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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.10.2019
CORAM
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
C.M.A.No.3918 of 2019

Pushpa

... Appellant/Petitioner

vs.

1.R.Chandrasekar

2.United India Insurance Company Ltd.,
48, Arcot Road, Saligramam,
Chennai - 600 093.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 25.04.2016 in MCOP.No.419 of 2013 on the file of the Motor Accident Claims Tribunal/II Additional District and Sessions Court at Poonamallee.

For Appellant : Mrs.Ramya V.Rao

For Respondent 2 : Mr.D.Bhaskaran

JUDGMENT

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

This appeal has been filed by the claimant seeking enhancement of compensation awarded under the impugned Award dated 25.04.2016 passed by the Motor Accident Claims Tribunal / III Additional District and Sessions Court at Poonamallee in MCOP.No.419 of 2013.

Brief facts leading to the filing of this appeal:

2. The Appellant sustained grievous injuries as a result of an accident that took place on 16.02.2013 caused by a motor cycle bearing registration No.TN02-T-7673 owned by the first respondent and insured with the second respondent. The accident happened when the Appellant/claimant was travelling as a pillion rider in the aforesaid motor cycle from Vimco Nagar to



Nerkundram and due to applying of sudden brake by the rider of the motor cycle, the Appellant/claimant was thrown out of the vehicle and as a result of the same, sustained grievous injuries.

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3. The Appellant/claimant preferred a claim before the Motor Accident Claims Tribunal (III Additional District and Sessions Court), at Poonamallee in MCOP.No.419 of 2013 against the respondents seeking a compensation of Rs.12,00,000/- for the injuries sustained by her.

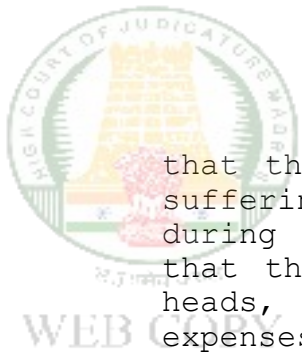
4. The Motor Accident Claims Tribunal by its Award dated 25.04.2016 passed in MCOP.No.419 of 2013 directed the second respondent to pay the Appellant a compensation of Rs.7,59,337/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation for the grievous injuries sustained by her as a result of the accident caused by the insured vehicle. Out of the total compensation of Rs.7,59,337/-, the Tribunal directed the Appellant /claimant to take a Fixed Deposit for a sum of Rs.3,00,000/- in any Nationalised Bank for a period of three years.

5. Aggrieved by the quantum of compensation awarded by the Tribunal under the impugned award on 25.04.2016 passed in MCOP.No.419 of 2013, this Appeal has been filed by the Appellant/claimant seeking enhancement of compensation.

6. Heard Mrs.Ramya V. Rao, learned counsel for the Appellant and Mr.D.Bhaskaran, learned counsel appearing for the second respondent. The first respondent has remained ex parte before the Tribunal and hence, the notice to him in this appeal is dispensed with.

Discussion:

7. The Appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal has filed this Appeal seeking enhancement of compensation. According to her, even though the Doctor has assessed her disability at 60% as per Ex.A9, the Tribunal without assigning any reason has reduced the percentage of disability to 45%. Further it is her case that the Tribunal ought to have applied multiplier method for assessing the loss of future earning capacity instead of assessing the disability compensation on percentage basis. It is also her case



that the compensation awarded by the Tribunal towards pain and suffering, Transportation, Extra Nourishment and loss of income during treatment is also very meager. Further it is her case that the Tribunal ought to have awarded compensation under the heads, loss of amenities, attender charges, future medical expenses and loss of expectation of life.

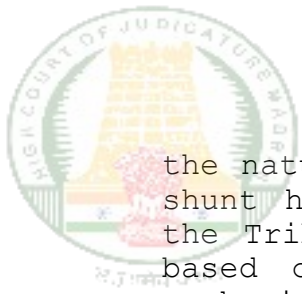
8. The adverse finding of negligence by the Tribunal against the driver of the insured motor cycle has now attained finality, as no appeal has been filed by the Insurance Company.

9. We will now have to examine only as to whether the quantum of compensation fixed by the Tribunal under the impugned award is a just compensation or not.

10. Before the Tribunal, the Appellant/claimant has filed 10 documents which were marked as Ex.A1 to Ex.A10 and two witnesses were examined on her side viz., the Appellant/claimant herself (PW1) and her Doctor V.R.Subramanian (PW2). On the side of the respondents, neither any witness was examined nor any document filed before the Tribunal.

11. The Appellant/claimant had sustained head injuries in the accident and in the course of treatment, Medium Pressure Ventriculoperitonea shunt was inserted. PW2 Doctor who examined the Appellant/claimant has assessed her disability at 60% as evidenced by the disability certificate Ex.A9. However, on its own without any basis when there is no contra evidence to disprove the same, the Tribunal has reduced the disability of the Appellant/claimant from 60% to 45%. Having sustained head injuries which has resulted in the insertion of Medium Pressure Ventriculoperitonea shunt on the Appellant/claimant which is a permanent disability, the Tribunal ought to have applied multiplier method while assessing the disability compensation for the Appellant/claimant instead of assessing the disability compensation on percentage basis.

