IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.778 of 2017
and
Cros.Obj.No.31 of 2019

C.M.A.No.778 of 2017

Reliance General Insurance Company Limited,
Heavitree Unit No.1,
III Floor, No.23, Spur Tank Road,
Chetpet, Chennai - 31. ... Appellant/ 2nd Respondent

Vs

1.S.Santhana Krishnan .. 1st Respondent/Claimants
2.K.Parveen Kumar .. 2nd Respondent/1st Respondent

PRAYER :
Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Order and Decree passed in M.C.O.P.No.4030 of 2008 dated 17.04.2014 in the II Court of Small Causes, Motor Accident Claims Tribunal, Chennai.

For Appellant : Mr.P.Suresh Srinivasan for Mr.K.Moorthy
For Respondents : Mr.P.R.Dhilip Kumar for R1

Cros.Obj.No.31 of 2019

S.Santhanakrishnan ...Cross Objector/ Claimants

Vs

1. Reliance General Insurance Company Limited,
Heavitree Unit No.1, III Floor, No.23, Spur Tank Road,
Chetpet, Chennai - 31.
.. 1st Respondent/2nd Respondent
2. K.Parveen Kumar ...2nd Respondents/1st Respondent

PRAYER :

Cross Objection filed under Order 41 Rule 22 of Civil Procedure Code for enhancement of the compensation awarded in the Judgment and Decree dated 17.04.2014 made in M.C.O.P.No.4030 of 2008 on the file of the Motor Accident Claims Tribunal / II Small Causes Court, Chennai.

For Cross Objector : Mr.P.R.Dhilip Kumar

For Respondents R1 : Mr.P.Suresh Srinivasan for Mr.K.Moorthy

C O M M O N 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 against the award of Rs.18,26,425/- and a cross objection has been filed by the claimant aggrieved over the very same quantum of compensation awarded to him for the injuries sustained in the accident occurred on 04.09.2006, when he was travelling in his motorcycle as a pillion rider which was driven rashly and negligently by the rider of the two wheeler causing accident. Therefore, claim petition.

2.On contest, the tribunal found that the accident occurred because of the rash and negligent driving of the two wheeler and fixed the liability on the rider of the vehicle and directed the insurance company to pay the amount as insurer of the vehicle.

3.Heard Mr.M.P.Suresh Srinivasan, learned Counsel for the insurance company and Mr.P.R.Dhilip Kumar, learned Counsel for the claimant.

4.With regard to the negligence aspect, the tribunal based on PW1's evidence and the filing of the FIR against the rider of the vehicle which has been marked as Ex.P.1, has found that the rider of the two wheeler alone was responsible for the accident. Moreover, there is no rebuttal evidence and therefore, the finding regarding the negligence aspect as given by the Tribunal is confirmed.

5.The Tribunal taking note of the fact that the claimant sustained Traumatic Brachial Plexus paisy, Right subclavian artery injury right and the claimant had undergone surgery on 13.09.2006 whereby subclavian to Axillary artery reversed saphenous vein graft sural nerve grafting C7 to upper trunk done and further as it is mentioned that Right upper limb is flaccid, no active movement in the right shoulder, elbow, forearm, wrist and fingers, there is loss of sensation in the right upper limb from below as proved by PW2 doctor's evidence and from Ex.P.6 to Ex.P.8 viz., discharge summaries determined the disability at 90%. The Tribunal based on Ex.P.11 viz., disability certificate issued by Government Institute of Rehabilitation Medicine also confirmed 90% disability.

6.While fixing the disability at 90%, the Tribunal took note of complete and permanent non use of right limb which is equivalent to loss of one hand. The Tribunal also referred to Workmen Compensation Act 1923, Schedule I, Part- I, SI.No.1 that the loss of sensation and complete non use of limb would amount to amputation and determined the loss of earning capacity at 90%. However, as rightly pointed out by Mr.P.Suresh Srinivasan, learned Counsel for the insurance company that though the claimant sustained 90% disability, the loss of earning capacity fixed at 90% is on the higher side. Though the Workmen Compensation Act speaks about 90% loss of earning capacity especially when one of the limbs was amputated, in this case, the limb was not amputated. However, it is equivalent as rightly found by the Tribunal to amputation, as there was complete, permanent loss of use of right hand. Taking note of the above, 90% loss of earning capacity determined by the Tribunal is on the higher side and the same is reduced to 75%.

