

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2019

CORAM:

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

C.M.A. No. 2887 of 2018

Bharathi Axa General Insurance Company Ltd,
2nd Floor, Metro Plaza,
No.162, Annasalai,
Chennai - 600 002. ... Appellant/2nd Respondent

Vs.

1.B.Gowthamaraja ..1st Respondent/Claimant

2.N.Ramesh ...Respondents/ Respondent

Prayer:- Appeal filed under Section 173 of Motor Vehicles Act,1988 against the judgment and decree dated 27.03.2018 made in M.C.O.P.No.7490 of 2014 on the file of Motor Accident Claims Tribunal(Special Sub-Judge No.1), Small Causes Court, Chennai.

For Appellant : Mr.K.Poomalai

For Respondents: Mr.K.Suryanarayanan for R1

JUDGMENT

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

This appeal is preferred only against the quantum. The first respondent is the claimant.

2. On 05.10.2014, when the first respondent was walking, an auto rickshaw which came from the opposite direction dashed against him resulting in grievous injuries. The injury is on the head. The doctor opined that the percentage of injury is 65% and the first respondent does not have any control over his natural calls. The doctor also stated that he cannot control his body movements. The Court below awarded a sum of Rs.65,41,800/- under various heads, which is extracted hereunder:-

"(ix) Calculation:

1. Pecuniary Loss	:Rs.54,43,027/-
2. Pain and Sufferings	:Rs.50,000/-
3. Transportation	:Rs.10,000/-
4. Medical Expenses	:Rs.5,00,997/-
5. Extra Nourishment	:Rs.30,000/-
6. Attender Charges	:Rs.7,750/-
7. Loss of future prospects:	:Rs.5,00,000/-
Total	:Rs.65,41,774/-
Rounded off to	:Rs.65,41,800/-"

3. Challenging the same, the present appeal has been filed on the question of quantum alone.

4. Learned counsel appearing for the appellant would submit that the Court below applied multiplier '9' which is not correct. There is no material to substantiate the future treatment that would be required. Therefore, the order requires interference.

5. Learned counsel appearing for the first respondent placing reliance upon the evidence of PW2 read with Exs.P4, P5, P11 to P14 submitted that the first respondent requires constant assistance. He is not in a position to do any activity on his own. He has availed all possible leaves resulting in loss of Rs.25 lakhs and his illness requires further treatment. Therefore, the order does not require any interference.

6. Inasmuch as we are dealing with a case of injury, the Tribunal has committed an error in adopting the multiplier. In this case multiplier '9' was adopted. However, the injury suffered is in the brain. There is nothing to discard the evidence of PW2, who is the doctor who deposed on the nature of injury. Similarly, Exs.P11 to P14 speak about the loss suffered by the first respondent due to the accident. Therefore, we take the aforesaid amount of Rs.20 lakhs as such. However Rs.5 lakhs will have to be included for the medical expenses. Thus, put together it would come to Rs.25 lakhs.

7. We find that there is nothing wrong in the award of the Tribunal in awarding Rs.5 lakhs towards the future prospects. Though the first respondent attained the age of superannuation we cannot say that he will not earn thereafter. From the evidence let in, we are satisfied that nature of injury sustained would require constant assistance. This also would include continuous treatment till his death. The first respondent is expected to take care of his normal activities. In

such view of the matter, we are inclined to add a sum of Rs. 15 lakhs for the aforesaid purpose, which is inclusive of the amounts awarded under conventional heads by the Tribunal.

8. In fine, the appeal stands allowed by setting aside the order of the Tribunal. Resultantly, the award of the Tribunal is modified from Rs. 65,41,800/- to Rs.45,00,000/- which is inclusive of amounts awarded under other conventional heads by the Tribunal. The amount deposited with 7.5% interest awarded by the Tribunal will have to be permitted to be withdrawn by the first respondent and the remaining amount (in excess) can be withdrawn by the appellant. The other findings with respect to pay and recovery is not disturbed as there is no challenge to the same.

The appeal is allowed in the above terms. No costs. Consequently, connected CMP No.21934 of 2018 is closed.

ssm

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The Special Sub-Judge No.1,
Small Causes Court,
Motor Accidents Claims Tribunal
Chennai.

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to Mr.K.Suryanarayanan, Advocate, SR.No.16568
+1cc to M/s.V.Poomalai, Advocate, SR.No.16744

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