

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN

C.M.A. No. 1310 of 2018

A.Praveen Kumar ...Appellant/Petitioner

Vs.

1. V.Raja
2. R. Sagunthala
3. M/s. Reliance General Insurance Company Limited
1st Floor, Geejay arcade,
141/71, Thiruvengkatasamy Road,
R.S. Puram,
Coimbatore - 641 002. ... Respondents/Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 25.09.2013 made in M.C.O.P. No. 509 of 2012 on the file of Motor Accidents Claim Tribunal, Special Subordinate Judge, Coimbatore.

For Appellant : Mr.I.Abrar Md Abdullah

For Respondents : Mr.R.Sunil Kumar for
: R3

Ex-parte for R1,R2
सत्यमेव जयते

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JUDGMENT

(Delivered by M.M.Sundresh,J.)

Seeking enhancement, the appellant, who is the claimant, filed this appeal.

2. The accident took place on 20.05.2011. The appellant was aged about 32 years. A sum of Rs.50 lakhs was claimed for the head injury suffered by him. He worked as Administrative Officer in a private concern. The evidence also would show that he got hall ticket for selection to the post of Forest Ranger, marked as Ex.P13. The Tribunal assessed the disability at 53%. It took into consideration the salary of the claimant at Rs.24,930/- per month, applied multiplier of '16' and under conventional heads added medical expenses, pain and suffering, extra nourishment, transport and loss of amenities and, thus, awarded compensation of Rs.32,79,876/-. Seeking enhancement of the same, the claimant filed the appeal.

3. Learned counsel appearing for the appellant submitted that no amount has been awarded for future prospects, taking into consideration the nature of injury suffered by the injured. He added that by taking note of the recent Constitution Bench judgment in National Insurance Company Ltd. v. Pranay Sethi, reported in (2017) 16 SCC 680, enhancement will have to be given.

4. Learned counsel appearing for the insurance company submits that the Tribunal has committed an error in taking into account the salary of the claimant, including travelling, special, field and medical allowances, which is not permissible in law. He added that after deducting the above said allowances and adding 40% towards future income, at best, the appellant would be entitled to a sum of Rs. 30,12,451/-. It is further submitted that though the cross-appeal is not posted before this Court, in view of the provision contained under the Code of Civil Procedure and as held by the Supreme Court and as well as by this Court, it is well open to the respondents to question the award passed and the reasons assigned.

5. Admittedly, in the case on hand, two errors have been committed by the Tribunal. One is not awarding any amount towards future income, which is against the interest of the appellant. Second is taking note of the salary, including all allowances, and computing towards loss of pay. There is no difficulty in holding that allowances will have to be deducted from the salary. If 40% is taken into account as future prospects, a sum of Rs.30,12,451/- is to be awarded to the appellant. However, it cannot be stated in all cases that a

private employee is not a permanent employee. Such a distinction between the private and the government employee is not permissible, as we are concerned with the nature of the employment. Therefore, we are proceeding as if the employment was permanent in nature. Considering the age of the claimant, i.e., 32 years, we are of the view that a higher percentage, over and above 40%, can be awarded towards future income even as per the decision of the Supreme Court in Pranay Sethi, supra. That apart, we see that no amount has been awarded by the Tribunal for the treatment undergone by the claimant for two spells. If these amounts are granted, the total amount of compensation that could be awarded will almost be the same as awarded by the Tribunal.

6. In such view of the matter, we are not inclined to interfere with the award, though we find certain infirmities therein as ultimately the compensation awarded is just and proper. The amount will have to be deposited within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the amount. All other terms imposed by the Tribunal hold good.

In view of the above, the appeal stands dismissed, of course, for the reasons recorded herein above. No costs.

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

True Copy

Sub-Assistant Registrar

ssm
To:-

The Motor Accident Claims Tribunal,
Special Subordinate Judge,
Coimbatore.

Copy to

The Section Officer,
VR Section High Court, Madras.

+1cc to Mr.I.Abrar Md. Abdullah, Advocate sr.34555
+1cc to Mr.R.Sunilkumar, Advocate Sr.33246

C.M.A. No. 1310 of 2018

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srg 05/07/2019