IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2018

CORAM :
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN
C.M.A.Nos.624 and 2413 of 2016
and
C.M.P.Nos.5157 of 2016 and 7310 of 2017

C.M.A.No.624 of 2016

National Insurance Company Limited,
Represented by its Divisional Office,
No.74-A, Paramathi Road,
Namakkal Town & District ...Appellant/2nd Respondent

Vs

1.Thangadurai ...1st Respondent/Petitioner

2.R.Krishnaraj ... 2nd Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed against the Judgment and Decree dated 27.03.2015 in MCOP.No.79 of 2014, on the file of the Motor Accidents Claims Tribunal (Additional District Judge) at Namakkal.

For Appellant : Ms.R.Sree Vidhya

For Respondents: Mr.Ma.P.Thangavel

C.M.A.No.2413 of 2016

Thangadurai ... Appellant/Petitioner

Vs

1.R.Krishnaraj

2.National Insurance Company Limited,
Divisional Office,
No.74-A, Paramathi Road,
Namakkal Town & District ... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal as against the Judgment and Decree dated 27.03.2015 made in M.C.O.P.No.79 of 2014 on the file of the MACT/Additional District Court at Namakkal.

For Appellant : Mr.Ma.P.Thangavel

For Respondents: Ms.R.Sree Vidhya

C O M M O N   J U D G M E N T

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

The Insurance company has filed CMA.No.624 of 2016 and the claimant has filed CMA.No.2413 of 2016.

2.Both the appeals have been filed against the very same award of Rs.14,77,000/-. For the sake of convenience, parties are referred as claimant and insurance company.

3.The claimant sustained injuries in the accident which occurred on 20.11.2013, when he was riding the two wheeler, which was dashed down by a Tata Sumo car causing accident. In the accident, the claimant suffered fracture of both bones left leg, fracture of left radius and lower end of ulna, fracture of nasal bone and abrasion over right forearm. Therefore the claim petition.

4.On contest, the Tribunal found that the accident occurred because of the rash and negligent driving of the car and determined the disability at 60% and taken 100% as "Loss of Earning Power" for calculating loss of income as the injured is a lorry driver and therefore awarded a sum of Rs.14,77,000/-. The said award is being challenged before this Court by both the parties.

5.Heard Ms.R.Sree Vidhya, learned counsel appearing for the insurance company and Mr.Ma.P.Thangavel, learned counsel for the claimant.

6.The Tribunal taking into consideration Ex.P.1-FIR, filed against the driver of the Tata Sumo; Ex.P.5-charge sheet against the driver of Tata Sumo and based on the oral evidence, rightly came to the conclusion that the driver of the Tata Sumo was rash and negligent. Moreover, there is no rebuttal evidence on the side of the insurance company, owner and driver and therefore, the said finding cannot be disturbed.

7.A specific plea has been taken by Ms.R.Sree Vidhya, learned counsel appearing for the insurance company that the victim did not possess any two wheeler licence to ride the two wheeler and he was having licence only to drive heavy vehicles. However, the Tribunal did not take into consideration the said contention made by the insurance company. A perusal of Ex.P.10, driving licence of the claimant would reveal that the victim was having licence only to drive LMV and Heavy vehicles and there is no endorsement with regard to the two wheeler. By relying upon Ex.P.10-driving licence, the insurance company is justified in making such plea. Therefore, there is a contributory negligence on the part of the claimant and accordingly 20% negligence is fixed on the claimant.

8.It is proved before the Tribunal that the claimant sustained fracture of both bones left leg, fracture of left radius and lower end of ulna, fracture of nasal bone and abrasion over right forearm and he was hospitalised from 20.11.2013 to 23.12.2013 in M.M. Hospital, Namakkal. He was operated on the left leg as evidenced by Ex.P.2 Wound Certificate. PW2-Doctor based on medical records categorically stated that the claimant was operated upon and internal fixture has been fixed on 01.12.2013. Again, another surgery was performed to fix another inter locking rod and the third surgery was conducted in the left hand to fix k-wire. The skin was harvested from the thigh area and plastic surgery was done on the left hand for the purpose of skin grafting. PW2-Doctor further stated that the broken bone did not unite properly. Further, another surgery has to be done to take out the internal fixture. The Doctor would also state that the length of the left leg got reduced and because of the injury, the urinary tract got injured and there is a problem in urination and therefore, 65% disability was fixed by PW2. Further, taking into consideration that the claimant was a driver and he may not be in a position to undertake his avocation, the Tribunal rightly came to the conclusion that there was 100% loss of earning power. For arriving at such a conclusion, the Tribunal relied upon the judgment of this Court in R.Murali Vs. R.Shyamala and another reported in 2014 (2) TNMAC 420, wherein the driver was injured and he sustained 60% disability. However, 100% loss of earning power was taken. Therefore, the Tribunal is justified in concluding that there was 100%, loss of earning power.

