IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2740 of 2018
and
C.M.P.No.20789 of 2018

HDFC ERGO General Insurance Co. Ltd.,
356/2, Empire Arcot Complex, 1st Floor,
Omalur Main Road, Near New Bus Stand
Salem ... Appellant / R2

Vs

1.Mathivannan ... R1 / Petitioner

2.Periyannan ... R2 / R1

PRAYER : Civil Miscellaneous Appeal filed under section 173 of MV Act 1988 against the Judgment and Decree dated 29th January 2018 made in MCOP.No.173 of 2015 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Dharmapuri.

For Appellant :Mr.T.K.Prem Kumar

For Respondents :Mr.C.Prabakaran

J U D G M E N T

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

The appeal has been preferred by the insurance company, thinking that they could reduce the compensation amount from Rs.29,28,366/-, but, actually, they are going to suffer more amount in their own appeal.

2.The 1st respondent, who is a lorry driver, aged about 35 years, allegedly earning about Rs.25,000/- per month was travelling as a substitute driver on 06.06.2014. The driver of the lorry named Mr.Prabhu drove the vehicle rash and negligently and hit against a parked lorry bearing Reg. No.TN 52 A 9761. In the said accident, the 1st respondent's left leg got fractured and he sustained injuries on the face, head and all over the body. After treatment, the 1st respondent's leg above the knee was amputated. Therefore, claim petition.

3.After contest, the Tribunal found that the accident occurred because of the rash and negligent driving of the driver of the 2nd respondent's lorry, insured with the appellant/insurance company, based on PW1's evidence, rightly, and awarded a sum of Rs.29,28,366/-. The said award is being challenged before this Court on the question of quantum alone.

4.Heard Mr.T.K.Prem Kumar, learned counsel appearing for the appellant, who would submit that the Tribunal awarded double amounts under the headings pain and sufferings, mental agony as well as for loss of earning and therefore, he seeks to reduce the amount.

5.On the other hand, Mr.C.Prabakaran, learned counsel for the 1st respondent/claimant would submit that even though the multiplier “16” has to be applied, as the age of the claimant is “35”, the Tribunal wrongly adopted multiplier “15” and therefore, he seeks enhancement. A perusal of the records would reveal that the 1st respondent/claimant was examined as PW1, who deposed that the accident occurred because of the rash and negligent driving of the driver of the vehicle, belonging to the 2nd respondent, insured with the appellant. The rash and negligent driving of the lorry was also proved by Ex.P.1-FIR. Moreover, there is no contra evidence available on the part of the appellant to disprove the case of the 1st respondent/claimant. Therefore, the Tribunal rightly determined the negligence on the part of the driver of the lorry, insured with the appellant.

6.It is proved that the claimant sustained injuries, resulting in amputation of leg as proved by Ex.P.3-Wound certificate, Ex.P.4-Discharge summary and Ex.P.13 Disability Certificate. Though it is stated that 83% of disability sustained by the 1st respondent/claimant, it is proved that the 1st respondent is a lorry driver and his leg got amputated because of the injuries sustained in the accident. In that case, it is not 83% alone and it is loss of 100% income, by virtue of avocation. Therefore, even though 83% determined by the Tribunal towards disability is confirmed, loss of income is enhanced to 100%.

7.The age of the claimant is proved by PW1's evidence as well as Ex.P.3 and Ex.P.4. Ex.P.8-driving licence of the 1st respondent/claimant. As per the same, the age of the 1st respondent/claimant is 35 years at the time of accident and the appropriate multiplier to be applied is “16”, whereas the

Tribunal wrongly adopted “15” as multiplier. Therefore, this Court adopts “16” as multiplier.

8.Though the 1st respondent/claimant claimed a sum of Rs.25,000/- as monthly income, the Tribunal determined the monthly income at Rs.9,000/-, in the absence of any material evidence to prove the same, which is inconsonance with the judgment of the Honourable Supreme Court delivered in Syed Sadiq Vs.United India Insurance Company, reported in 2014 (1) TNMAC 459. In the referred judgment, the Honourable Supreme Court, fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008, whereas in the present case, the accident occurred on 06.06.2014. In view of inflation and consumer price index, Rs.9,000/- determined by the Tribunal is justified.

