARAN, J.)

The appeal has been preferred by the Insurance Company against the award of Rs.60,58,000/- as compensation for the permanent disability sustained by the first respondent/claimant, aged about 47 years, working as LIC Development Officer and allegedly earning a sum of Rs.1,00,000/- per month, in the accident occurred on 25.3.2011 when the victim, while riding his motor-cycle bearing Registration No.TN-29-0970 from Dharmapuri to Salem Main Road, was knocked down by a lorry bearing Registration No.KA-05-AA-9688 belonging to the second respondent and insured with the appellant Insurance Company driven in a rash and negligent manner.

2. Heard Mr.R.Mohan Babu, learned counsel for the appellant and Mr.V.Sakkarapani, learned counsel for the first respondent/claimant.

3. Mr.R.Mohan Babu, learned counsel for the appellant/Insurance Company would point out that when the claimant has not lost the job, as it is proved by Ex.P18-Balance Sheet, the award of Rs.37,44,000/- towards the loss of future income on account of 80% disability is unwarranted. Since the claimant lost his right leg above knee, he would submit that the amounts awarded under the other conventional heads are also on the higher side.

4. However, Mr.V.Sakkarapani, learned counsel for the first respondent/claimant would submit that the claimant was working as LIC Development Officer and his earning power is affected because of the disability. He would also point out from Ex.P10 income tax statements that the claimant was able to receive only Rs.3,57,832/- towards incentive bonus after the accident, when he had received Rs.15,55,849/- as incentive bonus prior to the accident through Ex.P8-Salary Certificate. Moreover, he has not been given promotion on account of his disability.

5. A perusal of the records would show that the claimant on account of the accident lost his right leg above the knee as per the deposition of the doctor-P.W.2 and further fortified by Exs.P9-discharge summary and Ex.P17-disability certificate. However, the Tribunal, taking the monthly income of the victim at Rs.30,000/- and adopting the multiplier of '13' for 80% disability, determined the loss of future income at Rs.37,44,000/-. Whereas, in the present case, the victim himself has admitted that he did not lose his job, but his contention is that the prospects of promotion have been affected and the benefit of incentive bonus got reduced. Even a perusal of Exs.P7, P8 & P10 would prove that the incentive bonus received by the claimant got reduced to Rs.3,57,832/- from Rs.15,55,849/-, which he received prior to the accident. Taking advantage of the said fact, the claimant cannot contend that he is entitled to receive a sum of Rs.37,44,000/- towards the loss of future income. Assuming for the moment, the rights of the victim are violated by the insurance company or any incentive is not being given on account of his disability, the rights of the victim is always protected by the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. When the said statute safeguards the first respondent/claimant's interest and there is no loss of job, we are of the opinion that the award of Rs.37,44,000/- towards loss of future income by the Tribunal is unwarranted and the same needs to be interfered with.

6. Since this Court is not inclined to award compensation towards loss of future income as ordered by the Tribunal, it has to necessarily compensate the claimant for his 80% disability. As already observed, the 80% disability sustained by the first respondent/claimant for the loss of right leg above the knee has been proved before the Tribunal by P.W.2-doctor and other medical documents. Therefore, for 80% disability, we award a sum of Rs.3,20,000/- at the rate of Rs.4,000/- per percentage of disability.

7. However, we confirm the award of Rs.75,000/- towards pain and suffering, Rs.90,000/- towards the loss of income during the period of treatment for 3 months, Rs.5,11,000/- towards medical expenses as per Ex.P15, Rs.5,18,000/- towards fixation of artificial leg as per Ex.P14 and Rs.20,000/- towards attender charges, as ordered by the Tribunal. As the award of Rs.20,000/- each towards transportation and extra nourishment is very low, we enhance the amount to Rs.50,000/- each under the above heads. Similarly, as the award of Rs.60,000/- towards mental agony and loss of amenities is very low, we enhance the same to Rs.2,00,000/-. Considering the fact that the claimant is on the job and he has to replace the artificial leg in future by incurring medical expenses, we deem it appropriate to award a sum of Rs.6,00,000/- towards the replacement of artificial leg and future medical expenses, instead of Rs.10,00,000/- awarded by the Tribunal.

8. Accordingly, the first respondent/claimant is entitled to a total compensation of Rs.24,34,000/- under the following heads:

Sl. No.	Heads	Amount
1	80% permanent disability @ Rs.4,000/- per percentage of disability	Rs. 3,20,000/-
2	Pain and Suffering	Rs. 75,000/-
3	3 months loss of income during the period of treatment (Rs.30,000 x 3 = Rs.90,000)	Rs. 90,000/-
4	Medical expenses (as per bills)	Rs. 5,11,000/-
5	Fixation of Artificial Leg (as per Ex.P14)	Rs. 5,18,000/-
6	Transportation	Rs. 50,000/-
7	Extra Nourishment	Rs. 50,000/-
8	Mental agony and loss of amenities	Rs. 2,00,000/-

Sl. No.	Heads	Amount
9	Attender Charges	Rs. 20,000/-
10	Replacement of artificial leg and future medical expenses	Rs. 6,00,000/-
Total		Rs.24,34,000/-

The claimant is entitled to interest at the rate of 7.5% per annum for the aforesaid compensation amount from the date of petition till realisation.

9. Since the appellant-Insurance Company is said to have deposited the entire compensation amount of Rs.60,58,000/- along with interest at the rate of 7.5% per annum as ordered by the Tribunal, we direct the Tribunal to transfer the compensation amount including the accrued interest as ordered by us to the bank account of the appellant/claimant through RTGS within a week from the date of receipt of a copy of this order and the balance amount lying in deposit shall be returned to the appellant-Insurance Company within a week thereafter.

10. With this direction, the civil miscellaneous appeal is allowed in part. Consequently, C.M.P.No.1499 of 2018 is closed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ss/ay
To

The Motor Accidents Claims Tribunal,
Special Subordinate Judge,
Dharmapuri.

Copy to
The Section Officer,
VR Section,
High Court, Madras.

C.M.A.No.113 of 2018

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srg 25/09/2018