9.Though the claimant claimed a sum of Rs.15,000/- per month as a driver, no documentary proof was produced before the Tribunal. Therefore, the Tribunal took Rs.6,500/- as income. However, the learned counsel appearing for the claimant would rely upon the judgment of the Hon'ble Supreme Court in Kala Devi and others Vs. Bhagwan Das Chauhan and others reported in 2014 (2) TNMAC 680 (SC), in which Rs.9,000/-was fixed as monthly income, in respect of the victim, who died in the accident which occurred on 15.12.2003. However, there is another judgment of the Honourable Supreme Court in Syed Sadiq Vs. Divisional Manager, United India Insurance Co. Ltd., reported in 2014 (1) TNMAC 459 (SC), in which a sum of Rs.6,500/- alone was fixed for a vegetable vendor, who sustained injury in the accident, which occurred in the year 2008. Therefore, this Court, considering the date of accident (i.e.,) 20.11.2013, determines the monthly income at Rs.9,000/- and adds 30% towards future prospects as the age of the victim is 42 years as per the judgment of the Constitution Bench of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). After adding 30% towards future prospects, the income of the deceased comes to Rs.11,700/- (Rs.9,000/- + 30% of Rs.9,000/-).

10.Since the claimant lost his avocation, multiplier method has to be adopted to calculate the loss of income. As per the judgment of the Honourable Supreme Court in Sarla Verma & Others Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), the appropriate multiplier is "14" for the age of 42 years. Therefore, loss of income comes to Rs.15,72,480/- (11700 x 12 x 14 x 80/100). Since 20% contributory negligence has been fixed on the claimant, 80% income alone has been taken.

11.Medical expenses:

The Tribunal has awarded Rs.2,36,960/- towards medical expenses, as per Ex.P.6(s)-Medical bills. The same is confirmed.

12.Transport charges

The Tribunal has awarded Rs.5,000/- towards transport charges and the same is enhanced to Rs.25,000/-.

13.Extra nourishment

The Tribunal has awarded Rs.5,000/- towards extra nourishment and the same is enhanced to Rs.25,000/-.

14.Attendant charges

The Tribunal has awarded Rs.10,000/- towards attendant charges and the same is confirmed.

15.Pain and suffering

The Tribunal has awarded Rs.25,000/- towards pain and suffering. The said sum is enhanced to Rs.1,00,000/-.

16.Expectation of life

The Tribunal has awarded Rs.25,000/- towards expectation of life. Since, so many fractures and subsequently, surgeries were undergone by the claimant, the same is confirmed.

17.Hence, the total compensation awarded in this case is Rs.19,94,440/- rounded off to Rs.20,00,000/-.

Head	Amount (Rs.)
Loss of income	1572480
Medical expenses	236960
Transport charges	25000
Extra nourishment	25000
Attender charges	10000
Pain and suffering	100000
Expectation of life	25000
	1994440

18.The rate of interest awarded by the Tribunal at 7.5 % per annum remains unaltered. The claimant is directed to pay the additional court fee for the enhanced amount, if any.

19.Since it is submitted by the learned counsel for the insurance company that already award amount has been deposited, as per the order of the Tribunal, the insurance company is directed to deposit the balance amount, with proportionate interest and costs, as per the order of this Court, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the award amount through RTGS, within one week thereon, on condition that the claimant shall withdraw only a sum of Rs.10,00,000/- and the remaining sum of Rs.10,00,000/- should not be withdrawn by the claimant atleast for a period of five years so that, there will be regular income by way of interest. The Tribunal is directed to impose a condition, while transferring the amount to the bank account of the claimant that the bank shall pay only Rs.10,00,000/- to the claimant and the balance shall be kept in interest bearing fixed deposit at least for a period of five years. The accrued interest shall be paid to the claimant once in three months.

20.With the above directions, the Appeal filed by the Insurance Company (i.e.,) CMA.No.624 of 2016 is dismissed and the appeal filed by the claimant (i.e.,) CMA.No.2413 of 2016 is allowed. Consequently connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sai

To
1.The Additional District Judge,
Motor Accidents Claims Tribunal (Additional District Court)
Namakkal.

2.The Section Officer,
VR Section,
High Court, Madras

+1cc to M/s.R.Sree Vidhya, Advocate SR.No.28495
+1cc to M/s.Ma.P.Thangavel, Advocate SR.o.27854

NRI(CO)
sm:11.6.2018