IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.Nos.537 of 2018 and 1017 of 2018
and
C.M.P.No.8245 of 2018 in CMA.1017/2018

C.M.A.No.537 of 2018

Sadasivam
... Appellant/Claimant

Vs.

1. P.Kalavathi

2. M/s.Reliance General Insurance Co. Ltd.,
Heavitree, Unit No.1, 3rd floor,
No.23, Spur Tank Road,
Chetpet, Chennai 600 031
... Respondents/Respondent 1 & 2

PRAYER : Civil Miscellaneous Appeal filed Under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree in M.C.O.P.No.2828/2013, dated 20.04.2016, on the file of Motor Accidents Claims Tribunal, I Additional District Court, Cuddalore.

For Appellant : Mrs.Ramya V.Rao
for M/s.A.N.Viswanatha Rao

For Respondents : Mr.M.B.Raghavan for R2
for M/s.M.B.Gopalan Associates

C.M.A.No.1017 of 2018

M/s.Reliance General Insurance Company Limited,
Heavitree, Unit No.1, 3rd floor,
No.23, Spur Tank Road,
Chetpet, Chennai 600 031 ... Appellant/2nd respondent

Vs

1.S.Sadasivam ... 1st respondent/Claimant

2.P.Kalavathi ... 2nd Respondent/1st respondent

PRAYER : Civil Miscellaneous Appeal filed against the judgment and decree in M.C.O.P.No.2828/2013, dated 20.04.2016, on the file of Motor Accidents Claims Tribunal, I Additional District Court,Cuddalore.

For Appellant : Mr.M.B.Raghavan
for M/s.M.B.Gopalan Associates

For Respondents: Mrs.Ramya V.Rao for R1

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

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

These appeals have been preferred by both the Insurance company (C.M.A.No.1017 of 2018) and the claimant (C.M.A.No.537 of 2018). They have come up before this Court challenging the very same award passed by the Tribunal to the tune of Rs.19,00,500/- as compensation to the claimant, by name, R.Sadasivam, aged 50 years, Wholesale Merchant allegedly earning about Rs.12,000/- per month, who sustained injuries, leading to amputation of left leg above knee, in the accident which occurred on 12.02.2013, when the claimant was riding his motorcycle, which was hit down by a tipper lorry insured with the Insurance Company.

2.Heard Mr.M.B.Raghavan, learned counsel appearing for the Insurance Company and Mrs.Ramya V.Rao, learned counsel appearing for the claimant.

3. It is submitted by Mr.M.B. Raghavan, learned counsel for the Insurance Company that there is no proof with regard to the avocation of the victim as a wholesale merchant and earning of Rs.12,000/- per month. However, the Tribunal fixed Rs.12,000/- as the income per month. Therefore, the learned Counsel for the Insurance company sought to reduce the amount.

4. On the other hand, the learned Counsel for the claimant would submit that though the claimant claimed a sum of Rs.35,000/- as his monthly income, the Tribunal very reasonably fixed the amount of Rs.12,000/- as monthly income. However, it failed to add any amount towards future prospects. No amount was awarded towards “Loss of Amenities” also. Therefore, she seeks to enhance the compensation.

5. The only question to be decided is with regard to the quantum of compensation, as both the appeals have been filed questioning the quantum.

6. It is evident from the records that the claimant sustained injuries leading to amputation of his left leg above the knee. Though, there is no proof regarding the income as well as avocation of the victim, except Ex.P.7 and Ex.P.8, certificates issued by Sri Angalamman Traders, Nadu Pillayarkuppam, Maligampattu, Panruti Taluk and another issued by Sri.Amirtha Sago Industries, Vadakumarai Village, Sarvoy Post, Attur Taluk, for having engaged the claimant as an agent, the Tribunal did not fix the amount of Rs.35,000/- as monthly income. The Tribunal refused to believe those two documents as the authors of those documents had not been examined. He also further admitted in the cross examination that he was not appointed as an agent and he was not an Income Tax assessee. Therefore, the Tribunal rightly determined the monthly income of the claimant as Rs.12,000/-. In Syed Sadiq V. Divisional Manager, United India Insurance Company Limited, reported in 2014 ACJ 627, the Honourable Supreme Court has determined the monthly income at Rs.6,500/- for a vegetable vendor who sustained injuries in the accident occurred in the year 2008, whereas, this accident had occurred in the year 2013, after five years. The earning power, inflation, purchase power and cost index got varied and enhanced. Therefore, Rs.12,000/- fixed as monthly income of the claimant is very reasonable. The Tribunal did not add any amount towards future prospects. The approach of the Tribunal is justified. Since the income was not proved, the Tribunal took Rs.12,000/- as notional income inclusive of future prospects also. Therefore, Rs.12,000/- determined by the Tribunal as monthly income of the claimant is confirmed.

7. The claimant sustained injuries namely amputation of left leg above the knee. 85% disability was determined by the Tribunal based upon the evidence of PW2, Doctor. Eventhough, Mr.M.B. Raghavan, learned Counsel for the Insurance Company would submit that 85% disability determined by the Tribunal is on the higher side, there is no contra evidence available or adduced by the Insurance Company. Therefore, this Court confirms 85% disability determined by the Tribunal.

8. The age of the victim is proved to be 50 years as per the medical records Exs-P4 and P5. Therefore, appropriate multiplier applicable was rightly determined by the Tribunal as 13 and the Tribunal is justified in determining the "Loss of Income" at Rs.15,91,200/-(Rs.12,000 x 12 x 13 x 85/100).

9. Rs.1 Lakh awarded towards "Pain and Suffering" is very reasonable as pain and suffering suffered by the victim due to the accident cannot be estimated or assessed and the injuries led to amputation of his left leg above knee. Rs.25,300/- awarded towards medical expenses as per Ex-P6 series is confirmed. The sum of Rs.10,000/- each awarded towards Extra nourishment and Transport Charges is confirmed. Similarly, Rs.18,000/- awarded towards Attendant charges (3 x Rs.6000) is also confirmed. Rs.1,46,000/- awarded towards "Future Medical Expenses" has to be confirmed since the claimant has to have an artificial leg. No amount was awarded towards "Loss of Amenities". In the absence of one leg, the claimant has to use crutches to move from one place to another and therefore, Rs.1 Lakh is awarded towards "Loss of Amenities". The award of Rs.19,00,500/- is enhanced to Rs.20,00,500/-, rounded off to Rs.20 Lakhs. The rate of interest awarded by the Tribunal at 7.5 % per annum is confirmed.

10. The claimant shall pay additional court-fee, if any, for the enhanced amount, within a period of two weeks from the date of receipt of a copy of this order.

11. The Insurance company is directed to deposit the entire award amount, as per the modified award passed by this Court, with interest and costs, before the Tribunal, after deducting the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal is directed to transfer the entire amount to the bank account of the claimant through RTGS within a period of one week thereon.

12. In the result, the appeal filed by the insurance company(C.M.A.No.1017 of 2018) is dismissed and the appeal (C.M.A.No.537 of 2018) filed by the claimant is partly allowed. No costs. Connected C.M.P. is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ay/nv

To

The Motor Accident Claims Tribunal,
(I Additional District Court),
Cuddalore.

+1cc to M/s.M.B.Gopalan Associates, Advocate sr.no.55142
+2cc to Mr.A.N.Viswanatha Rao, Advocate sr.no.54384

C.M.A.Nos.537 of 2018 and
1017 of 2018

vd(co)
nr 20/09/2018