BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.04.2022

CORAM:
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR
C.M.A(MD)No.896 of 2021
and
C.M.P.(MD)No.8426 of 2021 and 924 of 2022

The Branch Manager,
New India Assurance Company Limited,
Kumbakonam, Having its Office at Velacherry,
Chennai-2. ... Appellant / Respondent No.2

-Vs-

1.Ananth ... 1st Respondent / Petitioner
2.Muthukrishnan ... 2nd Respondent / 1st Respondent

(R2 set exparte in Tribunal: Notice dispensed with)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, praying this Court to set aside the judgment and decree passed in M.C.O.P.No.265/2017 dated 24.03.2021 on the file of the Motor Accident Claims Tribunal, Additional District Court (Fast Track Court), Kumbakonam.

For Appellant : Mr.J.S.Murali
For R1 : Mr.K.Manoharan

JUDGMENT

R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.

The Insurance Company is on appeal, challenging the award of a sum of Rs.83,92,043/- (Rupees Eighty Three Lakhs Ninety Two Thousand and Forty Three Only) as compensation for the injuries suffered by the claimant.

2.According to the claimant, the accident occurred due to rash and negligent driving of the driver of Toyota Innova Car owned by the second respondent and insured with the appellant / Insurance Company. According to the claimant, while he was riding in two wheeler along with his wife and two children, near Samathuvapuram Colony in Villupuram, a four wheeler, namely, Toyota Innova Car bearing Registration No.TN 22 CZ 0740, driven by its driver in a rash and negligent manner came from behind and hit the motorcycle.

As a result of the impact, the passengers in the motorcycle were thrown off and they sustained grievous injuries. While the wife and children of the first respondent were treated for the injuries, the first respondent was shifted to Bilroth Hospital at Chennai. His right leg was amputated above knee.

3.Contending that the first respondent / claimant, who was working as Technician in Automobile Service Centre in Chennai, was forced to quit his job because of the disability suffered by him, the claimant sought for compensation of Rs.2 Crores.

4.The Insurance Company resisted the claim, contending that the accident did not occur in the manner suggested by the claimant. It was alleged that the claimant was also responsible for the accident. It was further case of the Insurance Company that the quantum of compensation claimed was excessive and the claim is not commensurate with the disability suffered by him.

5.Other Motor Accident Claim Petitions filed by the wife and the minor children of the claimant / first respondent were clubbed together and tried jointly.

6.At trial before the Tribunal, the first respondent / claimant was examined as P.W.1 and his wife and one Ragunathan were examined as P.W.2 and P.W.3. Ex.P.1 to Ex.P.33 were marked on the side of the claimants. One Manoharan was examined on the side of the appellant / Insurance Company and no documentary evidence was produced. Ex.X.1 to X.5 were marked as Court documents through P.W.3.

7.The Medical Board issued disability certificate, certifying that the injured claimant has suffered 85% of disability. The same was marked as Ex.P.31. Ex.P.7 discharge summary discloses that the first respondent's / claimant's right leg was amputated above the knee.

8.Considering the oral and documentary evidence, the Tribunal concluded that the accident occurred due to rash and negligent driving of the Toyota Innova Car insured with the appellant / Insurance Company. On the quantum, the Tribunal took the monthly income of the injured claimant at Rs.42,595/- based on Ex.X.5. It added 50% towards future prospects and adopted multiplier of 17. Deducting 15%, since disability was assessed only at 85%, the Tribunal found that total loss of dependency would be Rs.79,42,711/-. The Tribunal deducted 30% towards income tax and awarded following amounts under various heads:-

1.	Compensation towards loss of income for 85% permanent disability	Rs.79,42,711/-
2.	Medical expenses as per Ex.P.9	Rs.3,48,082/-

3.	Attender Charges	Rs.21,250/-
4.	Extra-nourishment charges	Rs.20,000/-
5.	Pain and suffering	Rs.50,000/-
6.	Transportation expenses	Rs.10,000/-
	Total	Rs.83,92,043/-

9.Mr.J.S.Murali, learned counsel appearing for the appellant / Insurance Company would vehemently contend that the Tribunal erred in fixing total negligence on the driver of the car. He would also point out that the Tribunal has erred in fixing the monthly income at Rs.42,595/- based on Ex.X.5, which is montly income drawn by the injured claimant, after the accident in July, 2018. He would further point out that the Tribunal should have taken only a sum of Rs.40,537/-, which was drawn by the injured claimant at the date of his death. He would point out the Tribunal erred in not deducting amounts paid towards medical reimbursement, conveyance allowance, telephone allowance, night shift allowance, heat allowance, washing allowance, which amounted to Rs.4,326/-. He would also rely upon ***National Insurance Company Limited Vs. Indira Shrivastsava*** reported in ***2014 ACJ 614*** in support of his contention. He would also contend that the Tribunal erred in adopting future prospects as the same, according to him, can only be added in fatal cases.

10.Contending contra, the learned counsel appearing for the first respondent / claimant would submit that the deduction of 30% of total loss of dependency towards income tax is not correct. He would submit that the Tribunal ought to have deducted income tax payable for the income and thereafter, adopted the multiplier. He would also point out that the compensation paid under other heads is very low. He would add that the future prospects would be applicable to the case of injury, where there is a loss of income due to the injury.

11.We have heard Mr.J.S.Murali learned counsel for the appellant / Insurance Company, Mr.K.Manoharan, learned counsel for the first respondent and considered their rival submissions.

