

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2015

CORAM

THE HONOURABLE Mr.JUSTICE N.KIRUBAKARAN

C.M.A.No.661 of 2015

Prabhu Dass

... Appellant/ Petitioner

Vs.

1.SRS Travels

Rep. by its Proprietor K.T.Rajasekar
No.23/53, Pillaiyar Koil Street
Somamangalam, Chennai

2.ICICI Lombard General Insurance Company Ltd.,

No.140, Nungambakkam High Road
Chennai - 600 034

... Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree of the Motor Accident Claims Tribunal (III Judge, Small Causes Court), Chennai dated 06.01.2015 made in M.C.O.P.No.4834 of 2012.

For Appellant : Mrs.Salim Fathima for Mr.S. Ravikumar

For Respondents: Mrs.R.Sreevidhya for R2

JUDGMENT

The appeal has been preferred by the claimant against the award of Rs.7,97,500/- as compensation for the injuries sustained by him, in the accident occurred on 02.08.2012.

2. Heard Mrs.Salim Fathima, learned counsel for the appellant and Mrs.R.Sreevidhya, learned counsel for the second respondent/insurance company.

3. The only question to be decided by this court is with regard to the quantum of compensation, as the Insurance company has not filed any appeal against the award.

4. The Tribunal considered the avocation of the injured, took Rs.7,000/- as the monthly income and determined the disability at 50%, applied multiplier 17, awarded a sum of Rs.7,14,000/- towards pecuniary loss and including other amounts, a sum of Rs.7,97,500/- has been awarded as compensation.

5. It is seen from the record no amount was awarded towards future prospects. As evident from Ex.P8, the claimant is having driving licence and therefore his avocation as driver cannot be questioned. As rightly taken by the Tribunal Rs.7,000/- would be a reasonable amount for a driver. As per the decisions of the Hon'ble Supreme Court in Santosh Devi's case as well as Sarala Verma's case, 50% is required to be added towards future prospects. If 50% is added towards future prospects, the monthly income would be Rs.7,000 + 50% = Rs.10,500/-.

6. Though the Tribunal adopted multiplier 17 for the age of 35, the correct multiplier would be 16. Therefore this court reduces the multiplier by 1. Though PW2-doctor on medical evidence determined the disability of the claimant at 70%, as the left leg was amputated below the knee, in the absence of any contra evidence, the Tribunal should not have reduced the disability at 50%. Moreover, whether the leg was amputated below the knee or above the knee, the result will be one and the same, namely the claimant may not be in a position to work as a driver. Therefore, this court determines the loss of earning capacity at 70%. Therefore, the loss of income is calculated as follows:

$$\text{Rs.7,000/-} + 50\% \times 12 \times 16 \times 70/100 = \text{Rs.14,11,200/-}$$

7. The Tribunal awarded Rs.10,000/- towards loss of income during the treatment period. Since this court has enhanced the loss of income as above, this additional loss of income is deleted. The Tribunal awarded a sum of Rs.10,000/- each towards, transportation and extra nourishment. The same does not require any enhancement and the same is confirmed. The Tribunal has further awarded Rs.500/- towards damage to clothes, Rs.10,000/- towards medical expenses, Rs.10,000/- towards loss of amenities and Rs.30,000/- towards pain and suffering. These amounts are reasonable and hence they are confirmed. The Tribunal has awarded Rs.3,000/- towards attender charges. The same is enhanced to Rs.10,000/-. Thus the award of Rs.7,97,500/- is enhanced to Rs.15,00,000/-. The break-up of enhanced compensation is as follows:

(1) Loss of Income	: Rs.14,11,200/-
(2) Transportation expenses	: Rs. 10,000/-
(3) Extra nourishment	: Rs. 10,000/-
(4) Damage to clothes	: Rs. 500/-
(5) Medical Expenses	: Rs. 10,000/-
(6) Attender charges	: Rs. 10,000/-
(7) Loss of Amenities	: Rs. 10,000/-
(8) Pain and suffering	: Rs. 30,000/-

Total	Rs.14,91,700/-
Rounded of to :	Rs.15,00,000/-

The rate of interest awarded by the Tribunal @ 7.5% per annum shall remain unaltered.

In the result, the Civil Miscellaneous Appeal is allowed enhancing the compensation from Rs.7,97,500/- to Rs.15,00,000/- along with interest @ 7.5% per annum from the date of petition till the date of deposit. The second respondent is directed to deposit the entire amount minus the amount already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellant is permitted to withdraw only 50% of the total amount. If already any amount was withdrawn, the same has to be taken into consideration and totally only 50% alone is required to be paid to the appellant/claimant. Balance 50% is directed to be deposited in interest paying accounts at least for a period of 10 years and the appellant is permitted to withdraw the interest once in every two months. However, there shall be no order as to cost.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

asr

To

The III Judge,
Motor Accident Claims Tribunal
Small Causes Court, Chennai

1 cc to Mr.S Ravikumar, Advocate, Sr. 32256

1 cc to Mr.R. Sreevidhya, Advocate, Sr. 32407

C.M.A.No.661 of 2015

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