In the High Court of Judicature at Madras
Dated : 27.09.2018
Coram
The Honourable Mr.Justice K.K. SASIDHARAN
AND
The Honourable Mr.Justice R. SUBRAMANIAN

C.M.A.No.96 of 2016

K. Vijayan .... Appellant
..vs..

1. Jothiraman

2. ICICI Lombard General Insurance Co Ltd.,
No.140, Chottabhai Centre,
Nungambakkam, Chennai 600 034 ..Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in MCOP No.4756 of 2012 dated 23.03.2015 on the file of Motor Accidents Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Mr.K.V. Muthu Visakan
For R1 : Ex-parte
For R2 : M/s R. Sreevidhya

JUDGMENT

(Judgment of the Court was delivered by R. SUBRAMANIAN, J.)

The claimant, who has suffered amputation at his right leg in the motor accident that had occurred on 19.05.2012 has come up with this appeal, challenging the award passed by the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai in MCOP No.4756 of 2012 dated 23.03.2015 granting a sum of Rs.15,70,321/-.

2. According to the appellant, while the appellant was riding a motorcycle bearing Registration No.TN-05-B-2374 at Sathyamoorthy Nagar near Vyasarpadi, at that time, another motorcycle bearing Registration No.TN-18-E-9499, belonging to the 1st respondent and insured with the 2nd respondent, came from north, driven in a rash and negligent manner, dashed against the petitioner. As a result of the grievous injuries sustained, his right leg was amputated below knee. The appellant also contended that the appellant was employed as Computer Hardware Service Engineer, and doing his own business and

earning a sum of Rs.25,000/- per month and claimed a compensation of Rs.50,00,000/-.

3. The claim petition was resisted by the second respondent Insurance Company contending that the

accident was caused due to rash and negligent driving of the appellant who was riding the motor cycle at the time of accident. Hence, the Appellant Insurance Company is not liable to pay the compensation.

4. In order to prove his claim the claimant examined P.W.1 to P.W.3 and marked Exs.P.1 to P.18. On the side of the respondent Insurance Company, Ms.K. Abirami, Legal Officer was examined as R.W.1 and Exs.R.1 to R.6 were marked.

5. The Tribunal, after considering the oral and documentary evidence adduced before it, came to the conclusion that the accident was caused due to rash and negligent driving of the rider of the motorcycle bearing Registration No.TN-18-E-9499, insured with the

second respondent. Accordingly, the Tribunal fixed the entire liability on the second respondent Insurance Company.

6. The Tribunal took monthly income of the claimant as Rs.7,000/- and arrived at the loss of earning capacity as Rs.10,58,400/- (Rs.7000/- x 12 x 18 x 70%). Further the Tribunal awarded a sum of Rs.15,000/- towards transportation to the hospital; Rs.15,000/- towards extra nourishment Rs.500/- towards damage to clothing; Rs.2,15,365/- towards medical expenses; Rs.1,06,056/- towards artificial limb cost; Rs.15,000/- towards attender charges; Rs.20,000/-towards loss of amenities; Rs.25,000/- towards loss of social and marital status and Rs.1,00,000/-towards pain and suffering and thus, awarded a total compensation of Rs.15,70,321/-. The break up of the details of the compensation awarded by the Tribunal are as follows:

Loss of income : Rs.10,58,400
Transport to Hospital : Rs. 15,000
Extra nourishment : Rs. 15,000
Damage to clothing : Rs. 500
Medical expenses : Rs. 2,15,365
Artificial Limb cost : Rs. 1,06,056
Attender charges : Rs. 15,000
Loss of amenities : Rs. 20,000
Loss of social and marital status : Rs. 25,000
pain and suffering : Rs.1,00,000

Total Rs.15,70,321

Aggrieved over the quantum of compensation awarded by the Tribunal, the claimant is before this Court with the present appeal.

7. Heard Mr.K.V. Muthu Visakan, learned counsel for the appellant and Ms.R. Sreevidhya, learned counsel for the respondent Insurance Company. The learned counsel for the appellant would contend that the adoption of Rs.7,000/- as notional income by the appellant is on the lower side and further submit that the injured/claimant is doing his own business and the documents viz., bank statement and the income tax return have been produced in proof of the said income. According to the learned counsel, in the light of the documentary evidence which is available on record, the Tribunal is not right in fixing the notional income as Rs.7,000/- during the year 2012. We have perused the documents viz., Ex.P.14 bank statement and Ex.P.12 income tax return. Though it relates to the assessment year 2011-12 we do not think that it will be proper to rely on it as the same

was filed after the accident. However, the perusal of bank statement filed as Ex.P.14, shows that the claimant had deposited a sum of Rs.2,05,445/- with Tamil Nadu Industrial Co-operative Bank Ltd, Vyasarpadi between 01.01.2012 and 31.05.2012 and the statement issued by Indian Bank, Kodungaiyur has been filed which shows that the claimant has deposited a sum of Rs.72,000/-.

8. On a combined effect of these documents, we find that adoption of monthly income of Rs.15,000/- would be just and proper. Admittedly, the appellant has suffered amputation of his right leg. In case of amputation just below the hip, the disability is about 80%. We therefore take a functional disability as 80%. The claimant was aged about 29 years at the time of accident. Hence we need to add 40% towards future prospects, thus loss of monthly income would be Rs.21,000/- Thus, loss of earning capacity would be 21,000 x 12 x 17 x 80% = Rs.34,27,200/-. Apart from the above, the appellant is entitled to the following amounts:

Permanent disability : Rs. 1,60,000
Medical expenses : Rs. 2,15,365
Attender charges : Rs. 15,000
loss of social and marital status : Rs. 25,000
Artificial Limb cost : Rs. 1,06,056
pain and suffering : Rs. 2,00,000
Transport to Hospital : Rs. 30,000
Extra nourishment : Rs. 15,000
Future medical expenses : Rs. 15,000
Loss of amenities : Rs.1,50,000

Thus, the appellant is entitled to a compensation of Rs.43,58,621/-. The award will carry 7.5% interest from the date of petition till the date of payment.

9. In the result, the appeal is partly allowed granting a sum of Rs.43,58,621/- with 7.5% interest. No costs.

10. It is stated that the Insurance Company has satisfied the award passed by the Tribunal, which granted a sum of Rs.15,70,321/-.

11. The Insurance Company is directed to deposit the balance amount within a period of six weeks from the date of receipt of a copy of this order and on such deposit, the appellant is permitted to withdraw the amount.

12. It is found that the appellant has paid court fee only for a sum of Rs.20,00,000/-. The appellant is directed to pay the remaining court fee payable on the modified award amount.

(K.K.S.J.,) (R.S.M.J.,)

27 September 2018

sr

Speaking Order/Non-Speaking Order

Index:Yes/No

Website:yes/no

To

Motor Accidents Claims Tribunal,
III Small Causes Court, Chennai.

K.K. SASIDHARAN,J.,
and
R. SUBRAMANIAN,J.,

sr

C.M.A.No.96 of 2016

27.09.2018