

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.1764 of 2018
& Cross Objection No.59 of 2019

The Manager
M/s.TATA AIG General Insurance Company Limited,
Sulaiman Zackriya Avenue,
Panthian Salai, Egmore,
Chennai- 600 006.

... Appellant
in CMA 1764/18
... 1st Respondent
in Cros Obj 59/19/
2nd Respondent

Chithra

Vs.

... 1st Respondent
in CMA 1764/18
... Cross Objector
in Cros Obj 59/19/
Claimant

Jothi Arasu

... 2nd respondent
in CMA 1764/18
& in Cros Obj 59/19/
1st respondent

Prayer in C.M.A.No.1764 of 2019 : Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree made in M.C.O.P.No.5 of 2017 dated 18.12.2017 on the file of Motor Accidents Claims Tribunal, Subordinate Court, Jayankondam.

Prayer in Cross Objection No.59 of 2019: Appeal filed under Section 41 Rule 22 of CPC against the judgment and award of the Motor Accident Claims Tribunal (Sub Court) Jayankondam dated 18/12/2017 in MCOP.No.5/2017.

For Appellant
in CMA 1764/18 &
1st Respondent in : Mr.N.Vijayaraghavan
Cross Objection : for M/s.M.B.Gopalan Associates
No.59/19

For 1st Respondent
in CMA 1764/18
& Cross Objector : Mr.S.Kaithamalai Kumaran
in Cros Obj
59/19

For 2nd respondents
in CMA 1764/18 : Ex parte
& in Cros Obj
59/19

COMMON JUDGMENT
(Delivered by M.M.SUNDRESH.,J)

As both the appeal and the cross-objection are with respect to the same award passed by the Tribunal in M.C.O.P.No.5 of 2017, they are taken up together and disposed of by a common judgment.

2. The appellant is the insurer. The cross-objector pursuant to the injuries suffered made a claim for a sum of Rs.60,00,000/-. She is a student studying B.Tech, aged about 19 years. Pursuant to the injuries suffered by her, the left leg was amputated and thereafter a plastic surgery was done. The evidence of P.W.2 - Doctor was also to the effect that she requires constant treatment including possible future surgeries. Accordingly, he issued disability certificate marked as Ex.P10. The Tribunal, fixing the monthly income at Rs.9,000/- and after adding future prospects, fixed the functional disability resulting in loss of income at Rs.20,41,200/-. The Tribunal awarded certain amount towards the other conventional heads including the pain and suffering, transportation, loss of amenities, loss of marital prospects and the medical expenses incurring apart from expenses towards the artificial limb which are to be replaced frequently. Challenging the same, the present appeal has been filed. Seeking enhancement, the cross-objection has been filed.

3. The learned counsel appearing for the Insurance Company submitted that the Tribunal was wrong in fixing higher income for the other conventional heads, namely, the loss of earning, pain and suffering and marital prospects and, therefore, the amounts awarded by the Tribunal will have to be reduced.

4. Per contra, the learned counsel appearing for the cross-objector/claimant submitted that the claimant lost the prospect of both the job and marriage. She was a student at the relevant point of time. She had a good potential to earn more. The injury suffered by her is very serious. Not only there is a removal on part of the left leg, there are other injuries also which she suffered. The evidence of P.W.2 is also on the need for future treatment. In such view of the matter, the Tribunal ought to have awarded higher amount.

5. We are concerned only with the quantum. The fact that the claimant was an Engineering student, aged about 19 years is not in dispute. The injuries suffered on a perusal of Ex.P10 read with evidence of P.W.2 would show that the injuries are very serious in nature. What was done is the plastic surgery. The Doctor has also opined that constant future treatment is also required including the possible surgical procedure in future. Having lost her leg, she needs constant support. She also requires replacement of artificial limb. In such view of the matter, we are of the view that the Tribunal was not correct in fixing the monthly income at Rs.9,000/- especially by taking into consideration the fact that the claimant is a student at the relevant point of time. Therefore, we are inclined to fix the monthly income at Rs.10,000/- month, following the same procedure adopted by the Tribunal, we fix the loss of earning at Rs.22,68,000/- (10000 + 5000 (50% future prospects) * 12 * 18 * 70%). On the other conventional heads, we are not inclined to interfere with, more so, when there is a strict possibility of the claimant loosing her marital prospects. Though it might appear that the amount awarded for a sum of Rs.2,00,000/- towards the pain and suffering is high, we do not think so. This is for the reason that she had to undergo a very painful surgery apart from taking constant treatment.

6. Apportionment of the compensation, now determined by this Court is detailed below:-

Loss of Earning	..	Rs.22,68,000/-
Pain & Suffering	..	Rs. 2,00,000/-
Loss of amenities	..	Rs. 1,50,000/-
Transportation	..	Rs. 25,000/-
Marital Prospects	..	Rs.3,00,000/-
Medical Bills	..	Rs. 93,337/-
Artificial Limb	..	Rs.2,42,945/-
Total	..	Rs.32,79,282/-
Rounded off	..	Rs.32,80,000/-

7. In such view of the matter, the compensation arrived at is Rs.32,79,282/-, which we are rounding off to Rs.32,80,000/- with the interest at 7.5% from the date of the petition till the

date of realization.

8. The appellant/Insurance Company is directed to deposit the enhanced compensation amount as awarded by this Court along with proportionate interest, less the amount, if any, already deposited to the credit of M.C.O.P.No.5 of 2017 on the file of Motor Accidents Claims Tribunal, Subordinate Court, Jayankondam within a period of six weeks from the date of receipt of a copy of the judgment.

9. We also direct the Tribunal to transfer the award amount by way of RTGS to the bank account of the claimant within a period of three weeks from the date of deposit of the award amount. On such transfer, the claimant is entitled to withdraw the same.

10. In view of the above, the Civil Miscellaneous Appeal is dismissed and the Cross-Objection stands allowed. No costs. Consequently, connected C.M.P.No.13635 of 2018 is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

ssm

To

The Motor Accidents Claims Tribunal,
Subordinate Court, Jayankondam.

Copy to
The Section Officer
VR Section
High Court,
Madras

+1 cc to Mr.B.Gopalan Advocate sr6349
+1 cc to Mr.S.kaithamalai Kumaran Advocate sr5095

C.M.A.No.1764 of 2018
& Cross Objection No.59 of 2019

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