

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 362 of 2015

S.K. Shukoor

..Appellant/Appellant

Vs.

1. M/s. Seaport Logistics (P) Ltd.,
No.42, Moore Street,
Chennai - 600 001.

2. The New India Assurance Co. Ltd.,
No. 45, 5th Floor, Moore Street,
Chennai.

..Respondents/1&2 Respondent

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 29.07.2010 passed in M.C.O.P. No. 3080 of 2006 by the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai.

For Appellant :: Mr.T.G. Ravichandran

For Respondents:: Mr.J. Chandran for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the claimant aggrieved over the award of Rs.11,05,068/- passed by the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai, for the injuries sustained by him in the accident, which occurred on 27.06.2006, while he was riding his bicycle, which was hit by a lorry belonging to the 1st respondent and insured with the 2nd respondent, driven in a rash and negligent manner.

2. Heard Mr.T.G. Ravichandran, learned counsel for the appellant and Mr. J. Chandran, learned counsel for the 2nd respondent.

3. The only issue is with regard to the quantum of compensation awarded by the Tribunal since the claimant alone is before this Court.

4. The claimant suffered fracture in the left leg and the portion below the right knee of the right leg was amputated. Further, he had suffered femur bone fracture in the left leg and it was joined with plates. The Doctor, who assessed the disability sustained by the claimant, was examined as P.W.3 and Ex-P12 is the Disability Certificate issued by him. Ex-P4 is the Medico Legal Register Copy maintained in National Hospital, Chennai, where the claimant was

treated, which reveals the nature of injuries suffered by the claimant. As per Ex-P6, Clinical Summary, as the claimant had left shaft of femur, right degloving injury with soft tissue and bony injury, wound debridement and K-wire fixation was done. Left femur external fixation was done and interlocking nailing closed right femur. Subsequently, transposition flap left ankle/SSG left thigh and both legs were done and epidural catheterisation for post op pain relief was also done. Therefore, based on the evidence of P.W.3, Doctor and other medical records, namely, Exs-P4 to P8, P11 and P12, the Tribunal rightly determined the disability at 95%. Moreover, the Tribunal had the benefit of seeing the claimant, whose leg was amputated. Therefore, the percentage of disability fixed by the Tribunal cannot be found fault with and the same is confirmed.

5. Though the appellant/claimant claimed a sum of Rs.5,500/- as his monthly income and in proof of the same, marked Exs-P9 and P10 and examined P.W.2 and based on the said oral and documentary evidence, the Tribunal fixed the monthly income of the appellant as Rs.5500/-, in the facts and circumstances of the case, this Court reduces the monthly income to Rs.4500/-. Though the claimant sustained 95% disability, practically, he lost his job, resulting in 100% loss of earning power. Therefore, considering the age of the claimant, namely, 23 years, this Court is inclined to add 50% towards "Future Prospects". Therefore, the total monthly income of the appellant/claimant would be,

Total monthly income:: Rs.4500/- + 50% (Rs.4500/-)
:: Rs.6750/-

The appropriate multiplier, as per the age of the appellant, is 17 years. Accordingly, applying the same, "Loss of Income due to disability" would be

Loss of Income due to disability :: Rs.6750 x 12 x 17
:: Rs.13,77,000/-

In view of the calculation of "Loss of Income due to disability" in the above manner, the amount of Rs.95,000/- awarded towards "Permanent Disability" stands deleted and so also, the amount of Rs.7,48,068/- awarded towards "Future Loss of Income/Earning Power". The sum of Rs.11,000/- awarded towards "Loss of Income during treatment", the sum of Rs.1,94,000/- awarded by the Tribunal, as per Ex-P8, Medical Bills, and the sum of Rs.50,000/- awarded towards "Pain and Suffering" are confirmed. The sum of Rs.2000/- awarded towards "Transportation Expenses" is too low and the same is enhanced to Rs.15,000/-. Likewise, the amount of Rs.5000/- awarded towards "Extra Nourishment" is too low and the same is enhanced to Rs.25,000/-. Further, a sum of Rs.50,000/- is awarded towards "Loss of Amenities". Hence, the award of Rs.11,05,068/- granted by the Tribunal is enhanced to Rs.17,22,000/-, rounded off to Rs.17 lakhs. The rate of interest awarded by the Tribunal at 7.5% per annum remains intact.

6. Since the entire amount, as per the award of the Tribunal, has already been deposited by the 2nd respondent before the Tribunal, the balance amount, as per the modified award passed by this Court, shall be deposited before the Tribunal within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to re-invest the same in interest bearing Fixed Deposit in Indian Bank, High Court Branch, Chennai, at least for a period of six years. The appellant/claimant is permitted to withdraw interest accruing on such deposit once in two months. The appellant/claimant shall pay the appropriate court-fee for the enhanced award amount.

7. In the result, the Civil Miscellaneous Appeal is allowed enhancing the award passed by the Tribunal. No costs. Connected M.P. is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nv

To

The II Judge, Motor Accident Claims Tribunal,
Court of Small Causes,
Chennai.

C.M.A. No. 362 of 2015

KK(CO)
EU 17.04.2015

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