IN THE JUDICATE OF MADRAS HIGH COURT

Orders Reserved on:27.02.2018

Delivered on : 16.04.2018

CORAM

THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

C.M.A.No.3629 of 2014

V.Udhaya Sankar ... Appellant/Claimant

Vs.

1.S.Kumar
2.Sriram General Insurance Company Ltd.,
E8, Epip, Rilco Indusrial Area,
Sitapura, Jaipur,
Rajasthan-302 022. ... Respondents/Respondent

Civil Miscellaneous Appeals have been filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 18.06.2014 made in M.C.O.P.No.1147 of 2012 on the file of the II Judge(Motor Accidents Claims Tribunal) Small Causes Court), at Chennai.

For Appellant : Mr.M.Santhanaraman
For Respondents: Mr.Dakshinamoorthy (For R2)
R1 No Appearance

JUDGMENT

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

Not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal (II Small Causes Court) at Chennai, in and by award dated 18.06.2014 in M.C.O.P.No.1147 of 2012, the present appeal has been filed by the appellant/claimant.

2.Since the present appeal has been filed only questioning the quantum of compensation, it is not necessary for this Court to traverse into the other aspects of the award passed by the Tribunal.

3.It is the case of the claimant that on account of the accident caused by the vehicle insured with the 2nd respondent-Insurance Company, he had sustained the following injuries_ grossly crushed left leg around and below left knee with nonviable muscle, badly comminuted fracture left femur reck and fracture fibula neck right. He had undergone surgery on 10.09.2011 and his left leg below the knee was amputated. He took treatment from 10.09.2011 to 13.09.2011. At the time of accident, he was working as Supervisor in a private company viz., ATV Private Ltd at Mariamalai Nagar, and earning a sum of Rs.18,000/- per month. Further, he is a co-owner of agricultural land measuring 8 acres situated at Kollappakkam Village in Kanchipuram District. He had taken the entire 8 acres of land on lease from his brothers and was doing agriculture as part-time work by raising paddy crop, out of which he was earning a sum of Rs.4,80,000/- per annum. Thus, he made a claim for a sum of Rs.53,55,000/- as compensation.

4.The case of the claimant was resisted by the Insurance Company before the Tribunal by filing a detailed counter denying the averments made in the claim petition.

5.Before the Tribunal, on the side of the claimant, the claimant examined himself as P.W.1 besides examining a Doctor as P.W.2 and marked 34 documents as Ex.P.1 to Ex.P.34. On the side of the Insurance Company, neither oral evidence nor documentary evidence was adduced.

6.The Tribunal, after analysing the entire evidence, has passed an award for a total sum of Rs.31,45,500/- as compensation. The beak up details of the compensation amount awarded by the Tribunal are as follows_

Loss of income for 12 months	=Rs.1,20,000/-
Transportation	=Rs. 25,000/-
Extra-nourishment	=Rs. 35,000/-
Damage to clothes	=Rs. 5,000/-
Medical Expenses	=Rs.12,70,500/-
Future Medical Expenses	=Rs. 2,00,000/-
Attender Charges	=Rs. 50,000/-
Pain and suffering	=Rs. 1,00,000/-
Loss of earning power (10,000 x 12 x 15 x 70%)	=Rs.12,60,000/-
Disability of 40% at the rate of Rs.2,000/- per disability	=Rs. 80,000/-
Total	=Rs.31,45,500/-

Not being satisfied with the compensation amount award by the Tribunal, the claimant has come forward with the present appeal.

7.The learned counsel for the appellant/claimant submitted that in order to prove the income earned by the claimant, Salary Slips for the months of June-2011 to September-2011 were marked as Ex.P.2, ESIC Card was marked as Ex.P.3, Patta was marked as

Ex.P.4 and Chitta Adagal-1423 was marked as Ex.P.5. In spite of the production of the said documents, the Tribunal has fixed only a meagre sum of Rs.10,000/- as monthly income of the claimant. Further, though it is the case of the claimant that he was earning income of Rs.4,80,000/- per annum from the agricultural operations, the Tribunal has not fixed any amount towards the loss of income from the agricultural operations. Therefore, it is prayed by the learned counsel for the appellant/claimant that by fixing a sum of Rs.18,000/- as monthly salary of the claimant and also by fixing a reasonable sum as loss of income from the agricultural operations, the compensation amount awarded by the Tribunal could be recalculated to arrive at a just and proper compensation.