12. In the disability certificate Ex.A9, there is no reference to the whole body functional disability of the Appellant/claimant as a result of the grievous injuries sustained by her due to the accident. It cannot be presumed that the extent of disability mentioned in Ex.A9 is the extent of the disability of the whole body. In the case on hand, considering



the nature of injuries sustained by the Appellant/claimant and a shunt having been inserted into his body due to the injuries, the Tribunal ought to have assessed the disability compensation based on whole body functional disability. The Tribunal has mechanically applied percentage of permanent physical disability for the purpose of assessing the disability compensation which is not in accordance with the law laid down by the Hon'ble Supreme Court in the case of Raj Kumar Vs. Ajay Kumar and another reported in 2011 (1) SCC 343. A person is not only to compensate for the physical injury but also for the loss which he suffered as a result of such injury. This means, he has to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries and his inability to earn as much as he used to earn or could have earned. The Doctor has assessed the disability of the Appellant under Ex.A9 with reference to the injuries sustained by the Appellant and he has assessed the same at 60%. But has not considered the whole body functional disability of the Appellant/claimant which is required to be considered for the case on hand. The Appellant as a construction worker, has suffered permanent functional disability as a result of the accident. This being the case, the Tribunal ought to have considered the whole body functional disability of the Appellant/claimant while assessing the disability compensation. Under Ex.A9, the physical disability of the Appellant/claimant is assessed at 60%. We notionally assess the whole body functional disability of the Appellant/claimant based on Ex.A9 at 30%. We set aside the findings of the Tribunal that the Appellant/ Claimant has suffered only 45% physical disability.

13. Insofar as the assessment of the notional monthly income of the Appellant/claimant is concerned, the Tribunal has assessed the same at Rs.5,000/-. The Appellant/claimant was a construction labourer. She had claimed that she was earning a daily income of Rs.400/- as a construction labourer. However, the said claim was rejected by the Tribunal which fixed the monthly income of the Appellant/claimant at Rs.5,000/- which in our considered view is low, considering the fact that the year of the accident was 2013. In the year 2013, Judicial notice can be taken that a construction worker on an average would have earned Rs.9,000/- per month, even if he or she was paid on daily basis. Accordingly, we assess the notional monthly income of the Appellant/claimant at Rs.9,000/- instead of Rs.5,000/- fixed by the Tribunal.

14. The Tribunal has also not awarded loss of future prospects to the Appellant/claimant, despite the fact that the



Appellant/claimant has sustained head injuries and a shunt has been inserted in her body which has caused permanent functional disability to her. As per the decision of the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and Others reported in 2017 (16) SCC 680, the Appellant/claimant is entitled to loss of future prospects at the rate of 40% of his monthly income. Accordingly, we award loss of future prospects to the Appellant/claimant at the rate of 40%.

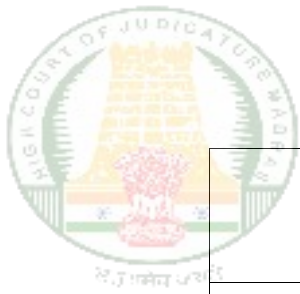
15. As stated above, considering the nature of avocation and the grievous injuries sustained by the Appellant, the Tribunal ought to have applied multiplier method, while assessing the disability compensation. But under the impugned award, the Tribunal has arrived at the disability compensation based on percentage basis which is an incorrect and erroneous assessment. Considering the age of the Appellant/claimant being 30 years at the time of the accident, 16 is the correct multiplier to be adopted in accordance with settled principles of law.

16. The compensation awarded by the Tribunal under the head pain and suffering is also less, considering the nature of injuries sustained by the Appellant/claimant. We accordingly, enhance the same from Rs.30,000/- to Rs.50,000/-.

17. The Tribunal has also not awarded any compensation towards loss of amenities which the Appellant/claimant is entitled to as per the settled principles of law. Accordingly, we award a sum of Rs.50,000/- as compensation to the Appellant/claimant towards loss of amenities.

18. Insofar as the compensation awarded by the Tribunal under the heads medical expenses, transportation charges and Extra Nourishment charges are concerned, they are in accordance with the settled principles of law and therefore, does not call for any interference. However, the loss of income for a period of three months calculated by the Tribunal at Rs.5,000/- per month, totalling Rs.15,000/- is enhanced to Rs.27,000/- at the rate of Rs.9,000/- per month as the notional monthly income of the Appellant/claimant has been enhanced by this Judgment from Rs.5,000/- to Rs.9,000/-.

19. For the foregoing reasons, the impugned award is modified in the following manner:



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Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Disability	90,000/- (45% x 2000)	7,25,760/- (9000 + 40% = 12600 x 12 = 1,51,200 x 30% x 16)
Pain and Suffering	30,000/-	50,000/-
Loss of amenities	...	50,000/-
Medical expenses	6,14,337/-	6,14,337/-
Transport charges	5,000/-	5,000/-
Extra Nourishment	5,000/-	5,000/-
Loss of income	15,000/-	27,000/-
Total	7,59,337/-	14,77,097/-

Conclusion:

20. In the result, the Appeal is partly allowed by enhancing the award amount from Rs.7,59,337/- to Rs.14,77,097/-. 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.14,77,087/- together with interest at the rate of 7.5% per annum (excluding the period of 1087 days being the delay on the part of the Appellant in preferred this Appeal) from the date of claim till the date of realisation and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.419 of 2013 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 Appellant through RTGS within a period of four weeks thereafter. No costs.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar



To

1.The Motor Accident Claims Tribunal
II Additional District and Sessions Court at Poonamallee

2.The Section Officer,
VR Section, High Court,
Chennai.

+2 ccs to Mr.A.N.Viswanatha Rao Advocate sr87100

+1 cc to Mr.D.Bhaskaran Advocate sr87202

C.M.A.No.3918 of 2019

aa26/12/2019