BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 06.06.2019
CORAM
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.M.A(MD)No.392 of 2019
and
C.M.P(MD)No.4759 of 2019

The Branch Manager
Reliance General Insurance Company Ltd.,
Door No.10/4/4/, 2nd Floor
Thaha Plaza, South Bypass Road
Vannarpettai
Tirunelveli ... Appellant/2nd Respondent

vs.

1.Thangavel ... 1st Respondent/Petitioner
2.Uma ... 2nd respondent/2nd respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree made in M.C.O.P.No.777 of 2014 dated 04.07.2015 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tirunelveli.

For Appellant : Mr.K.Gokul

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant against the Judgment and Decree made in M.C.O.P.No.777 of 2014 dated 04.07.2015 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tirunelveli.

2.In an accident which occurred on 18.06.2014, the 1st respondent/claimant sustained injuries, for which, he filed a claim petition before the Motor Accident Claims Tribunal, Special Sub Court, Tirunelveli, claiming compensation. The appellant insurance company with which the offending vehicle is insured, resisted the claim. Considering the oral and documentary evidence adduced on either side, the Tribunal fixed the liability on the appellant to pay compensation of Rs.14,78,000/- to the 1st respondent/claimant with 9% interest per annum. Aggrieved by the said award, the insurance company has filed this appeal.

3.Though the appellant has filed this appeal questioning negligence and quantum, during the course of hearing, learned counsel for the appellant has restricted his relief only to quantum.

4.Learned counsel for the appellant would submit that fixation of monthly income at Rs.6,000/- for a Mason and application of multiplier method for computing loss of income due to disability, are erroneous and without any proof. It is further contended that the Tribunal has awarded exorbitant compensation under other heads and the rate of interest at 9% is also on the higher side. Thus, he prays for reduction on the quantum of compensation.

5.Heard the learned counsel for the appellant and perused the materials available on record.

6.Perusal of record shows that in the accident, the 1st respondent/claimant sustained crush injury in the left thigh which resulted in amputation of left leg and also fracture of left hand. PW2 Doctor who examined the claimant has deposed that to fuse the fractured bones in the left hand, a surgery has been done, but the bones were not united properly. He has assessed the partial permanent disability sustained by the claimant at 86% and issued Ex.P7-Disability Certificate.

7.Though the learned counsel for the appellant has contended that fixation of monthly income for a Mason is on the higher side and the application of multiplier method is unwarranted, in my considered opinion, it is a case of amputation of left leg and the claimant is a Mason by avocation. Therefore, it is 100% functional disability as per the judgment of the Hon'ble Supreme Court in **Raj Kumar vs. Ajay Kumar and another reported in 2010 (2) TN MAC 581 (SC)**. Due to the amputation of left leg and fracture in the left hand, the claimant cannot do his avocation as Mason and he has to be idle for the rest of his life time. Further, the Hon'ble Supreme Court in **Syed Sadiq vs. United India Insurance Co.Ltd., reported in 2014 (1) TN MAC 459(SC)**, has fixed the monthly income at Rs.6,500/- for a vegetable vendor where there was no proof of income. Therefore, the fixation of monthly income at Rs.6,000/- and the application of multiplier method cannot be said to be erroneous. Consequently, the award of Rs.9,36,000/- under the head loss of income cannot be found fault with. Apart from the above, the Tribunal has awarded Rs.72,000/- (Rs.6000x12) for loss of income during treatment period; Rs.20,000/- towards transportation; Rs.20,000/- towards nutrition; Rs.30,000/- towards attendant charges; Rs.1,00,000/- for pain and sufferings; Rs.1,00,000/- for loss of amenities and Rs.2,00,000/- for future medical expenses. Altogether, the Tribunal has awarded Rs.14,78,000/- with 9% interest per annum as compensation.

8.Perusal of record shows that the Tribunal has not awarded any sum towards future prospects as per the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others reported in 2017 (6) CTC 493**, It is a case of amputation and considering the facts and circumstances of the case, this Court is not inclined to interfere with the quantum. However, the rate of interest at 9% awarded on the quantum for the accident of the year 2014, is on the higher side and therefore, it is reduced to 7.5%.

9.Accordingly, the appellant is directed to deposit the entire award amount of Rs.14,78,000/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, less the amount already deposited, if any, and costs, to the credit of the claim petition, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent/claimant is permitted to withdraw the entire amount without filing any formal permission petition before the Tribunal.

In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

sd/
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS)

To

1. The Motor Accident Claims Tribunal
cum Special Subordinate Court,
Tirunelveli.

2. The Record Keeper,
Vernacular Section,(2 copies)
Madurai Bench of Madras High Court,
Madurai.

C.M.A(MD)No.392 of 2019
06.06.2019

MSA
MK (21.06.2019) 3P 4C