8.Per contra, the learned counsel appearing for the Insurance Company submitted that on account of the accident, the claimant/victim has suffered the amputation of left leg only below the knee and that as per the Schedule under the Workmen Compensation Act, the Tribunal has to fix only 60% disability; whereas, the Tribunal has fixed 70% disability for the amputation of the left leg below the knee, which has resulted in awarding an exorbitant sum of Rs.12,60,000/- for loss of earning power. Under such circumstances, there is no need to enhance the compensation amount under the head of loss of earning power. Further, with regard to the alleged income from the agricultural operations, it is submitted by the learned counsel for the Insurance Company that except the oral evidence, no proof was produced by the claimant to show that there was loss of income from the agricultural operations. Thus, the learned counsel for the Insurance Company submitted that there is no need for interference from this Court to the award passed by the Tribunal. Thus, he sought for dismissal of the appeal.

9.Keeping the submissions made on either side, We have carefully gone through the entire materials available on record and We find that on account of the accident, the claimant/victim had suffered amputation of his left leg below the knee. But, the Doctor-P.W.2 had assessed the disability suffered by the claimant/victim at 70%. As contended by the learned counsel for the Insurance Company, as per the Schedule under the Workmen Compensation Act, if there is amputation below the knee, the disability has to be fixed at 60%. Therefore, We are inclined to fix the disability suffered by the claimant/victim at 60%. With regard to the monthly income of the claimant, though the claimant has marked the documents viz., pay slips, the employer of the claimant was not examined and the pay lips were marked only through the claimant/P.W.1. Under such circumstance, We are not inclined to fix a sum of Rs.18,000/- as monthly income of the claimant as salary from the company. However, considering the facts and circumstances of the case, We are of the opinion that by fixing a sum of Rs.12,000/- as monthly income of the claimant, the calculation could be made to arrive at a just and proper compensation. The claimant was aged 37 years at the time of accident, hence, the correct multiplier that has to be applied in this case is 15. If the sum of Rs.12,000/- is taken as monthly income, the multiplier 15 is applied, the compensation for the loss of earning power in proportion to 60% disability works out to Rs.12,96,000/- (12000 x 12 x 15 x 60/100), which sum could be awarded as a just and proper compensation under the said head. Consequently, the sum of Rs.12,60,000/- awarded by the Tribunal is hereby modified and enhanced to Rs.12,96,000/-. So far as the income from the agricultural operations is concerned, We find from the materials available on record that he is only a co-owner of the land, therefore, there cannot be any loss of income from the agricultural operations. Further, no tangible evidence was adduced on the side of the claimant to show that there is loss of income from the agricultural operations. Therefore, We are not inclined to fix any income from the agricultural operations. Except the above modification in the compensation under the head of loss of earning power, the compensation amounts awarded by the Tribunal under other heads remain unaltered as the same appear to the just and reasonable. Consequently, the total compensation amount of 31,45,500/- awarded by the Tribunal is hereby modified and enhanced to Rs.31,81,500/-. The break up details of the modified/enhanced compensation are as follows_

Loss of income for 12 months	=Rs.1,20,000/-
Transportation	=Rs. 25,000/-
Extra-nourishment	=Rs. 35,000/-
Damage to clothes	=Rs. 5,000/-
Medical Expenses	=Rs.12,70,500/-
Future Medical Expenses	=Rs. 2,00,000/-
Attender Charges	=Rs. 50,000/-
Pain and suffering	=Rs. 1,00,000/-
Loss of earning power (12,000 x 12 x 15 x 70%)	=Rs.12,96,000/-
Disability of 40% at the rate of Rs.2,000/- per disability	=Rs. 80,000/-
Total	=Rs.31,81,500/-

10.In the result, the appeal is partly allowed and the total compensation amount of Rs.31,45,500/- awarded by the Tribunal is hereby modified and enhanced to Rs.31,81,500/-. The Insurance Company is directed to deposit the entire compensation amount with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is entitled to withdraw the same with proportionte interest accrued thereon by making necessary application before the Tribunal. No costs.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To,
The II Judge
(Small Causes Court)
Motor Accidents Claims Tribunal
at Chennai.

Copy to
The Section officer
VR Section, High Court, Madras.(2 copies)

+1 CC to Mr.M.R. Sivakumar, Advocate sr 28226.
+1 CC to Mr.S. Dhakshinamoorthy, Advocate sr 28279.

C.M.A.No.3629 of 2014

TM(CO)
SP(22/05/2018)