IN THE HIGH COURT OF JUDICATURE AT MADRAS

| Reserved on 27.08.2018 | Delivered on 04.09.2018 |
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CORAM:
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.1181 of 2018
and
C.M.P.No.9745 of 2018

The New India Assurance Company Limited,
Motor Third Party Claims Hub,
No.45, Moore Street, Chennai 600 001. ... Appellant

-vs-

1.V.S.Venkataramanan,
2.R.Loganathan
... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree dated 30th day of January, 2018, made in M.C.O.PNo.7097 of 2015, on the file of Motor Accident Claims Tribunal (V Court of Small Causes) of Madras.

For Appellant : Mr.S.Manohar

For Respondents: Mrs.Saleem Fathima
for M/s.M.Swamikkannu

J U D G M E N T

R.SUBRAMANIAN, J.

1. The Insurance Company which suffered an award for Rs.84,36,633.35/- for the injuries suffered by the 1st respondent in the motor accident that occurred on 17.07.2015 is the appellant before us. The claim petition was filed by the 1st respondent seeking compensation of Rs.3,75,00,000/- for the injuries including amputation on his left leg up to the knee. The 1st respondent claimed that he was employed as a Senior Manager-Quality assurance in M/s. Switzer Process Instruments Pvt. Ltd., Ambattur Estate, Chennai and was earning a sum of Rs.65,000/- per month, because of the accident, he has lost his job. It is also claimed that taking pity on him, the employer had admitted him in another job on monthly salary of Rs.10,000/-. Claiming that he had suffered both mental as well as pecuniary loss, the 1st respondent sought for the compensation

as stated above.

2. The claim petition was resisted by the appellant Insurance company contending that there was no negligence on the part of the tipper lorry. According to it, the accident occurred due to the rash and negligent driving of the motor cycle bearing registration No.TN-20-U-9835 by the first respondent himself. The manner in which the accident occurred was also narrated to highlight the absence of negligence on the part of the lorry driver. The Insurance Company would further contend that there was no pecuniary loss inasmuch as the 1st respondent was re-employed in the same company at the same salary.

3. The Tribunal on examination of the oral and documentary evidence as well as the fact that the First Information Report was filed against the driver of the Tipper Lorry bearing Registration No.TN-22-CE-3339 concluded that the accident occurred due to the rash and negligent driving of lorry. The Tribunal also concluded that the Appellant Insurance Company as the Insurer of the lorry is liable to pay the compensation.

4. On the quantum, the Tribunal taking note of the disability certificate issued by the Chief Civil Surgeon, Government Peripheral Hospital, K.K.Nagar, Chennai which certified that the disability is about 85%, took the monthly income of the deceased at Rs.60,050/- and after deducting a sum of Rs.56,620/- towards the income tax deducted, arrived at the annual income of the 1st respondent/ claimant at Rs.6,63,980/-, adding 25% towards future prospects, since, the deceased was aged about 42 years and adopting the multiplier of 14, the Tribunal arrived at the loss of future earning capacity at Rs.46,47,860/-. The Tribunal granted a sum of Rs.2,40,000/- for continuing permanent disability, Rs.80,000/- for pain and suffering, Rs.2,34,195/- for loss of income, Rs.10,000/- for transport, Rs.80,000/- for extra nourishment, Rs.4,000 for damage to clothing and articles, Rs.28,55,578.35/- towards medical expenses, Rs.45,000/- towards attender charges, Rs.80,000/- towards loss of amenities, Rs.80,000/- towards loss of expectation of life and Rs.80,000/- towards loss of sexual life. Thus, the Tribunal arrived at total compensation of Rs.84,36,633.35/-. It is this award which is under challenge before us.

5. We have heard Mr.S.Manohar, learned counsel for the Appellant and Mrs.P.T.Saleem Fathima, learned counsel for M/s.M.Swamikannu for the first respondent respondent claimant.

6. Mr.Manohar, learned counsel appearing for the appellant would contend that a perusal of the xerox copy of the bank statement filed as Ex.P34 by the claimant himself would show that he has received a monthly salary of Rs.59,919/- on 04.06.2016 from the same Company, viz., M/s.Switzer Process Instruments Pvt. Ltd. Therefore, according to Mr.Manohar, there was no pecuniary loss due to the accident. Hence, according to him, the Tribunal was in error in granting a sum of Rs.46,47,860/- towards future pecuniary loss. The compensation granted by the Tribunal under other heads is not disputed by the Insurance company.

7. Mrs.P.T.Saleem Fathima learned counsel appearing for the 1st respondent/ claimant would contend that de hors the fact that the he is re-employed in the same Company, it cannot be denied that the claimant/ 1st respondent had suffered a certain loss and still continues to suffer pecuniary loss because of the injuries which has resulted in amputation of his leg. She would also contend the compensation granted by the Tribunal for pain and sufferings, attender charges, loss of amenities, loss of expectation of life are on the lower side.

8. We had given our anxious consideration to the rival contentions. The only question that arises for consideration in this appeal is as to:-

> Whether the re-employment of the first respondent/ claimant in the same company at a reduced salary would dis-entitle him from claiming compensation on the ground of future pecuniary loss?

