IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE **K.K.SASIDHARAN**
and
THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

CMA No.1985 of 2015 and
M.P.No.1 of 2015

M/s.Royal Sundaram Alliance Insurance
Company Limited,
No.45, 46, Peters Road,
Royapettah, Chennai - 600 014. ... Appellant

-vs-

1.Shanthi
2.V.Ramesh ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree in MCOP No.1756 of 2012 dated 17.10.2014 on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : Mr.Mohandass for
Mr.M.B.Gopalan
For Respondents : Mr.C.Richard Sureshkumar
for Ms.G.Anitha for R1

J U D G M E N T

[Judgment of the Court was delivered by
R.SUBRAMANIAN,J.]

The Insurance Company challenges the Award granting a sum of Rs.16,91,000/- to the first respondent for the injuries suffered by her in a road accident that occurred on 22.03.2012.

2. According to the claimant, while she was walking along MGR Veeranam Salai at about 8.30. a.m., on 22.03.2012 a lorry bearing Registration No.KA-02AA-9036, owned by the second respondent and insured with the appellant Insurance Company, driven by its driver in a rash and negligent manner dashed against the high voltage electric post resulting in it falling on the claimant causing grievous injuries to her legs. The claimant would contend that the accident occurred only due to the rash and negligent driving of the driver of the lorry resulting in permanent disability and as a result of which, she is prevented from continuing her avocation as a tailor. Therefore, the claimant sought for a compensation of Rs.25 lakhs.

3. The claim petition was resisted by the appellant Insurance Company denying the accident itself. The Insurance Company would also contend that the percentage of disability has been exaggerated. The Insurance Company would further deny the avocation claimed by the first respondent and contend that there was no actual pecuniary loss due to the accident.

4. The Tribunal on an analysis of the evidence on record concluded that the accident occurred due to the rash and negligent

driving of the driver of the lorry. In coming to the said conclusion, the Tribunal relied upon the First Information Report filed as Ex.P1 and also the fact that there was no contra evidence on the side of the Insurance Company to disprove the contents of the First Information Report.

5. On quantum, the Tribunal awarded the following amounts as compensation under the following heads:-

Heads	***Amount in Rs.***
Medical Expenses	32,000
Loss of Future Earning Capacity	15,84,000
Loss of Income for three months at Rs.10,000 per month	30,000
Transportation	10,000
Extra nourishment	10,000
Attender charges	20,000
Damage to clothing	5,000
Total	**16,91,000**

The Insurance company is on appeal claiming that the Award is excessive.

6. We have heard Mr.Mohandass, learned counsel for the Insurance Company and Mr.C.Richard Sureshkumar, learned counsel for

the first respondent. The second respondent though served has not entered appearance either in person or through counsel.

7. Mr.Mohandass, learned counsel for the Insurance Company would contend that the Tribunal erred in adopting the multiplier method to arrive at the loss of earning capacity and more particularly, in the absence of any evidence to show that the claimant was actually doing business as a tailor. He would also contend that once multiplier method is adopted, the Tribunal should have translated the disability assessed by the Doctor into functional disability, which would have resulted in reduction of the percentage of disability to a large extent.

8. Per contra, the learned counsel appearing for the first respondent would contend that the claimant was actually doing tailoring business and was earning about Rs.20,000/- per month and due to the accident, she has been disabled from continuing the said business. He would also contend that the Tribunal had not awarded any amount towards pain and suffering and loss of amenities.

9. We have considered the rival submissions.

10. As rightly pointed out by Mr.Mohandass, learned counsel for the appellant, there is no evidence except the oral evidence of the claimant herself with regard to the avocation. We are therefore of the view that the Tribunal was not correct in adopting Rs.10,000/- as monthly income and adding 50% towards future prospects to arrive at a sum of Rs.15,000/- as monthly income for the purpose of calculation of loss of earning power. Even then, the fact that the claimant had suffered injuries and there has been mal-union of the fracture of the left tibia and bone grafting has been done, is proved by medical records. The claimant was treated as inpatient for more than a month at Government General Hospital, Chennai. The discharge summary filed would show that there is a mal-union of the fracture in the Tibia bone which would definitely affect the day to day activities of the claimant. Even assuming that she is a house wife, certain amount of pecuniary loss has to be assumed. We therefore take her monthly income as Rs.7,500/- and adding 40% towards future prospects, the income for the purpose of determining the future loss of earning power would be Rs.10,500/- per month. The claimant is aged about 31 years at the time of accident and hence, the multiplier of "16" has to be adopted. The doctor had assessed the disability at 65%. The Tribunal has adopted functional disability at 55%. Considering the nature of injuries

and the fact that there has been mal-union of the bones on the left leg, we feel that the functional disability could be taken at 50%. Thus calculated, the loss of earning power would be Rs.10,500 x 12 x 16 x 50% =Rs.10,08,000/-. The amount awarded towards Medical Expenses, Transportation, Extra Nourishment and Attender charges are confirmed. The Award of the Tribunal in respect of loss of earning power during the period of treatment cannot be granted inasmuch as the Tribunal had adopted multiplier method in assessing the loss of earning power. The Tribunal has not awarded any amount towards pain and suffering. The claimant was admitted as inpatient for more than a month. We therefore award a sum of Rs.50,000/- towards Pain and Suffering.

11. The compensation awarded by the Tribunal is modified as follows:-

Heads	***Amount in Rs.***
Loss of Earning Power	10,08,000
Medical Expenses	32,000
Transportation	10,000
Extra nourishment	10,000
Attender charges	20,000
Pain and Suffering	50,000
Total	**11,30,000**

12. In the result, the Civil Miscellaneous Appeal is Partly Allowed

as follows:-

(i) The award of the Tribunal is modified and reduced from Rs.16,91,000/- to Rs.11,30,000/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit with proportionate costs.

iii) The appellant - Insurance Company is directed to deposit the modified award amount, less the amount, if any, already deposited, along with accrued interest and costs within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the modified amount as awarded by this Court with proportionate costs and interest.

No costs. Consequently, connected miscellaneous petition is closed.

(K.K.SASIDHARAN, J.) (R.SUBRAMANIAN, J.)
4 October 2018

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To

The Motor Accidents Claims Tribunal,
VI Court of Small Causes, Chennai.

K.K.SASIDHARAN,J.
and
R.SUBRAMANIAN,J.

(svki)

CMA No.1985 of 2015

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