IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2018

CORAM:

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

C.M.A. Nos.1469 of 2015 & 341 of 2016
and
C.M.P.No.2542 of 2016

CMA.No.1469 of 2015

Benatic Samson @ Samson
... Appellant/ Petitioner

-vs-

1.K.Arjunan
2.National Insurance Co., Ltd.,
Khivraj Mansion, 2nd Floor,
Anna Salai, Chennai - 600 002.
... Respondents/ Respondents

CMA.No.341 of 2016:
National Insurance Co., Ltd.,
Khivraj Mansion, 2nd Floor,
Anna Salai, Chennai - 600 002.
... Appellant/ 2nd Respondent

-vs-

1.Benatic Samson @ Samson ..1st Respondent / Petitioner
2.K.Arjunan ...2nd Respondent/1st Petitioner

PRAYER IN CMA.No.1496 of 2015: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 19.02.2015 made in MACTOP.No.2722 of 2013 on the file of the II Judge, Small Causes Court, (Motor Accidents Claims Tribunal) at Chennai.

PRAYER IN CMA.No.341 of 2016: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree made in MACTOP.No.2722 of 2013 on the file of the Motor Accident Claims Tribunal (II Judge, Court of Small Causes) at Chennai dated 19.02.2015.

For Appellants :Mr.K.Suryanarayanan in CMA.No.1469/15
Mr.M.Krishnamoorthy in CMA.No.341/16

For Respondents: R1 - Exparte in CMA.No.1469/15
Mr.M.Krishnamoorthy for R2 in CMA.No.1469/15

Mr.K.Suryanarayanan for R1 in CMA.No.341/16
R2 - Exparte

J U D G M E N T

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

1. The challenge in these appeals is to the award of the Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai dated 19.02.2015 made in MCOP.No.2722 of 2013. While the appeal in CMA.No.1469 of 2015 is filed by the injured claimant seeking enhancement, the appeal in CMA.No.341 of 2016 is filed by the Insurance Company questioning the quantum of compensation.

2. The case of the claimant before the Tribunal was that while he was riding the motor cycle bearing registration No.TN-20-BS-6295 at T.H. Road near Kodungaiyur, a lorry bearing registration No.TN-22-B-7567 proceeding in the same direction, driven by its driver in a rash and negligent manner endangering public safety came from behind and dashed against the motor cycle. As a result of the impact the claimant was thrown out of the motor cycle and the wheel of the lorry ran over his leg which resulted in grievous injures. Because of the injury, the left leg of the claimant was amputated. Contending that it was the driver of the lorry who had caused the accident by his negligence the claimant sought for a compensation of Rs.1,00,00,000/-.

3. The claim petition was resisted by the Insurance Company contending that it was the rash and negligent driving of the claimant which caused the accident. The Insurance Company would also contend that the compensation claimed is highly excessive and without any evidence. The claims made under various heads were specifically denied. It was also contended that the claimant who was riding the motor cycle drove the vehicle in a zig-zag manner without observing the traffic rules and without a valid driving license. According to the Insurance Company, it was the negligence and carelessness on the part of the claimant which caused the accident.

4. The Tribunal which heard the claim petition took into account the evidence of PW1 as well as FIR, Ex.P1 which was lodged by one Shankar, found that the accident occurred due to the rash and negligent driving on the part of the lorry driver. The Tribunal also faulted the Insurance Company for not examining the owner or the

driver of the lorry. On the above conclusions, the Tribunal held that the accident was caused due to the negligence on the part of the lorry driver. Considering the nature of injuries, as well as the fact that there was amputation of the left leg above the knee, the Tribunal concluded that the functional disability caused by the accident would be 80%. The Tribunal also concluded that the total permanent disability was 90%, considering the various injuries which are grievous in nature.

