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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.No.2261 of 2016
and
C.M.P.No.15954 of 2016

M/s Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers, 46, Whites Road, Rayapettah,
Chennai - 600 014. ... Appellant/Respondent-2

Vs.

1.Srikanthan ...1st Respondent/Petitioner
2.R.Sri Devi ...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to set aside the decree and judgment dated 29.04.2016 made in MCOP No.334 of 2013 on the file of Motor Accident Claims Tribunal (Principal District Court), Perambalur.

For Appellant : Mr.K.Vinod for Mr.S.Manohar

For Respondents: Mr.V.Raghupathi for R1

J U D G M E N T

(Judgment of the Court was made by K.KALYANASUNDARAM.,J)

As against the award passed in MCOP No.334 of 2013 dated 29.04.2016, by the Motor Accident Claims Tribunal, (Principal District Judge), Perambalur, this appeal has been filed by the Insurance Company.

2.Facts in nutshell:-

This is the case of injury. According to the claimant, he was travelling as pillion rider in a two-wheeler bearing



Reg.No.TN-45-AE-2170 on Tanjore-Trichy NH 67 main road on 16.03.2013. The said two-wheeler was driven by his friend Sivasubramani. When they were nearing 'B' Sector Thirumana Mandapam, a Maruti Omni Car bearing Reg.TN-45-AY-7474 belonging to the first respondent and insured with the second respondent driven by its driver in a rash and negligent manner, dashed against the two-wheeler. In the impact, rider of the two-wheeler died and the claimant sustained multiple abrasion and fracture all over the body. It is further stated that immediately after the accident, he was carried to Kauvery Hospital, Trichy, where he was treated as inpatient from 16.03.2013 to 02.04.2013. During the treatment period, he underwent surgery on two occasions. It is also stated that he was working as Production Manager at Annai Velankanni Fabricators, Thuvakudi and his monthly salary is Rs.25,000/-. In view of the injuries sustained in the accident, he lost his employment. Alleging that the accident had occurred only due to the rash and negligent driving of the driver of the Maruti Omni Car, the claimant laid a claim petition claiming compensation of Rs.20,00,000/-, but the Tribunal has awarded Rs.24,59,832/- to the claimant. Assailing the award, the appellant/Insurance Company has filed the present appeal.

3.This appeal has been filed only challenging the quantum, hence, the other issues need not be dealt with herein.

4.It is the contention of the learned counsel appearing for the appellant Insurance Company Mr.K.Vinod that there is no evidence to show that the claimant lost his employment in view of the injuries sustained in the accident. He next contended that Ex.31-Termination Letter was issued by the employer after a period of one year and hence, we cannot give credence to the Termination Letter. According to the learned counsel, the claimant has not produced any evidence to show that he was continuously taking treatment about one year. Hence, the entire permanent disability cannot be taken into consideration to award compensation under the head of loss of earning capacity.

5.Per contra, the learned counsel appearing for the respondent/claimant Mr.V.Raghupathi has argued in support of the findings given by the Tribunal and prayed for dismissal of the appeal

6.In the matter on hand, perusal of the evidence of P.W.1 and P.W.3 would reveal that though the injured claimant sustained permanent disability to the extent of 52%, the functional disability can be taken only 25%, however, the



Tribunal taking the disability as 52% and by applying multiplier method awarded compensation. In the claim petition as well as in the evidence, the claimant has categorically stated that he was terminated from the service immediately after the accident. This is nothing on record to disbelieve the case of the claimant. The Tribunal based on the evidence of P.W.1 and Exs.P.21 to 23, has fixed the income of the injured as Rs.24,400/-, which is reasonable. Hence, by applying multiplier '14', this Court assess the loss of earning capacity as Rs.10,24,800/- ($24400 \times 12 \times 14 \times 25 / 100$). The Tribunal has awarded Rs.50,000/- towards loss of amenities and Rs.10,000/- towards Transportation. Considering the nature of injuries and period of treatment, the amount awarded under the head of loss of amenities is enhanced to Rs.1,00,000/- and the amount awarded under the head of Transportation is enhanced to Rs.25,000/-. The amount of Rs.2000/- awarded towards damage of cloth is enhanced to Rs.3000/-. This Court awards Rs.50,000/- towards attendant charges. The amount awarded under the other heads and the rate of interest fixed by the Tribunal as 7.5% per annum are confirmed. Accordingly, the compensation awarded by the Tribunal to the claimants is re-quantified as follows:-

Heads	Amount awarded by the Tribunal	Re-quantified Amount by this Court	Status
Loss of earning capacity	21,31,584/-	10,24,800/-	Reduced
Medical Expenses	1,66,248/-	1,66,248/-	Confirmed
For Pain and Sufferings	50,000/-	50,000/-	Confirmed
Loss of Amenities	50,000/-	1,00,000/-	Enhanced
For Extra Nourishment	50,000/-	50,000/-	Confirmed
Transportation	10,000/-	25,000/-	Enhanced
Damage to cloth	2,000/-	3,000/-	Enhanced
For Attendant Charges	Nil	50,000/-	Granted
Total	24,59,832/-	14,69,048/-	Reduced
Rounded off		14,70,000/-	



7. In such view of the matter, this Civil Miscellaneous Appeal is partly allowed. The award amount of Rs.24,59,832/- is reduced to Rs.14,70,000/-. The appellant/Insurance Company is directed to deposit the modified award amount of Rs.14,70,000/- with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimant is permitted to withdraw the modified award amount along with proportionate interest and costs, less the amount if already withdrawn. No costs. Consequently, connected miscellaneous petition is closed.

SD/-

ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

skn
To

The Motor Accident Claims Tribunal,
(Principal District Court), Perambalur.

Copy to

The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+1cc to M/s.V.Raghupathi, Advocate Sr.12964

+1cc to M/s.Elveera Ravindran, Advocate Sr.13156

C.M.A.No.2261 of 2016
and
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