IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2020

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

C.M.A.NO.2322 OF 2018

Sayee Subramaniam ... Appellant/Petitioner

Vs.

1. Lakshmi

2. Bajaj Allianz General Insurance Co. Ltd.,
   6th Floor, Prince Towers,
   College Road, Nungambakkam,
   Chennai rep. by its Branch Manager
   (currently shifted to New Nos.497 & 498, Fifth Floor,
   Poonamallee High Road,
   Isana Kattima Building,
   Arumbakkam, Chennai - 106.)

3. Ravishankar

4. Divisional Manager,
   The New India Assurance Co. Ltd.,
   No.69/70, Seikkipettai Nadu Street,
   Kanchipuram.

... Respondents/Respondents

Prayer:-

Appeal filed under Section 173 of Motor Vehicles Act,1988 against the fair and decretal order dated 14.07.2016 passed in M.C.O.P.No.300 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Court for MCOP Cases), Thiruvannamalai.

For Appellant : Mr.S.S.Rajesh

For Respondents : Mr.S.Arun Kumar for R2
Mr.M.Krishnamoorthy for R4
Notice sent - R1 & R3

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

The appellant, who is the Director of the Private Company apart from having substantial assets including plantation, was involved in an accident occurred on 14.03.2009. Pursuant to the said accident, he suffered fracture on the right nose, right shoulder and right hip. He underwent surgeries twice. His disability was assessed as partial permanent disability at 50%. Seeking compensation for a sum of Rs.1,50,00,000/-, he approached the Tribunal.

2.The Tribunal after holding that there is no loss of income as could be seen from Ex.R2, was pleased to grant a sum of Rs.4,95,000/- by fixing the loss of income at Rs.75,000/-. Seeking enhancement of the same, the present appeal has been filed.

3.Learned counsel appearing for the appellant submits that the Tribunal has not taken into consideration the documents filed starting from Exs.P1 to P71. The procedure adopted by the Tribunal in assessing the disability is also not correct. The appellant is unable to walk properly in view of the fracture on the right hip. Even now, he is taking treatment. The compensation awarded under the conventional heads also require enhancement.

4.Learned counsel appearing for the Insurance Company submits that the Tribunal rightly took into consideration the Income Tax returns filed by the appellant himself. These returns would clearly show that there is actually an increase in the income. Though the appellant may be entitled for higher compensation under the conventional heads, the total compensation is just and proper.

5.On the question of loss of income, we find that the Tribunal did take into consideration the Income Tax returns filed. However, the fact remains that the appellant has been taking treatment for six months and he was treated as in-patient for some time. Therefore, loss of income at Rs.75,000/- is too low for someone who has been earning substantial amounts of money. In such view of the matter, we are inclined to enhance it to Rs.1,50,000/-. We are also of the view that the reasoning of the Tribunal in rejecting the compensation sought for by the appellant towards of loss of income sounds proper as factually there is no loss of income.

6.For permanent disability, the Tribunal has awarded a sum of Rs.1,50,000/-, which we accordingly confirm. The Tribunal has awarded Rs.2,20,000/- towards medical expenses and the same stands confirmed. The Tribunal has not awarded any amount towards transportation and future medical expenses. For those two expenses, we are accordingly awarding Rs.25,000/- and Rs.1,00,000/- respectively. Insofar as pain and suffering is concerned, we deem it appropriate to award a sum of Rs.1,00,000/- as the appellant survives multiple fracture followed by surgeries. No amount has been granted by the Tribunal for loss of amenities, which is fixed at Rs.50,000/-. For extra nourishment, a sum of Rs.25,000/- is awarded. Accordingly, we grant a sum of Rs.8,20,000/- as against Rs.4,95,000/- granted by the Tribunal. The interest awarded by the Tribunal at 7.5% per annum stands confirmed.

7.In view of the above, the Civil Miscellaneous Appeal is allowed in part. No costs.

8. The second respondent/insurance company is directed to deposit the enhanced compensation amount along with proportionate interest, less the amount if any already deposited, to the credit of M.C.O.P.No.300 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Court for MCOP Cases), Thiruvannamalai, 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 entire amount deposited by way of RTGS to the bank account of the claimant/appellant within a period of three weeks from the date of deposit of the award amount. On such deposit, the claimant/appellant is entitled to withdraw the same.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To
1. The Motor Accidents Claims Tribunal,
Special Court for MCOP Cases, Thiruvannamalai.

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

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.2303
+2cc to Mr.S.S.Rajesh, Advocate, S.R.No.1389

C.M.A.No.2322 of 2018

SR(CO)
CS/03/08/2020