IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2018

CORAM:

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

C.M.A.No.154 of 2018
and Cross Obj.17 of 2018

C.M.A.No.154 of 2018
M/s.TATA AIG General Insurance company Ltd.,
No.1, Ethiraj Salai,
Egmore, Chennai 8 : Appellant/2nd Respondent

versus

1.Vasanthi ... 1st Respondent/Claimant
2.S.Mani ... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed against the Judgment and Decree in MCOP No.4047 of 2014 dated 23.10.2017 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

For appellant : Ms.Harini, for M/s.M.B.Gopalan Associates

For 1st respondent : Ms.A.Subathra for Mr.V.Velu

Cross Obj.17 of 2018
Vasanthi : cross appellant/Claimant

versus

1. M/s.TATA AIG General Insurance company Ltd.,
No.1, Ethiraj Salai,
Egmore, Chennai 8
2.S.Mani : Respondents/Respondent

PRAYER: Cross Objection filed against the Judgment and Decree in MCOP No.4047 of 2014 dated 23.10.2017 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

For appellant : Ms.A.Subathra
for Mr.V.Velu

For 1st respondent : Ms.Harini,
for M/s.M.B.Gopalan Associates

COMMON JUDGMENT

(made by R.SUBRAMANIAN, J.)

The challenge in this civil miscellaneous appeal is to the award of the Motor Accident Claims Tribunal, granting compensation of Rs.21,05,760/- for the injuries suffered by the claimant in a motor accident that occurred on 4.6.2014. Inasmuch as the claimant was travelling in a Government bus, the question of negligence is not seriously disputed by the learned counsel for the Insurance Company. Though the claimant had stated that she was working as a tailor and earning about Rs.18,000/- per month, finding that there is no concrete evidence to show the income, the Tribunal has taken the notional income at Rs.6,500 p.m. Adding 30% towards future prospects and adopting multiplier of 13, the Tribunal worked out the future loss of income at Rs.10,54,560/- on the premise that loss of earning power would be 80%. The Tribunal also granted a sum of Rs.2,40,000/- for continuing disability, Rs.80,000/- for pain and suffering, Rs.7,800/- towards loss of income, Rs.10,000/- towards transport charges, Rs.50,000/- towards extra nourishment, Rs.2,000/- towards damage to clothing, Rs.13,400/- towards medical expenses, Rs.80,000/- towards mental agony and Rs.4,68,000/- towards attender charges and Rs.1,00,000/- for shortening of life expectancy, and thus arrived at a total compensation of Rs.21,05,760/-. Terming the compensation as excessive, the Insurance Company has come up with the appeal. The claimant has filed cross objection seeking enhancement.

2. We have heard Ms.A.Subadra, learned counsel for the appellant and Ms.Harini, for the 1st respondent/claimant.

3. The second respondent in the appeal, who is the owner of the offending lorry has remained exparte before the Tribunal and hence notice in the appeal is dispensed with.

4. On the quantum, the learned counsel for the appellant Insurance Company would contend that the Tribunal erred in granting a sum of Rs.80,000/- towards pain and suffering and another sum of Rs.80,000/- towards mental agony. She would also contend that the award of Rs.4,80,000/- towards attendant charges and Rs.1,00,000/- towards loss of expectancy are excessive.

5. Per contra, the learned counsel for the 1st respondent/claimant contended that the award on the whole is less, inasmuch as the Tribunal has fixed the monthly income only at Rs.6,500/- which is below par.

6. We have considered the rival submissions. Considering the fact that the claimant was a tailor, fixation of Rs.6,500/- as monthly income, in our considered opinion, is below par as rightly contended by the learned counsel of the appellant. At the same time, grant of compensation under various heads has resulted in duplication. We therefore find that the award requires modification and the same has to be modified.

7. As regards loss of future earning capacity, admittedly, the claimant had suffered 80% permanent disability. She has lost her right hand. Considering her avocation as tailor, she may not be able to do the same work in future. Hence the loss of earning capacity is ascertained as follows:-

"The monthly income is taken at Rs.12,000/-. Adding 25% towards future prospects, monthly income for the purpose of working out loss of future earning capacity would be Rs.15,000/-. Loss of future earning capacity would be Rs.15,000/- x 12 x 13= Rs.23,40,000/-. The functional disability is arrived at 80%. Therefore, the claimant would be entitled to Rs.18,72,000/-, i.e. 80% of Rs.23,40,000/-. The loss of future earning capacity is thus arrived at Rs.18,72,000/-."

8. The Tribunal has awarded Rs.80,000/- towards pain and suffering and Rs.80,000/- towards mental agony. This will have to be consolidated under one head and the claimant is granted Rs.1,00,000/- under the above two heads. The Tribunal has granted Rs.4,68,000/- towards attender charges. The same is reduced to Rs.1,00,000/-. The award of Rs.2,40,000/- towards permanent disability is confirmed. Loss of earning during treatment is fixed at Rs.36,000/- (Rs.12000 x 3), for a period of three months. Towards medical expenses, transportation and extra nourishment, the award granted by the Tribunal is confirmed. The award of Rs.2,000/- towards damaged clothing enhanced to Rs.15,000/-. Thus the total award works out to Rs.23,92,400/-. The same is rounded to Rs.24,00,000/- (Rupees Twenty Four lakhs only). The award of Rs.24,00,000/- would carry interest at 7.5% p.a. from the date of petition till the date of payment.

9. The appeal filed by the Insurance Company is dismissed. The cross objection is partly allowed and the award of the Tribunal is modified as above. There will be no order as to costs in the appeal. Consequently, connected miscellaneous petitions are closed.

10. It is submitted that the Insurance Company has already deposited 50% of the award amount. The Insurance Company is directed to deposit the balance amount within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant is entitled to withdraw the compensation amount.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

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

Copy to

The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to M/S.M.B.Gopalan Associates, Advocate Sr.64248
+1cc to Mr.V.Velu, Advocate Sr.63631

C.M.A.No.154 of 2018
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srg 23/10/2018