9. It is in evidence in the form of Ex.P34 that the respondent/ claimant has been paid a salary of Rs.59,919/- by the same company on 04.06.2016 i.e. after the accident. It is, therefore, clear that the claimant/first respondent has been re-employed in the same company at a lesser salary. At the same time, we cannot also brush aside the fact that the efficiency of the work done by the 1st respondent/ claimant will not be the same after the accident, considering the nature of the injury suffered by him. Therefore, he would definitely loose future prospects. It is also seen that the 1st respondent/ claimant is an Engineering graduate from Birla Institute of Technology, Pilani which is a very prestigious institution. Though, the contention of Mr.Manohar based on Ex.P34 has some force in it, we cannot also brush aside the fact that the first respondent/ claimant would loose future prospects. Admittedly, the first respondent/ claimant was drawing a salary of Rs.60,050/- on the

date of the accident.

10. As per the judgment of the larger bench of the Hon'ble Supreme court in National Insurance Co. Ltd vs Pranay Sethi and others reported in 2017 (2) TN MAC 271, even while calculating the loss of dependency in fatal cases, we have to add a certain percentage of income towards future prospects. Therefore, the loss of future prospects itself would be a ground for granting compensation. There can be no two opinions about the fact that the amputation of the leg would definitely have a bearing on the future prospects of the first respondent/ claimant.

11. We are, therefore of the considered opinion that even if the entire income cannot be taken as basis for computing the future loss of earning, the difference in salary and the loss of future prospects would definitely be taken into account in order to ascertain the pecuniary loss. The difference in salary is only about Rs.131/-, in the case on hand, therefore, we do not think that the same could form the basis for determination for loss of future earning prospects. The 1st respondent/ claimant was aged about 42 years at the time of the accident. According to the larger bench judgment of the Hon'ble Supreme court in National Insurance Co. Ltd vs Pranay Sethi and others referred to supra, the future prospects would be 25%, as the 1st respondent/ claimant was having a permanent job in the Private Limited Company. As a result of the accident and the amputation, the claimant/ 1st respondent is deprived of the future prospects. We are, therefore of the opinion that he should be compensated to that extent under the head of loss of earning capacity. The 1st respondent/ claimant was drawing a salary of Rs.60,050/- at the time of the accident, 25% of the same would be Rs.15,012.50/-. This can be rounded off to Rs.15,000/-. Considering his age, a multiplier of 14 has to be adopted. The disability has been certified at 85%, but, since, we are restricting the loss of future earning capacity only to the future prospects which the 1st respondent/ claimant has been deprived of due to the injuries suffered in the accident, we are of the considered opinion that the entire future prospects should be taken as the loss of future earning power. Thus, calculated the loss of future earning power would be Rs.25,20,000/- [15,000 x 12 x 14]. In view of the foregoing reasons, the award of the Tribunal insofar as it relates to future earning power is modified and granting a sum of Rs.25,20,000/- as against Rs.46,47,860/- awarded by the Tribunal.

12. The Tribunal has awarded a sum of Rs.80,000/- towards pain and sufferings considering the nature of the injury. The fact that there has been an amputation and the 1st respondent/

claimant has to live with the amputation for the entire remaining life. We are of the opinion that a sum of Rs.80,000/- granted towards pain and sufferings is too low and Rs.3,00,000/- would be the just compensation for pain and sufferings.

13. The Tribunal has granted a sum of Rs.45,000/- for attender charges, the 1st respondent/ claimant has been an inpatient for well over a period 6 months. The attender charges granted at Rs.45,000/- is also on the lower side, considering the period of treatment, the same is therefore enhanced to Rs.60,000/-. The Tribunal has awarded a sum of Rs.80,000/- each towards loss of amenities, loss of expectation of life. As already observed, the 1st respondent/ claimant is an Engineering graduate from one of the premier institutes in the country. He was also working as a Quality Control Manager drawing a five figure salary. Therefore, the amputation suffered by him would definitely have a telling fact on his future life. Therefore, we are of the opinion that an award of Rs.1,50,000/- each on the ground of loss of amenities and loss of expectation in life will be reasonable.

14. The other amounts awarded by the Tribunal towards loss of Income, transport to hospital, extra nourishment, medical expenses and loss of sexual life are sustained. Thus, the total compensation payable is determined as follows:

| S.No. | Particulars | Amount |
|---|---|---|
| 1. | Loss of future earnings | Rs.25,20,000/- |
| 2. | Compensation for continuing permanent disability | Rs.2,40,000/- |
| 3. | Pain and Sufferings | Rs.3,00,000/- |
| 4. | Loss of Income | Rs.2,34,195/- |
| 5. | Transport to Hospital | Rs.10,000/- |
| 6. | Extra-nourishment | Rs.80,000/- |
| 7. | Damage to clothing and articles | Rs.4,000/- |
| 8. | Medical Expenses | Rs.28,55,578.35/- |
| 9. | Attender charges | Rs.50,000/- |
| 10. | Loss of Amenities | Rs.1,50,000/- |
| 11. | Loss of Expectation of life | Rs.1,50,000/- |
| 12. | Loss of Sexual life | Rs.80,000/- |

| S.No. | Particulars | Amount |
|---|---|---|
| | Total | Rs.66,83,773.35/- |

Which is rounded off to Rs.66,84,000/-.

15. In fine, the appeal is partly allowed, the award of the Tribunal is modified granting a sum of Rs.66,84,000/- as compensation to the 1st respondent/ claimant with 7.5% interest from the date of petition till the date of award. Consequently, the connected Miscellaneous Petition is also closed. No costs.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

kkn
To

The Motor Accident Claims Tribunal,
V Court of Small Causes,
Chennai.

Coyp to
The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.S. Manohar, Advocate sr 61034.
+1 CC to Mr.M. Swamikannu, Advocate sr 60755.

CMA.No.1181 of 2018

KS(CO)
SP(11/10/2018)