IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2018

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

C.M.A. No. 394 of 2016
&
C.M.P. No. 2994 of 2016

Bajaj Allianz General Insurance Company Limited,
No.528, P.H. Road, Arumbakkam,
Chennai – 106. ..Appellant/2nd Respondent

Vs.

1. K. Subramani ... 1st Respondent/Petitioner
2. T. Krishnamurthy ..2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed Under Section 173 of MV Act, 1988 as against the judgment and decree dated 06.06.2015 passed in M.C.O.P. No. 1009 of 2014 by the Motor Accidents Claims Tribunal (IV Small Causes Court), Chennai.

For Appellant :: Mr.Srinivasan Ramalingam

For Respondent No II :: Mr.F. Terry Chellaraja

J U D G M E N T

(Judgment of the Court was delivered by N. KIRUBAKARAN,J.)

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the award of Rs.15,31,600/- passed by the Motor Accidents Claims Tribunal (IV Judge, Court of Small Causes), Chennai, in M.C.O.P. No. 1009 of 2014, by order dated 06.06.2015, in favour of the 1st respondent, who sustained grievous injuries including fractures in the accident, which occurred on 01.11.2013, when the 1st respondent, who was walking on GST road from west to east, was knocked down by a car, belonging to the 2nd respondent and insured with the appellant Insurance Company, driven in a rash and negligent manner,

2. Heard Mr.Srinivasan Ramalingam, learned counsel for the appellant and Mr.F. Terry Chellaraja, learned counsel for the 1st respondent.

3. The appeal has been filed on the question of liability as well as quantum of compensation awarded.

4. Though the Insurance Company took a plea before the Tribunal that the 1st respondent crossed the National Highways negligently, which resulted in the accident, there is no evidence adduced on the side of the appellant/Insurance Company to susbtantiate the said plea. The injured, who was examined as P.W.1, has spoken about the accident. Ex-P1 FIR has been filed as against the driver of the car. Based on P.W.1's evidence as well as the filing of FIR as against the driver of the car, the Tribunal rightly found that the accident occurred because of the rash and negligent driving of the car insured with the appellant Insurance Company and said finding is confirmed.

5. As far as quantum is concerned, the claim of the 1st respondent was that he was working as a Supervisor in a Hotel earning a sum of Rs.15,000/- per month. However, in the absence of any documentary evidence, in support thereof, the Tribunal determined the monthly income at Rs.8000/-. The Honourable Apex Court, in the judgment rendered in Syed Sadiq and others V. Divisional Manager, United India Insurance Company Limited reported in 2014 ACJ 627, in respect of an accident, which took place in the year 2008, in respect of a vegetable vendor, fixed the monthly income at Rs.6500/- whereas in this case, the accident had occurred on 01.11.2013 and therefore, Rs.8000/- fixed by the Tribunal as monthly income of the claimant is justified. However, no future prospects have been added. As per the Constitution Bench judgment of the Honourable Apex Court rendered in National Insurance Company Limited V. Pranay Sethi & Others reported in 2017 ACJ 2700, 25% of the actual salary has to be added towards " Future Prospects", if the victim is employed in a private sector and aged between 40 to 50 years. In this case, the 1st respondent/claimant is aged about 48 years, which is proved by Exs. P3 and P4. Therefore, Rs.2000/- has to be added towards " Future Prospects", which would make the total monthly income of the 1st respondent as Rs.10,000/-.

6. It is proved by medical evidence, especially, the evidence of P.W.2 Doctor that the injuries sustained by the 1st respondent/claimant have caused permanent partial disability. After examining the 1st respondent, P.W.2 determined the disability at 75%. P.W.2 Medical Expert would depose that the 1st respondent sustained fracture of lleum right, segmental fracture of right humerus, communited fracture of right proximal 1/3 tibia. It is seen from the records that the 1st respondent underwent a surgery in Chengalpet Government Hospital and wires have been fixed on the right hand and right shoulder and because of that, there is rigidity of muscles. Moreover, the movement of right leg got restricted and he could not raise or bend the

legs beyond certain limit. Moreover, he is unable to walk independently and he is depending upon crutches. Though the Doctor determined the disability at 75%, even in the absence of any rebuttal evidence on the side of the appellant, the Tribunal fixed the disability as 70% and this Court confirms the disability at 70% as arrived at by the Tribunal.