7.The claimant was a student undergoing graduation course in Law and therefore, notional income of Rs.6,000/- was fixed by the Tribunal in the absence of material evidence. The monthly income of Rs.6,000/- fixed by the Tribunal is on the lower side and this Court redetermines the said amount. The Honourable Supreme Court in the judgment delivered in Syed Sadiq Vs.United India Insurance Company, reported in 2014 (1) TNMAC 459, 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 this case, the accident occurred in the year 2009 after a year and hence, this Court redetermines the monthly income at Rs.8,000/-.

8.No amount was added towards future prospects. The age of the deceased is 20 years and therefore, 50% has to be added towards future prospects. Further, the Tribunal has adopted right multiplier '18' as per the Judgment in Sarla Verma's case [2009 (2) TNMAC 1 (SC)] and hence, the loss of income would be Rs.8,000/- + 50% x 12 x 18 x 75% = Rs.19,44,000/-.

9.Rs.25,000/- awarded by the Tribunal towards Transportation is too low as the claimant has to be further hospitalized and he has to follow up the treatment. Taking into consideration that the claimant had underwent four surgeries and subsequent treatment, this Court enhances the same to Rs.50,000/- and similarly, Rs.25,000/- awarded towards Extra Nourishment is enhanced to Rs.50,000/-. Rs.4,10,025/- awarded toward Medical Expenses as per Ex.P.10 viz., medical bills is confirmed. Rs.1,00,000/- awarded towards pain and sufferings is very less considering the nature of injuries sustained by him and surgeries underwent by him and the sufferings, he has to endure throughout his life and hence, the same is enhanced to Rs.2,00,000/-. No amount has been awarded towards Loss of Amenities and hence, Rs.1,00,000/- is awarded under this head. Further, Rs.1,00,000/- awarded towards Future Medical Expenses is confirmed. Therefore, the sum of Rs.18, 26,425/- awarded by the tribunal is modified as follows:

SI.No	Head	Amount (Rs.)
1.	Loss of income	19,44,000/-
2.	Loss of Amenities	1,00,000/-
3.	Pain and Sufferings	2,00,000/-
4.	FutureMedical Expenses	1,00,000/-
5.	Medical Bills	4,10,025/-
6.	Transportation	50,000/-
7.	Extra Nourishment	50,000/-
	Total	28,54,025/-

10.Hence, the total compensation payable in this case is Rs.28,54,025/-. The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed. Additional Court fee, if any, shall be paid by the claimant within a period of two weeks from the date of receipt of the coy of this order. If the requisite court-fee is not paid by the claimant, the Tribunal is directed to deduct the requisite court fee from the compensation amount awarded to the claimant and thereafter, transfer the remaining award amount to the claimant's account. It is made clear that the claimant would not be entitled to any interest for the delay period in filing the cross-objection.

11.The insurance company is directed to deposit the entire award amount as per the order of this Court before the Tribunal along with interest and costs (excepting for Future Medical Expenses) after deducting the amount, if any, already deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount to the account of the claimant through RTGS within a period of one week.

12. Accordingly, the appeal filed by the insurance company is dismissed and the Cross objection filed by the claimant is partly allowed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
II Court of Small Causes, Chennai.

Copy To

The Section Officer,
VR Section, High Court,
Madras-104.

+2cc to Mr.K.Moorthy, Advocate, S.R.No.70814
+1cc to Mr.P.R.Dhilip Kumar, Advocate, S.R.No70551

C.M.A.No.778 of 2017
and
Cros.Obj.No.31 of 2019

KJI(CO)
CS/25/09/2019