5. It was the case of the claimant that he was employed as Supervisor in one Tarun Transport and was earning a sum of Rs.15,000/- per month. A salary certificate said to have been issued by the said Transport Company along with cash vouchers have been filed as Ex.P10 and P11. The Tribunal relying upon the said documents, fixed the monthly income of the claimant at Rs.15,000/- and adopting a multiplier of '16', the Tribunal arrived at the loss of earning power at Rs.1,80,000/-. Since it had arrived at the functional disability at 80%, the Tribunal granted a sum of Rs.23,04,000/- as compensation for loss of earning power. The Tribunal awarded a sum of Rs.1,80,000/- towards permanent disability, Rs.50,000/- towards transportation, Rs.50,000/- towards extra nourishment, Rs.1,000/- towards damage to cloths, Rs.11,00,000/- towards medical expenses (based on the bills), Rs.1,50,000/- towards future medical expenses, Rs.1,00,000/- towards attender charges, Rs.2,00,000/- towards pain and suffering and mental agony, Rs.1,00,000/- towards loss of amenities and Rs.2,00,000/- towards loss of marital prospects. In all the Tribunal awarded a sum of Rs.44,35,000/-.

6. Aggrieved the Insurance Company has come forward with the appeal in CMA.No.341 of 2016. Contending that the Tribunal erred in not taking into account the future prospects, the claimant has come forward with the appeal in CMA.No.1469 of 2015 seeking enhancement.

7. We have heard Mr.M.Krishnamoorthy, learned counsel appearing for the Insurance Company and Mr.K.Suryanarayanan, learned counsel appearing for the claimant. The owner of the lorry who is shown as 2nd respondent in the appeal, though served has not chosen to appear either in person or through counsel.

8. Mr.M.Krishnamoorthy, learned counsel appearing for the Insurance Company would vehemently contend that the Tribunal was not right in fixing the monthly income at Rs.15,000/- based on the salary certificate which has been issued in the letter head of the Transport Company. He would also contend that the cash vouchers appear to have been prepared on the same day. Pointing out that the employer has not been examined as a witness Mr.M.Krishnamoorthy, would contend that the non examination of the employer makes the very salary

certificate doubtful.

9. Per contra Mr.K.Suryanarayanan, learned counsel appearing for the claimant would contend that considering the fact that the claimant was employed in the Transport Company as a Supervisor or Business Development Manager the fixation of his income at Rs.15,000/- per month is just and proper. Mr.K.Suryanarayanan would further contend that the Tribunal has erred in not adding any amount towards future prospects.

10. We have considered the rival submissions. The compensation awarded on the other heads is not very seriously disputed. Though Mr.M.Krishnamoorthy, learned counsel appearing for the appellants would submit that the medical expenses of Rs.11,00,000/- has been awarded without any documentary evidence, we find that the medical bills have been produced and they have been marked as Ex.P4 evidencing payment of sum of Rs.10,73,753/- which has been rounded of by the Tribunal to Rs.11,00,000/-. We therefore see no ground to interfere with the said fixation.

11. Further we find that the contention of Mr.M.Krishnamoorthy on the quantum of monthly income fixed by the Tribunal has some force in it. Admittedly, the claimant has discontinued his B.A., graduation and claims to have been employed as Supervisor. We are therefore of the considered opinion that his salary can be safely taken at Rs.10,000/- per month, adding 40% towards future prospects, the monthly income is Rs.14,000/- for the purpose of fixation of future loss of earing power. Thus calculated the future loss of earning power works out to Rs.21,50,400/- (14,000 x 12 x 16 x 80%). The compensation awarded under the heads of future medical expenses, attender charges, mental agony, pain and suffering, loss of amenities, loss of marital prospects loss of earning power, transportation, extra nourishment, damage to clothes are all sustained. Thus, the total compensation works out to Rs.42,81,400/-. The claimant is entitled to 7.5 % interest on the compensation.

12. In fine, the appeals are partly allowed. The award of the tribunal is modified to Rs.42,81,400/- with interest at 7.5% per annum from the date of petition till date of payment. It is stated that the Insurance Company has deposited 70% of the award amount, the Insurance Company shall deposit the balance amount along with 7.5% interest within a period of six (6) weeks from the date of receipt of a copy of the judgment. On such deposit the claimant will be entitled to withdraw the entire amount. There shall be no order as to costs in these appeals.

Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

dsa
To
The Second Judge, Court of Small Causes, Chennai

+1cc to Mr. Mr.M.Krishnamoorthy, Advocate SR.No. 60967
+1cc to Mr. K.Suryanarayanan , Advocate SR.No. 61026

C.M.A. Nos.1469 of 2015 & 341 of 2016
A.SK(10/01/2019)