

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 594 of 2015

&

M.P. No. 1 of 2015

M/s. Future Generali India Insurance
Co. Ltd.,
Plot No.55, (Old Plot No. 27),
1st, 2nd & 3rd Floor,
Vijaya Raghava Road,
T. Nagar, Chennai - 600 017. ..Appellant/2nd Respondent

Vs.

1. R. Murthy
2. P.R.R. Travels,
No.1, Puduchathiram Village,
Thiruvallur High Road,
Thirumazhisai - 601 207. ..Respondents/ Petitioner &
Respondents

Prayer: Civil Miscellaneous Appeal under Section 173 of Motor Vehicle act 1988 as against the judgment and decree dated 07.10.2014 passed in M.C.O.P. No. 4359 of 2012 by the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai.

For Appellant :: Mrs. Harini for
Mr.M.B. Gopalan

सत्यमेव जयते
J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the award of Rs.6,44,700/- passed by the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai, in favour of the 1st respondent, for the injuries sustained by him, in the accident, which occurred on 20.08.2012.

2. Heard Mrs. Harini, learned counsel representing Mr.M.B. Gopalan for the appellant.

3. Learned counsel for the appellant strenuously argued that the amounts awarded under various heads are excessive and the award

passed by the Tribunal, to the tune of Rs.6,44,700/- is on the higher side. She would specifically point out that the claimant was hospitalised only for five days initially and subsequently, for three days. Therefore, the amount of Rs.60,000/- awarded towards "Loss of income during treatment" is on the higher side and therefore, she seeks reduction of the award amount.

4. However, a close scrutiny of the award would show that the claimant sustained Grade I compound comminuted fracture of both bones of right leg, proximal third middle third junction with ipsilateral, fracture distal 3rd tibia with fracture 3, 4, 5 PPx right hand and next of 5th MC right hand and was treated as an in-patient from 20.08.2012 to 25.08.2012 and underwent surgery. Plates were implanted in his right leg tibia and patella and bone grafting was also done. Thereafter, he was treated as an in-patient from 08.03.2014 to 11.03.2014 during which period, he underwent surgery for implant removal and sequestrectomy was also done. The above facts are proved by Ex-P3, Accident Register issued by Stanley Hospital,, Chennai, Ex-P4, Discharge Summary issued by Right Hospitals, Ex-P5, Discharge Summary issued by Cauvery Trust Hospital and Ex-P9, Disability Certificate. That apart, P.W.2, Doctor, also spoke about the disability sustained by the claimant, who is a Welder by profession, aged about 50 years and assessed the disability at 60%. He would state that the fracture of patella bone was fixed with cancellous screws and due to infection removed, right leg deformed and scar adherence causing movement restriction by 40 degrees of leg and knee joint. According to the Doctor, the claimant has difficulty in standing, walking and doing active work. Further, since the claimant sustained fracture 3, 4, 5 of the right hand fingers and there was malunion of the fractured bones, there was restriction in movement of fingers and right hand grip got reduced. Though the Doctor fixed the disability at 60%, the Tribunal, taking into consideration, the evidence of P.W.2, fixed the disability at 55%. The said determination of disability by the Tribunal, based on P.W.2 Doctor's evidence and other medical records, cannot be found fault with and the same is confirmed.

5. Following the judgment of this Court rendered in Managing Director, Tamil Nadu State Transport Corporation, Kumbakonam Division, Trichy V. S. Kannappan reported in 2007 TN MAC Pg.1, a sum of Rs.2000/- was awarded for each percentage of disability, totalling to Rs.1,10,000/- towards "Continuing Permanent Disability". The said amount is very reasonable and the same is confirmed. Since the claimant suffered fracture in his right hand as well as in his right leg and underwent surgeries, he would have endured much pain and suffering and therefore, the sum of Rs.50,000/- awarded by the Tribunal towards "Pain and Suffering" is reasonable and the same is sustained. Likewise, the amount of Rs.40,000/- towards "Extra Nourishment"; another sum of Rs.40,000/- towards

"Transportation Expenses" and Rs.20,000/- towards "Attendant Charges" are justifiable and hence, they are confirmed.

6. Though this is a case wherein multiplier method is required to be adopted, for calculating "Loss of income due to disability", taking into consideration, the award in toto, this Court is inclined to confirm the amounts awarded under other heads as well, namely, Rs.1,50,000/- towards "Loss of Future Prospects"; Rs.60,000/- awarded towards "Loss of income during treatment period"; Rs.30,000/- towards "Loss of Amenities", since the right leg and right hand of the claimant were affected; Rs.1,26,665/- awarded towards "Medical Expenses" based on medical bills and Rs.3000/- towards "Damage to Clothes". Therefore, the award of Rs.6,44,665/- rounded off to Rs.6,44,700/- together with interest @ 7.5% per annum is confirmed.

7. Though the argument of the learned counsel for the appellant that the award is excessive, in a way, is acceptable, but the same cannot be sustained for the simple reason that the claimant sustained fracture in his right hand as well as his right leg, which has affected his avocation as a Welder.

8. The appellant Insurance Company is directed to deposit the entire award amount, with interest and costs, before the Tribunal, after deducting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is permitted to withdraw only 3,50,000/- and the balance amount shall be re-invested by the Tribunal in interest bearing Fixed Deposit, in Indian Bank, High Court Branch, Madras, at least for a period of 6 years. The claimant is permitted to withdraw interest accruing on such deposit once in two months.

9. In the result, the Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal, to the tune of Rs.6,44,700/- is confirmed. No costs. Connected M.P. Is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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

+1 cc to M/s.M.B.Gopalan, Advocate, SR.19394.

krd 29/5

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