9.No amount was added towards future prospects by the Tribunal. As per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), 40% has to be added if the age of the victim is below 40 years. Therefore, this Court adds only 40% towards future prospects. After adding 40% towards future prospects, the monthly income would be at Rs.12,600/- (Rs.9,000/- + 40% of Rs.9,000/-). As the age of the deceased is 35 years, appropriate multiplier is “16”. Therefore, applying the said multiplier, the loss of income would be at Rs.24,19,200/- (Rs.12,600/- x 12 x 16).

10.Pain and sufferings :

The learned counsel for the appellant is right in contending that awarding of Rs.1,00,000/- each under the headings pain and sufferings and mental agony is double payment. There can be only one award amount either under pain and sufferings or mental agony. As it should be under one heading, Rs.1,00,000/- awarded by the Tribunal towards mental agony is deleted.

11.Medical expenses:

The Tribunal has awarded a sum of Rs.6,46,266/- under this head. The same is confirmed.

12.Transportation:

The Tribunal has awarded a sum of Rs.67,500/- under this head. The same is confirmed.

13.Extra nourishment:

The Tribunal has awarded a sum of Rs.70,000/- under this head. The same is confirmed.

14.Artificial leg:

The Tribunal has awarded a sum of Rs.1,00,000/- under this head. The same is confirmed.

15.Medical expenses:

The Tribunal awarded a sum of Rs.6,46,266/- under this head. The same is confirmed.

16.Attendant charges:

The Tribunal has awarded a sum of Rs.50,000/- under this head. The same is confirmed.

17.Loss of amenities:

The Tribunal awarded a sum of Rs.1,00,000/- under the head loss of future life. But no such amount could be awarded, however, considering the fact that no award was granted towards loss of amenities, the same amount is confirmed under the heading loss of amenities.

Head	Amount (Rs.)
Loss of income	2419200
Pain and sufferings	100000
Medical expenses	646266
Transportation	67500
Extra nourishment	70000
Artificial leg	100000
Attendant charges	50000
Loss of amenities	100000
Total	3552966

18.Hence, the total compensation payable in this case is Rs.35,52,966/-, rounded off to Rs.35,53,000/-.

19.The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. Though the Insurance company has filed the appeal, the facts and circumstances enable this Court to enhance the compensation. Accordingly, award of the Tribunal (i.e.,) Rs.29,28,366/- is enhanced to Rs.35,53,000/-, invoking Order 41 Rule 33 of CPC and Section 151 of CPC and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are benevolent in nature and what is required to be awarded is just and reasonable compensation. Neither it could be inflated nor inadequate. Therefore, even in the absence of appeal/cross-appeal by the claimant, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC).

20.The 1st respondent/claimant is directed to pay the requisite court-fee, if any, within a period of two weeks from the date of receipt of a copy of this order, failing which the amount enhanced would not accrue to the claimant.

21.The Insurance company is directed to deposit the entire award amount along with interest and costs as per the modified award passed by this Court, within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer 50% of the modified award amount along with interest and costs to the personal bank account of the 1st respondent/claimant through RTGS within a period of one week thereon. The balance 50% of the modified award amount shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, atleast for a period of five years.

22.Accordingly, this appeal is dismissed, enhancing the award of the Tribunal from Rs.29,28,366/- to Rs.35,53,000/- with interest. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

sai Sub Assistant Registrar
To

1) The Motor Accident Claims Tribunal/
Chief Judicial Magistrate Court,
Dharmapuri.

2) The Section Officer,
VR Section, High Court, Madras 600 104. (2 copies).

+1 cc to Mr.T.K.Premkumar, Advocate, S.R.No.82859.

+1 cc to Mr.C.Prabhakaran, Advocate, S.R.No.82659.

C.M.A.No.2740 of 2018

EV(CO)
SSM(24/01/2019).