IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2018

CORAM

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

C.M.A.No. 157 of 2018
and
Cross Objection No.42 of 2018

M/s. United India Insurance Company Limited,
The Branch Office,
No.111, Arjuna Towers, 2nd Floor,
No.248/164, Cherry road,
Salem-636 001.
... Appellant/1st Respondent in Cross Objection in CMA

Vs.

1.G.A.Suganthan
... 1st Respondent/Cross Objector

2.P.Settu

3.A.Amarnath ... Respondents 2 & 3 in CMA & Cross Objection

Prayer: Civil Miscellaneous Appeal and Cross Objection are filed against the Judgment and Decree made in MCOP No.193 of 2014, dated 24.07.2017, on the file of the Motor Accident Claims Tribunal, Special Subordinate Court No.1, Salem.

For Appellant/Insurance Company:: Mr.M.B.Raghavan,
For 1st Respondent/ :: Mr.T.Shanmugananda Vijaya Kumar
Cross Objector

J U D G M E N T

(Judgement of this Court was made by N.KIRUBAKARAN, J.)

The appeal has been preferred by the Insurance Company against the award of Rs.4,92,220/- for the disability sustained by the 1st respondent/claimant, due to the injuries sustained by him in the accident, which occurred on 11.05.2013, when the victim was riding his two wheeler, hit down by a Tata Indica Car, belonging to the 3rd respondent driven by its driver/2nd respondent and insured with the appellant/Insurance Company.

2.The claimant has also filed a Cross-Objection questioning the award of the Tribunal.

3.Heard, Mr.M.B.Raghavan, learned counsel appearing for the appellant, who would submit that the claimant/1st respondent sustained fracture of right shaft of femur and the Medical Board determined the disability at 14% as per Ex.C1. However the tribunal took the disability at 25%, without any proof and applied multiplier method, taking Rs.6,000/- as monthly income. Therefore he would submit that the Tribunal's award of Rs.4,92,220/- is on the higher side.

4.Heard, Mr.T.Shanmugananda Vijaya Kumar, learned counsel appearing for the claimant/1st respondent, who argued that the amount awarded by the Tribunal is inadequate as the claimant had the potential to be a successful International Tennis Player. Therefore, he seeks enhancement.

5.It is proved by the Medical records, especially, Ex.P2, Ex.P4, Ex.P10, Ex.P11 and Ex.P18 that the claimant sustained the right shaft of femur fracture. Ex.P.18 would show that he was admitted in the hospital on 11.05.2013 and surgery called "I L Nailing Right Femur" was performed on him in London Ortho Specialty Hospital, Salem and he was discharged on 14.05.2013.

6.The manner of the accident and negligence are not questioned by the Insurance Company and only issue is with regard to quantum of compensation awarded by the Tribunal. It is true that Ex.C.1, issued by the Medical Board speaks about 14% disability. The Tribunal, in the absence of any contra evidence, determined the disability at 25%, which is erroneous and therefore, the same is reduced and this court fixes the disability at 14% as per Ex.C.1.

7.Before the tribunal, it was proved that the claimant was an International Tennis Player. Ex.P15 issued by the State Association of Tamil Nadu in the game of Soft Tennis would prove that the claimant represented State of Tamil Nadu in the event of 7th Junior International Soft Tennis Championship held at Aurangabad, Maharashtra, from 09.11.2011 to 13.11.2011 and his team secured 3rd place. However, the Tribunal rightly rejected Ex.P.19, stating that it was not properly issued to the claimant and de hors Ex.P.19, Ex.P.15 would prove that the claimant is an All India tennis Player. At that time, he was hardly aged about 19 years. Therefore, he had all the potential of becoming an International Tennis Player. In our country, we rarely groome sports persons and even sports persons feel that they are not encouraged properly. At the age of 17 itself, the claimant proved that he played Tennis at All India Level and secured 3rd place in the National event and therefore, his credential as a tennis player is proved and the same cannot be questioned.

8.The claimant was studying first year of B.E., (EEE) at the time of the accident and the Tribunal took Rs.6000/- as monthly income and adopted multiplier of "18" and determined the loss of income for 25%. The Honourable Supreme Court in the judgment delivered in Syed Sadiq Vs.United India Insurance Company, reported in 2014 (1) TNMAC 459, fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident, which occurred in the year 2008, whereas this accident occurred on 11.05.2013. Therefore this Court determines monthly income at Rs.10,000/-. Along with 40% future prospects, the monthly income would be at Rs.14,000/- (Rs.10,000/- + 40% of Rs.10,000/-).

9.As per the age of the claimant, the appropriate multiplier is "18". Therefore, the loss of income would be at Rs.4,23,360/- (Rs.14,000/- x 12 x 18 x 14/100).

10.Pain and suffering:

The Tribunal awarded a sum of Rs.15,000/- towards pain and suffering. The same is enhanced to Rs.25,000/-.

11.Transportation:

The Tribunal awarded a sum of Rs.10,000/- under this head. The same is confirmed.

12.Medical bills:

The Tribunal awarded a sum of Rs.88,220/- as per Ex.P.3-medical bills and Ex.P.4-Receipt issued by London Ortho Specialty Hospital. The same is confirmed.

13.Extra nourishment:

The Tribunal awarded a sum of Rs.15,000/- under this head. The same is enhanced to Rs.25,000/-.

14.Loss of amenities:

The Tribunal awarded a sum of Rs.20,000/- under this head, which is too low. Therefore, the same is enhanced to Rs.50,000/-.

15.Future Medical expenses:

The Tribunal awarded a sum of Rs.20,000/- under this head. The same is confirmed.

Head	Amount (Rs.)
Total loss of income	423360
Pain and suffering	25000
Transportation	10000
Medical bills	88220
Extra nourishment	25000
Loss of amenities	50000
Future medical expenses	20000
Total	641580

16.Hence, the total compensation payable in this case is Rs.6,41,580/-.

17.The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed.

18.The Insurance company is directed to deposit the award amount as per the modified award passed by this Court, within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer the entire award amount along with interest and costs to the bank account of the claimant through RTGS within a period of one week thereon.

19.The claimant is directed to pay the additional court fee, if any, within a period of two weeks from the date of receipt of a copy of this order, failing which, the enhancement made by this Court shall be automatically deleted. The necessity to include the above clause is only to see that the additional court fee is paid promptly, as many complaints are received from the registry stating that the claimant's counsel are not paying the additional court fee for the enhanced award amount and thereby delaying the copy being made ready, which prevented the insurance company or transport corporation to receive the order copy, so that they could file an appeal or to act upon the order passed by this Court. On payment of such additional court fee, the registry is directed to note/make entry about the payment of court fee in the Decree itself.

20.Accordingly, C.M.A.No. 157 of 2018 is dismissed and Cross Objection No.42 of 2018 is partly allowed, enhancing the award of the Tribunal from Rs.4,92,220/- to Rs.6,41,580/- with interest. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vkr/sai

To

The Special Subordinate Court No.1,
Motor Accident Claims Tribunal,
Salem.

+1cc to Mr.M.B.Gopalan Associates, Advocate sr.no.55762
+3cc to Mr.T.Shanmugananda, Advocate sr.no.55224

C.M.A.No. 157 of 2018

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nr 17/09/2018