7. Though the disability sustained by the claimant is determined as 70%, the Tribunal did not determine the " Loss of Earning Capacity" resulting from it. Since the 1st respondent is unable to walk independently and he has to necessarily depend upon crutches and he is experiencing difficulty in answering the call of nature as he suffered fracture in the hip and also there is evidence with regard to the claimant's inability to perform the marital obligations, this Court determines the " Loss of Earning Capacity" at 55%. To calculate "Loss of Future Earnings", this Court adopts multiplier method and as per the judgment of the Honourable Supreme Court in Sarla Verma's case, (2009 ACJ 1298 (SC)), the appropriate multiplier to be adopted, for 48 years is 13. Hence, "Loss of Future Earnings" is calculated as hereunder:

= Rs.10,000/- x 13 x 12 x 55/100

= Rs.8,58,000/-

Since the Tribunal mechanically adopted 70% disability as "Loss of Earning Power", this Court is constrained to calculate "Loss of Earning Power" and determines the same at 55% as aforesaid.

8. As far as the amounts awarded under the other headings are concerned, a perusal of the same would show that inflated amounts have been given and therefore, this Court reduces the amounts awarded under certain headings. The sum of Rs.2 lakhs awarded towards "Pain and Suffering", Rs.1,50,000/- awarded towards "Extra Nourishment" and Rs.1 lakh awarded towards "Transport to Hospital" are reduced to Rs.75,000/-, Rs.30,000/- and Rs.25,000/- respectively. The amount of Rs.3,000/- awarded towards "Damage to Clothes" is enhanced to Rs.5,000/-. The "Attendant Charges" awarded to the tune of Rs. 50,000/- and Rs.7,000/- awarded towards "Medical Expenses" are confirmed. So also, the amounts awarded towards "Loss of Income during treatment period" and "Loss of Amenities", to the tune of Rs.48,000/- & Rs.50,000/- respectively are confirmed. The amount awarded towards "Future Medical Expenses" is reduced from Rs.50,000/- to Rs.10,000/-. Since no amount was awarded towards "Disability", a sum of Rs.55,000/- is awarded. The break-up details of the amounts under various heads are as hereunder:

| | | |
|---|---|---|
| Loss of Future Earnings | :: | Rs.8,58,000/- |
| Pain and Suffering | :: | Rs. 75,000/- |
| Extra Nourishment | :: | Rs. 30,000/- |
| Transport to Hospital | :: | Rs. 25,000/- |
| Damage to Clothes | :: | Rs. 5,000/- |
| Attendant Charges | :: | Rs. 50,000/- |

| | | |
|---|---|---|
| Medical Expenses | :: | Rs. 7,000/- |
| Disability | :: | Rs. 55,000/- |
| Loss of income during treatment period | :: | Rs. 48,000/- |
| Loss of Amenities | :: | Rs. 50,000/- |
| Future Medical Expenses | :: | Rs. 10,000/- |
| Total | :: | Rs.12,13,000/- |

Hence, the total compensation payable to the 1st respondent is Rs.12,13,000/-. The rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered.

9. Since the entire amount, as per the award of the Tribunal, has already been deposited by the appellant Insurance Company, the Tribunal is directed to transfer the amount, as per the modified award passed by this Court, to the bank account of the 1st respondent, through RTGS, within one week from the date of receipt of a copy of this order. The balance amount shall also be refunded to the appellant within the said period of one week.

10. In the result, the Civil Miscellaneous Appeal is partly allowed reducing the quantum of compensation awarded by the Tribunal from Rs.15,31,600/- to Rs.12,13,000/-. No costs. Connected C.M.P. is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To
The Motor Accident Claims Tribunal
IV Small Causes Court, Chennai

copy to:

The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.Srinivasan Ramalingam, Advocate sr.no.24445
+1cc to Mr.F. Terry Chellaraja, Advocate sr.no.24652



nr 21/05/2018