IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1533 of 2018

Kavitha Mundra ... Appellant/Claimants

vs.

1.A.K.S.Bhattad
2.The Royal Sundaram General Insurance Co. Ltd.,
'Sundaram Towers,
No.45 and 46, Whites Road,
Royapettah, Chennai 600 014....Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.02.2018 made in MACT O.P.No.2165 of 2011 on the file of the Motor Accident Claims Tribunal, (Special Sub Judge No.2, Motor Accident Clams Petitions) Small Causes Court, Chennai.

For Appellant : Mr.K.Suryanarayanan

For Respondent 2 : Mr.M.B.Raghavan

JUDGMENT

[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

This appeal has been filed by the claimant seeking enhancement of compensation under the Award dated 13.02.2018 passed by the Motor Accident Claims Tribunal (Special Sub Judge No.2, Motor Accident Clams Petitions) Small Causes Court, Chennai in MCOP.No.2165 of 2011.

Brief facts leading to the filing of this appeal:

2. The Appellant sustained grievous injuries on 02.08.2010 as a result of an accident caused by a Ford figo car bearing registration No.TN01-AK-8439 (insured vehicle) owned by the first respondent and insured with the second respondent. The accident happened when the Appellant/claimant was travelling in the Ford figo car bearing registration No.TN01-AK-8439 and was proceeding in the Chennai to Vellore road when at Vellai gate bridge (Kancheepuram Taluk) the driver of the insured vehicle

lost control and went beyond the median and hit against the opposite car and as a result of the same, the Appellant/claimant sustained grievous injuries and became a paraplegic.

3. The Appellant/claimant preferred a claim before the Motor Accident Claims Tribunal, Special Sub Judge No.2, Motor Accident Clams Petitions, Small Causes Court, Chennai in MCOP.No.2165 of 2011 against the respondents seeking a compensation of Rs.95,00,000/- for the injuries sustained by her as a result of the accident.

4. The Motor Accident Claims Tribunal by its Award dated 13.02.2018 passed in MCOP.No.2165 of 2011 directed the second respondent to pay the claimant a compensation of Rs.33,73,289/- together with interest at the rate of 7.5% per annum from the date of numbering of the claim petition i.e., from 27.06.2011 till 30.01.2013 and from 09.12.2015 till the date of realisation.

5. Unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned Award, the Appellant/claimant has filed this appeal seeking enhancement of compensation.

6. Heard Mr.K.Suryanarayanan, learned counsel appearing for the Appellant and Mr.M.B.Raghavan, learned counsel appearing for the second respondent.The first respondent has remained exparte before the Tribunal and hence, notice to the first respondent is dispensed with in this Appeal.

Discussion:

7. The Appellant/claimant has sought for enhancement of compensation on the ground that the Tribunal has erroneously adopted the percentage method instead of adopting multiplier method for assessing the disability compensation. According to the Appellant/claimant, he became a paraplagic as a result of the accident and hence, the Tribunal ought to have applied only the multiplier method for assessing the disability compensation. It is also the case of the Appellant/claimant that the Tribunal failed to award compensation towards loss of earning power on assumption that the income has increased after the accident relying upon Ex.R1. According to the Appellant, the Tribunal failed to show that in the absence of computation of income and profit and loss account, the mere Income Tax Return Verification form cannot be relied upon. It is also her case that the Tribunal failed to award fair and reasonable compensation under various other conventional heads namely Transportation to

hospital, extra nourishment, pain and suffering and attender charges etc. It is also her case that the Tribunal committed a serious error in rejecting the proforma invoice for Rewalk Exoskeleton Robotics which would improve the mobility of the Appellant and the Tribunal ought to have considered the same.

8. This Court has perused and examined the impugned award as well as the materials and evidence available on record.

9. Before the Tribunal, the Appellant/claimant has filed 14 documents which were marked as Ex.P1 to Ex.P14 and the Appellant/claimant was examined as a witness (PW1). On the side of the respondents, Income Tax Return Verification Form for the assessment years 2013-14 to 2016-17 were filed which were marked as Ex.R1, but no witness was examined on their side.

10. It is not in dispute that the Appellant/claimant has become a paraplagic due to the accident caused by the insured vehicle. The adverse finding of negligence on the part of the driver of the insured vehicle by the Tribunal has also attained finality as no appeal has been filed by the second respondent insurance company.

