IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.01.2020

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

C.M.A.No.2165 of 2019

Velmurugan ... Appellant /Petitioner

vs.

1.Ramesh
2.The Branch Manager
Future General India Assurance Company Limited,
1st, 2nd and 3rd Floor,
Plot No.55 (Old Plot No.27),
Vijay Raghava Road,
T.Nagar, Chennai - 600 017. ... Respondents/Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the order and decreetal order dated 27.11.2018 made in M.C.O.P.No.135 of 2015 on the file of the Motor Accidents Claims Tribunal, Gudiyattam, Vellore District (Sub Court Gudiyattam, Vellore District).

For Appellant : Mr.T.Dhanyakumar

For Respondents : R1-Unclaimed
Mr.N.Vijayaragavan for R2

JUDGMENT

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

Seeking enhancement of the compensation awarded by the Tribunal at Rs.16,67,359/- in M.C.O.P.No.135 of 2015, the claimant has filed this appeal.

2.On 10.02.2015, when the appellant and his relatives were proceeding in a Tata Sumo Car bearing Regn. No.TN 23 BQ 2271 belonging to the first respondent and insured with the second respondent, on Madurai to Thiruchendur Road, the driver of the car drove it in a rash and negligent manner and dashed against the median wall. As a result of which, the appellant underwent amputation of left leg above knee and suffered fracture in the right thigh, leg, foot, hip and heal apart from grievous injuries in toe. He is also stated to be partner in auto finances apart from doing money lending business and mineral water business. Claiming a sum of Rs.50,000/- towards monthly income, he sought for compensation Rs.50 lakhs. The Tribunal while fixing the income at Rs.5,000/- after taking note of the medical bills, awarded Rs.16,67,359/-, which amount is sought to be enhanced in this appeal.

3.Learned counsel appearing for the appellant submitted that the Tribunal committed an error in taking the income at Rs.5,000/- per month. The evidence adduced by the appellant has not been disputed. Even, in normal circumstances, a sum of Rs.12,000/- ought to have been awarded. The functional disability has been correctly fixed at 80% by taking into consideration the injuries suffered. Further medical bills produced under Exs.P7 and P8 have not been taken into consideration. For future medical expenses, only a sum of Rs.10,000/- has been awarded. Therefore, the appeal will have to be allowed.

4.Learned counsel appearing for the second respondent insurance company submitted that there is no evidence to substantiate that there is loss of estate. The Tribunal correctly passed an award by taking into consideration the aforesaid aspect. Thus, this appeal will have to be dismissed.

5.We find some force in the submission made by the learned counsel for the appellant. The appellant is stated to be doing business on his own apart from being a partner in some other enterprises. Even for a normal person, as a matter of course, higher amount has to be fixed as income. Therefore, even assuming that there is no substantial loss of estate, the appellant would have certainly earned more money in the above enterprises. Thus, the Tribunal has committed an error in fixing the income at Rs.5,000/- per month. Hence we accordingly fix the income at Rs.10,000/- per month. We also concur with the Tribunal with respect to the multiplier adopted. Similarly, functional disability as fixed is also taken into consideration. Accordingly, the amount payable towards functional disability which is inclusive of loss of income is arrived at Rs.16,80,000/- (Rs.10,000/- + Rs.2,500/- (25% towards future prospects) = Rs.12,500/- x 12 x 14 = Rs.21,00,000/- x 80/100 = Rs.16,80,000/-). In such view of the matter, a sum of Rs.20,000/- towards loss of earning is deleted. Insofar as the medical bills are concerned, the Tribunal rightly took into consideration the medical bills which have been certified by the hospital. Therefore, the other medical bills has to be taken into consideration.

6.In such view of the matter, we do not find any error in the order of the Tribunal in that regard. However, for the future medical expenses, only a sum of Rs.10,000/- has been awarded. Considering the injuries suffered, which are multiple in nature, we are inclined to grant a sum of Rs.50,000/-. Accordingly, a sum of Rs.24,26,559/- has been arrived as compensation, which amount is rounded off to Rs.24,30,000/-. The interest awarded by the Tribunal at 7.5% is confirmed.

7.In the result, the Civil Miscellaneous Appeal is allowed in part. No costs.

8.The second respondent/Insurance Company is directed to deposit the enhanced compensation amount awarded by this Court along with proportionate interest, less the amount if any already deposited, to the credit of M.C.O.P.No.135 of 2015 on the file of the Motor Accidents Claims Tribunal, Gudiyattam, Vellore District (Sub Court Gudiyattam, Vellore District), within a period of eight weeks from the date of receipt of a copy of the judgment.

9.We also direct the Tribunal to transfer the entire amount deposited 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 deposit, the claimant is entitled to withdraw the same.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mmi
To

The Motor Accidents Claims Tribunal,
(Sub Court Gudiyattam),
Vellore District.

+1cc to Mr.T.Dhanyakumar, Advocate Sr.2392
+1cc to Mr.N.Vijayaraghavan, Advocate Sr.2820

C.M.A.No.2165 of 2019

mr[co]
srg 30/11/2020