IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2018

CORAM:

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

CMA No.164 of 2018
and C.M.P.No.2028 of 2018

Iffco-Tokio General Insurance Co. Ltd.,
2nd Floor, A1, Rahaba Arcade,
Pushpa Junction, Kallai Road,
Calicut. .... Appellant/2nd Respondent

-vs-

1.Jirosh K.K.
2.Shaji.K .... Respondents/Petitioner/ 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988 against the judgment and decree dated 11.09.2015 passed in M.C.O.P.No.1 of 2014 on the file of the Motor Accidents Claims Tribunal, Sub Court, Mahe.

For Appellant : Mr.M.B.Raghavan

For Respondents: Mr.E.Anbarasan (For R1)
R2 : Dispense with vide court order dt.21.3.2018

J U D G M E N T

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

The Insurance Company is on an appeal, challenging the quantum of compensation awarded at Rs.29,14,000/- for the injuries suffered by the 1st respondent in a motor accident that occurred on 05.04.2012.

2.The disability was assessed at 22.7% by the Medical Board. The claimant had pleaded that he was employed as a Salesman in Dubai and was earning a sum of Rs.40,000/- per month, apart from free boarding and lodging. The Tribunal took his monthly income at Rs.15,000/- and awarded a sum of Rs.6,94,620/- towards loss of future income. The Tribunal also awarded a sum of Rs.50,000/- for extra nourishment, Rs.3,72,018/- for medical expenses, Rs.57,160/- for transportation charges, Rs.1,00,000/- each towards pain and suffering and loss of amenities and Rs.50,000/- each towards loss of marriage prospects and loss of expectancy of life.

Apart from the above heads, the Tribunal awarded a sum of Rs.14,40,000/- as loss of income during treatment and healing period. For this purpose, the Tribunal took the income at Rs.40,000/- per month and assessed the period of treatment and healing at 3 years and arrived at the figure of Rs.14,40,000/-

3.Mr.M.B.Raghavan, learned counsel appearing for the Insurance Company would vehemently contend that compensation for future treatment cannot be granted for a period of three years. According to him, once the loss of future earning power is assessed and an award is granted on the basis of the percentage of the disability, applying the multiplier method, there cannot be a separate compensation for the loss of income for more than a period of three years.

4.Per contra, Mr.E.Anbarasan, learned counsel for the 1st respondent/claimant would contend that the injured had a Visa with employment in Dubai. He could not go to Dubai for nearly a period of three years, resulting in loss of income. According to him, the amount awarded at Rs.14,40,000/- is the actual loss suffered by him, because of the accident.

5.We have considered the rival submissions. We see some force in the contention of Mr.M.B.Raghavan that the Tribunal erred in awarding a sum of Rs.14,40,000/- towards loss of income during treatment period. However, we find that the Tribunal had adopted monthly income to be Rs.15,000/- only. Admittedly, the injured claimant was employed in a Super market in Dubai as a Salesman and a copy of his Visa has been filed to show that he had a job offer at Dubai. Taking note of the prevailing salaries in the middle east, we find that the Tribunal's fixation of monthly salary at Rs.15,000/- is absymally low. We therefore, take the salary at Rs.30,000/-. The injured was aged about 26 years at the time of accident. Therefore, the future prospects will have to be taken at 40%. Thus worked out, the monthly income works out to Rs.42,000/-. The percentage of disability has been assessed at 22.7%. Therefore, the loss of earning power is worked as follows:

$$Rs.42{,}000/- \times \frac{22.7}{100} \times 12 \times 17 = Rs.19{,}44{,}936/-$$

6.In view of the above, the compensation awarded under the head of loss of future income is enhanced to Rs.19,44,936/-. The other amounts awarded for extra nourishment, medical expenses, transportation charges, pain and sufferings, loss of amenities, loss of marriage prospects and loss of expectancy in life are confirmed. The amount awarded on the loss of earning during the period of treatment is set aside. The total award is worked out to Rs.27,24,114/- and the same is rounded off to Rs.27,24,000/- with interest at the rate of 7.5% per annum.

7.The appeal is partly allowed. The Insurance Company is directed to deposit the award amount, less the amount already deposited, within a period of six (6) weeks from the date of receipt of a copy of this order. On such deposit, the claimant will be entitled to withdraw the same. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsa

To

The Motor Accidents Claims Tribunal,
Sub Court,
Mahe.

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

+1cc to Mr.E.Anbarasan, Advocate Sr.No.66226
+1cc to Mr.N.Vijayaraghavan, Advocate SR.No.60254

RJ(CO)
sm:22.10.2018

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