IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.2060 of 2016 and
Cross Objection No.37 of 2022
CMP.Nos.15075 of 2016 and 17483 of 2022

The Branch Manager
National Insurance Company Limited
Erode ... Appellant-CMA and R1-Cross Objection

Vs

1. D.Balakrishnan ... R1-CMA and Cross Objector

2. R.Sampath ... R2-CMA and Cross Appeal

Prayer:- The above Civil Miscellaneous Appeal and Cross Objection have been filed, against the judgement and decree, dated 18.01.2016, made in MCOP.No.1303 of 2010, by the Chief Judicial Magistrate (MACT) Tiruppur.

For Appellant : Ms.N.B.Surekha

For Respondent : Mr.Ma.P.Thangavel-R1

JUDGEMENT

(Judgement of the Court was made by S.S.SUNDAR, J.)

1. The above appeal and cross objection are filed by the Insurance

Company and the claimant respectively, as against the quantum of compensation, awarded by the Chief Judicial Court (MACT) Tiruppur, by judgement and decree, dated 18.01.2016, in MCOP.No.1303 of 2010.

2. This is a case of injury. At the time of accident, the claimant was aged 28 years and he was working as a Lecturer in Aeronautical Department in Park College at Coimbatore. His salary certificates were produced and marked as Ex.P6 and Ex.P14 before the Tribunal. The Doctor, who treated the claimant, has assessed the permanent/ functional disability as 29.3% for fracture and 40% for head injury as per Ex.P8 disability certificate. The Employer of the claimant was examined as PW.3 to prove the income of the claimant as shown in Ex.P12 to Ex.P16. By the impugned judgement and decree, the Tribunal awarded a sum of Rs.32,89,030/- as total compensation with interest at 7.5% p.a. from the date of the petition till the date of deposit and with proportionate costs. Aggrieved by the same, the Insurance Company has filed the above appeal and the claimant has filed the above cross objection.

3. The learned counsel for the Appellant Insurance Company, though advanced arguments on the liability on the ground that the claimant is equally responsible for the accident, it is seen that the Tribunal has given specific findings on the basis of the materials and this Court is

unable to interfere with the same as the decision of the Tribunal is after proper appreciation of evidence.

4. The learned counsel for the Appellant Insurance Company then submitted that there are contradictions in the evidence of PW.1 and PW.3. He submitted that the evidence of PW.2 regarding the permanent disability cannot be accepted as PW.2 is not the Doctor, who treated the claimant. The learned counsel then pointed out that the Doctor, who was examined as PW.2 and who assessed the disability, is a Ortho Doctor and only a Neuro Surgeon can assess the functional disability of the claimant having regard to the nature of the injuries suffered by the claimant. The learned counsel also submitted that the Tribunal failed to see that the claimant is continuing in service as a Professor in the same College. The learned counsel also challenged the findings regarding the functional disability of the claimant.

5. The learned counsel for the cross objector submitted that the claimant was working as a Lecturer in the Aeronautical Department in the Park College at Coimbatore and that his salary, as per the salary certificates, which are marked as Ex.P6 to Ex.P14, is proved by examining his Employer as PW.3 and therefore, the monthly earning of the claimant should be taken as Rs.18,000/- per month.

6. The learned counsel for the claimant then submitted that the claimant was residing in the College Hostel and he is enjoying the privilege of free accommodation and food and therefore, he submitted that a sum of Rs.4,000/- should be added to the salary.
7. The learned counsel for the Insurance Company pointed out that the Tribunal has taken 50% towards future prospects instead of 40% and that therefore, the order of the Tribunal is contrary to law settled by the Honourable Supreme Court in its decision reported in **CDJ 2021 SC 196 (Karthik Subramaniam Vs. B.Sarath Babu).**
8. This Court anxiously considered the submissions of the learned counsel on either side.
9. As pointed out earlier, the findings of the Tribunal regarding the cause of the accident is confirmed.
10. The income of the claimant is established by producing the salary certificates, which are marked as Ex.P6 and Ex.P14 and the evidence of the employer, PW.3. Therefore, the claimant's salary is taken as Rs.18,000/- p.m.
11. The learned counsel on either side have no quarrel over 40% arrived at by the Tribunal towards future prospects. Therefore, the claimant is entitled to Rs.18,000/- plus Rs.7200/- p.m. towards monthly income. Hence, a sum of Rs.25,200/- p.m. as monthly income would be

appropriate. Thus, the annual income of the claimant would come to Rs.3,02,400/- p.a.

12.Having regard to the nature of injuries and the evidence, this Court is inclined to take the functional disability at 40% instead of 75%. Since a deduction of a sum of Rs.14,240/- p.m. towards income tax is shown as per the salary certificate, the annual income of the claimant would come to Rs.2,88,160/- p.a. (Rs.3,02,400/- minus Rs.14,240/-). Then the loss of earning capacity would come to Rs.19,59,488/- (Rs.2,88,160/- x 17 x 40/100).

13.The claimant is entitled to a sum of Rs.3,85,030/- towards medical expenses as per the documents marked as Ex.P4 (Series). Awarding a sum of Rs.50,000/- towards pain and sufferings and a further sum of Rs.50,000/- towards loss of amenities and enjoyment is permissible. The claimant is also entitled to a further sum of Rs.50,000/- towards extra nourishment. In all, this Court is inclined to award a total compensation of Rs.24,94,518/-, which is rounded off to Rs.24,95,000/- to the claimant with interest at 7.5% p.a. from the date of the petition till the date of deposit and with costs.

14.In fine, the Civil Miscellaneous Appeal and the Cross Objection are disposed of, modifying the impugned award to the extent indicated above. In all, the claimant is entitled to a sum of Rs.24,95,000/-

(Rupees Twenty Four Lakhs Ninety Five Thousand only) as total compensation with interest at 7.5% p.a. from the date of the petition till the date of realisation and with proportionate costs.

15.It is admitted by the learned counsel on either side that the Insurance Company had already deposited a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) with proportionate interest and costs, pursuant to the interim order of this Court, dated 26.09.2016, however, the claimant has not withdrawn any amount. The Appellant Insurance Company is directed to deposit the balance of the award amount with interest 7.5% p.a. from the date of the petition till the date of deposit and with proportionate costs, as per the order of this Court, within a period of twelve weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is permitted to withdraw the entire award amount with accrued interest and proportionate costs, as awarded by this Court. Consequently, the connected MP are closed. No costs.

(S.S.S.R.J.) & (A.A.N.J.)
04.01.2023

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm

To

1. The Chief Judicial Magistrate (MACT) Tiruppur

S.S.SUNDAR, J.
and
A.A.NAKKIRAN

Srcm

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