

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.NO.579 of 2015

M.Ismail

... Appellant

Vs.

1.C.Baskar

2.ICICI Lombard GI Insu. Co.

Chotabhai Towers,

No.140, Nungambakkam High Road,

Chennai-600 006.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 10.11.2014 made in MACT.OP.No.4938 of 2013 on the file of Motor Accident Claims Tribunal, (Court of Small Causes), Chennai.

For Appellant : Mr. M.Swamikkannu

For Respondents :

JUDGMENT

This appeal has been preferred by the claimant, aggrieved over the quantum of Rs.7,83,400/- awarded as compensation, for the injuries sustained by him, in the accident, which occurred on 27.07.2013.

2. Heard Mr.M.Swamikkannu, learned counsel appearing for the appellant, who would submit that the amount awarded by the Tribunal is on the lower side, as the claimant sustained various injuries including fractures, namely, fracture of bilateral 1st to 7th ribs. Based on P.W.2 Doctor's evidence, the Tribunal determined the disability at 55%, however, regarding the earning capacity fixed at 20%. Since 59 years old mutton stall owner sustained injuries, the Tribunal determined the loss of earning capacity at 20% and it cannot be found fault with. The claimant suffered displaced fracture of bilateral 1st to 7th ribs with chest wall hemotoma, right pneumothorax sub segment collapse of right lower lobe posterior basal and right upper lobe posterior and left lower lobe superior and posterior basal segments, lefty moderate hemothorax seen, fracture of D2 vertebral inferior end plate and spinous process. Therefore, neither

fixing the disability at 55% nor 20% towards loss of earning power can be found fault with. Accordingly, a sum of Rs.1,10,000/- awarded towards disability, Rs.1,34,400/- awarded towards loss of earning power, taking Rs.8,000/- as the monthly income of the injured, can be found fault with.

3. Further, a sum of Rs.48,000/- awarded towards loss of income for six months, Rs.10,000/- awarded towards transportation, Rs.15,000/- awarded towards extra-nourishment, Rs.1000/- awarded towards damage to cloths, Rs.3,10,000/- awarded towards medical expenses as per Exs.P3 to P6 and Rs.25,000/- awarded towards attender charges are confirmed.

4. However, the Tribunal made double payment awarding Rs.40,000/- towards mental agony as well as Rs.50,000/- awarded towards pain and sufferings. However, the learned counsel produced a Division Bench judgment of this Court in R.HARRISH Vs. G.DIVAKARAN AND OTHERS reported in 2014(1) TN MAC 657. In the said judgment, the Division Bench of this Court, merely went by the Tribunal award and enhanced the amount in each and every headings, where, mental agony as well as pain and sufferings have been enhanced. It is not explained therein as to how it is different from each other. When no such distinction has been made in the said judgment, it cannot be called ratio decidendi. The said judgment has been in the peculiar facts and the circumstances of that case and that cannot be mechanically followed. When a ratio has been laid down, that alone is to be followed by this Court and any other observation or factual finding cannot be binding of this Court as contended by the learned counsel appearing for the appellant. It is settled law that judgment cannot be read as stated. The learned counsel is unable to explain as to how the ratio decidendi has been decided in the above case. Therefore, the said judgment is of no use for the appellant.

5. In view of the above, Rs.40,000/- awarded by the Tribunal towards mental agony is sustained. A sum of Rs.50,000/- awarded by the Tribunal towards pain and suffering amounts to double payment and the same is deleted. Therefore, a sum of Rs.7,83,400/- awarded by the Tribunal in favour of the appellant is reduced to Rs.7,33,400/- along with interest at the rate of 7.5% p.a. This Court has got jurisdiction and power to reduce the award amount when it has been excessively granted to the claimant, when this Court has also similar power to enhance the compensation even in the absence of appeal/cross appeal by the claimant when it was found by this Court that the amount awarded by the Tribunal is inadequate or just compensation. Hence, by invoking Order 41 Rule 33 and Section 151 of CPC, this Court reduces the compensation awarded to the claimant even in the appeal by the claimant or even in the absence of appeal by the Insurance company.

6. In view of the above, the civil miscellaneous appeal is dismissed by reducing the amount of compensation awarded to the claimant from Rs.7,83,400/- to Rs.7,33,400/-. No costs. The second respondent Insurance Company is directed to deposit the entire modified award amount, minus the amount already deposited if any, along with interest at the rate of 7.5% p.a., and costs, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the entire modified award amount along with interest within one week thereafter.

7. After pronouncement of the order, the learned counsel for the appellant seeks leave to file appeal and the said request is rejected.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rrg
To

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

1 cc to Mr.M.Swamikannu ,Advocate, SR.No.17838

C.M.A.No.579 of 2015

cnr(co)
pmk.8.6.2015

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