

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 448 of 2015

M. Ganesh Sha

...Appellant/Petitioner

Vs.

1. Kubeersha

2. National Insurance Company Limited,
Door No.1, 66, Greams Road,
Chennai - 600 006.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal under section 173 of Motor Vehicles Act, 1988 as against the judgment and decree dated 17.12.2012 passed in M.C.O.P. No. 1636 of 2004 by the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai.

For Appellant : Mrs.T. Aananthi

For Respondents : Mr.S. Vadivel for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the claimant, not satisfied with the award of Rs.86,500/- 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 19.02.2004.

2. Heard Mrs.T. Aananthi, learned counsel for the appellant and Mr.S. Vadivel, learned counsel for the 2nd respondent.

3. It is seen from the records that the appellant/claimant sustained Type-1 Acromio Clavicular joint dislocation. P.W.2, Doctor, determined partial permanent disability at 35% as the claimant had

pain, stiffness, restricted movements; could not move his right shoulder above 90 degrees and had difficulty in lifting things. However, in the absence of any contra medical evidence, the Tribunal should not have reduced the percentage of disability to 30%. Therefore, this Court, accepting the evidence of P.W.2, Doctor, determines the disability at 35%.

4. As far as the quantum of compensation is concerned, the sum of Rs.1000/- awarded per percentage of disability is too low and therefore, this Court awards Rs.2000/- per percentage of disability, which amounts to Rs. 70,000/-. Hence, the sum of Rs.30,000/- awarded towards "Partial Permanent Disability" is enhanced to Rs.70,000/-. The sum of Rs.6000/- awarded towards "Loss of Income during treatment" and the sum of Rs.2000/- towards "Transportation Charges" are reasonable and they are confirmed. Likewise, the sum of 41,000/- awarded towards "Medical Expenses" as per Exs-P3 and P4 and Rs.500/- awarded towards "Damage to Clothes" are also confirmed. However, the amounts awarded towards "Extra Nourishment" and "Pain and Suffering" are too low and require enhancement. Hence, the sum of Rs.2000/- awarded towards "Extra Nourishment" is enhanced to Rs.10,000/- and the sum of Rs. 5000/- awarded towards "Pain and Suffering" is enhanced to Rs.15,000/-. In all, a sum of Rs. 1,44,500/- rounded off to Rs.1,50,000/- is payable as compensation to the appellant/claimant.

5. The 2nd respondent Insurance Company is directed to deposit the entire amount, as per the modified award passed by this Court, along with interest and costs, after deducting the amount, if any, already 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 appellant/claimant is permitted to withdraw the entire amount within a period of two weeks thereafter.

6. In the result, the Civil Miscellaneous Appeal is partly allowed enhancing the compensation payable to the appellant/claimant from Rs.86,500/- to Rs.1,50,000/-. No costs.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

nv

To

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

1 CC to Mr.S. Vadivel, Advocate SR.No. 13209

1 CC to Mrs.T. Aananthi, Advocate SR.No. 13194

C.M.A. No. 448 of 2015

UG (CO)
PSI (02.06.2015)



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