11. The Appellant/claimant hsa become a paraplagic due to the accident. It is found from the Income Tax Returns (Ex.P14) that the business income of the Appellant/claimant had recovered after three years from the date of the accident when her income substantially increased from the income she was earning at the time of the accident. However, for the assessment years 2010-11, 2011-12 and 2013-14, the income of the Appellant/claimant was lesser than what was for the assessment year 2010-11 when the accident had happened on 02.08.2010. The Appellant/claimant was doing business in share market, real estate and was also a consultant. In her claim petition, she has stated that she was earning a monthly income of Rs.30,000/-. In her oral evidence, she has stated that she earned Rs.5,00,000/- to Rs.6,00,000/- per annum. As seen from her Income Tax Returns (Ex.P14), the gross income has been varying from year to year which is reproduced hereunder:

Assessment Year	Gross Total Income
2008-09	Rs.3,38,038/-
2009-10	Rs.4,59,619/-
2010-11	Rs.1,84,451/-
2011-12	Rs.57,262/-

12. The second respondent has also filed Income Tax Returns Verification Form for the assessment year 2013-14 to 2016-17 which has been marked as Ex.R1 and as per Ex.R1, the gross total income of the Appellant from the assessment years 2013-14 to 2016-17 has been increasing every year as detailed below:

Assessment Year	Gross Total Income
2013-14	Rs.1,62,539/-
2014-15	Rs.4,01,057/-
2015-16	Rs.4,42,492/-
2016-17	Rs.11,70,275/-

13. The date of the accident is 02.08.2010. As seen from the Income Tax Returns (Ex.P14) and Income Tax Returns Verification Form (Ex.R1) series, the income for the assessment year 2011-12, 2013-14, 2014-15 2015-16 is considerably less when compared to the income for the assessent year 2010-11 when the Appellant/claimant was hale and healthy prior to the accident. The Tribunal without properly considering the Income Tax Returns Ex.P14 and Ex.R1 has erroneously held that there is no loss of earning power suffered by the Appellant/claimant. The Tribunal has awarded only a meagre sum of Rs.1,27,189/- as loss of income to the Appellant/claimant which is incorrect and inadequate. The Tribunal ought to have considered the loss of income suffered by the Appellant for the years 2011, 2012, 2013 and 2014 as seen from Ex.P14 and Ex.R1. But the said loss of income suffered by the Appellant/claimant has not been duly considered by the Tribunal. We therefore, enhance the loss of income awarded by the Tribunal from Rs.1,27,189/- to Rs.4,50,000/- and the said enhancement is made based on the loss of income to the Appellant/claimant for the years 2011, 2012, 2013 and 2014 after the the accident.

14. The Appellant/claimant became a paraplagic after the injuries sustained by her due to the accident. As a paraplagic person, she will have be incurring recurring medical expenses. The Tribunal has not awarded any compensation toward future medical expenses to the Appellant/claimant. In view of the permanent disability of the Appellant/claimant, we award a sum of Rs.3,00,000/- as future medical expenses to her.

15. Insofar as the quantum of compensation awarded by the Tribunal under various other heads namely compensation for disability, pain and suffering, transportation, extra nourishment, medical expenses and attender charges and loss of amenities are concerned, we do not find any infirmity in the same and the same is confirmed.

16. For the foregoing reasons, the compensation of Rs.33,73,289/- awarded by the Tribunal under the impugned award is enhanced to Rs.39,96,100 /- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Compensation for disability	2,70,000/-	2,70,000/-
Pain and Suffering	90,000/-	90,000/-
Loss of income	1,27,189/-	4,50,000/-
Transport to hospital	50,000/-	50,000/-
Extra nourishment	90,000/-	90,000/-
Medical Expenses	15,76,100/-	15,76,100/-
Attender charges & Loss of amenities of Life	11,70,000/-	11,70,000/-
Future Medical Expenses	..	3,00,000/-
Total	33,73,289/-	39,96,100/-

Conclusion:

17. In the result, the Appeal is partly allowed by enhancing the award amount from Rs.33,73,289/- to Rs.39,96,100/-. However, the rate of interest fixed by the Tribunal is confirmed. The second respondent insurance company is directed to deposit the entire award amount of Rs.39,96,100/- together with interest at the rate of 7.5% per annum from the date of numbering of the claim petition i.e., from 27.06.2011 till 30.01.2013 and from 09.12.2015 till the date of realisation and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.2165 of 2011 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount to the claimant/Appellant through RTGS within a period of four weeks thereafter. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
Special Sub Judge No.2, Motor Accident Clams Petitions
Small Causes Court, Chennai.

+1 cc to Mr.K.Suryanarayanan, Advocate,sr.88156

+1 cc to M/s.M.B.Gopalan Associates,Advocate,sr.88324.

vp(co)
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