12.We are unable to accept the contention of the learned counsel for the appellant / Insurance Company, regarding adoption of multiplier method by the Tribunal. No doubt, the claimant has continued in service for about a year after the accident, however, he has chosen to resign in July, 2017. Admittedly, the claimant was a Technician, working in Automobile Service Centre. The nature of job would require extensive walking. Therefore, amputation of one leg above knee would definitely have an impact on his regular work. Mere the fact that he worked for sometime after the accident cannot be a ground to reject the claim of the injured that he is not able to discharge the work to the satisfaction of his employer.

13.As regards the second contention of the learned counsel for the appellant that the Tribunal ought to have taken income at Rs.40,537/- namely, salary drawn at the time of accident, we are in entire agreement with him. The Tribunal has taken salary drawn at the time, when the claimant tendered his voluntary resignation in July, 2018, that is almost an year after the accident. For fixing loss of dependency salary drawn at the time of accident would be a proper foundation.

14.We also find some force in the contention of the learned counsel for the appellant that the Tribunal ought to have deducted a sum of Rs.4,326/-, which is the total of various allowances payable and his contention in that regard is amply supported by the dictum of the Hon'ble Supreme Court of India, in the case of ***National Insurance Company Limited Vs. Indira Shrivastsava*** referred to supra.

15.The calculation made by the Tribunal for deduction of income tax also appears to be very weird. Income tax is payable on the yearly income and not on the total loss of dependency. The Tribunal ought to have deducted income tax payable on the yearly income arrived by it and thereafter, applied multiplier. Hence, the award of the Tribunal needs to be re-worked.

16.The deduction adopted at 30% for income tax is also not justified, because the annual income would only come to Rs.6,51,804/-. Income tax payable on this income alone ought to have been deducted. Therefore, the award of the Tribunal needs to be re-worked and it is re-worked as follows:-

> ***"The monthly income of the injured is taken at Rs.40,537/- and after deducting a sum of Rs.4,326/- paid as allowances, the monthly income would be Rs.36,211/-. If we add 50% towards future prospects, total amount of monthly income would be Rs.54,317/-."***

17.At this juncture, we would like to advert to the contention regarding the future prospects. Of course, adopting of particular percentage towards future prospects was evolved by the Hon'ble Supreme Court of India in the case of ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***2017 (2) TNMAC 609***, which is the case of fatal accident. However, mere the fact that the Hon'ble Supreme Court has fixed percentage of the future prospects in a fatal accident case cannot be a ground to deny grant of future prospects in all injury cases.

18.Concept of future prospect is to compensate the family of the victim for the loss suffered by it. Even in case of injury, which results in loss of earning power of the injured claimant, future prospects must be added in order to arrive at a just compensation, because to the extent of incapacity, the injured losses earning power. We are, therefore, unable to accept the contention of the learned counsel for the appellant that future prospects could be applied or could be granted only in case of a fatal accident. We are of the opinion that it is to be applied in cases, where the injury results in significant loss of earning power. If in a case, where there is 100% loss of earning power, the Tribunal or the Court refuses to apply future prospects, it would only result injustice to the claimants.

19.Taking note of the same, we have arrived monthly income of the deceased at Rs.54,317/- and yearly income of the injured would be Rs.6,51,804/- In this amount, we have to deduct income tax. As per the rate prevalent for the financial year 2017-2018, for first Rs.2,50,000/-, there is total exemption. For income between Rs.2,50,000/- to Rs.5,00,000/-, 5% will be the tax and for income between Rs.5,00,000/- to Rs.10,00,000/-, 20% will be tax.

20.In the case on hand, for the income between Rs.2,50,000/- to Rs.5,00,000/- a sum of Rs.12,500/- would be the tax and for the next sum of Rs.1,50,000/-, tax payable would be Rs.30,000/- and therefore, total can be towards income tax at Rs.42,500/-. Therefore, yearly loss of dependency for the injured would be Rs.6,09,304/- and the multiplier applicable is 17. The total loss of income would be Rs.88,04,442/-. The compensation awarded under other heads is reasonable. We do not find any ground to interfere with the same. Therefore, the compensation awarded under other heads are confirmed and total compensation payable to the injured claimant would be Rs.92,53,774/-.

21.The compensation arrived at by us is over and above the compensation awarded by the Tribunal. Though the insurance Company is on appeal, it is open to us to enhance the compensation subject to payment of Court fee. Therefore, while dismissing the appeal of the Insurance Company, we enhance the award of the Tribunal to Rs.92,53,774/-. No doubt, the Hon'ble Supreme Court has held in the appeal filed by the Insurance Company, we cannot enhance the compensation. However, in the case on hand, we are not factually enhancing the compensation. We have only set right the error committed by the Tribunal in calculating the compensation. Therefore, while dismissing the appeal, we fix the compensation payable in the Claim Petition is at Rs.92,53,774/-. The Insurance Company has deposited 50% compensation as awarded by the Tribunal. The appellant / Insurance Company is required to deposit balance amount, within a period of eight (8) weeks from today (21.04.2022).

22.It is seen from the claim petition that the claimant has paid a sum of Rs.372.50/- as Court fee and they have undertaken to pay remaining Court fee after the award. The Tribunal will calculate the Court fee payable by the claimant for a sum of Rs.92,53,774/-, deduct the same from the compensation payable to the claimant and pay out the balance to the claimant. The claimant would be entitled to interest at the rate of 7.5% on the compensation as granted by the Tribunal.

23.Hence, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022
Sub Assistant Registrar(CS)

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To

1.The Motor Accident Claims Tribunal,
Additional District Court (Fast Track Court),
Kumbakonam.

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

+1 CC to M/s.S. MAHALINGAM, Advocate (SR-20321[F] dated 22/04/2022)

+1 CC to M/s.J.S. MURALI, Advocate (SR-20650[F] dated 22/04/2022)

C.M.A.(MD)No.896 of 2021
21.04.2022

SS(CO)
KB(12.05.2022) 6P 6C