

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.3.2015

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA.No.670 of 2015

Manoharan

... Appellant/ Petitioner

Versus

1) Managing Director,
Deepam Construction
No.4, Bye Pass Road,
Gandhi Nagar,
Thiruvannamalai Town.

2) The Divisional Manager,
The United India Insurance Co.Ltd.,
No.46, Kalpadi Road,
Vellore.

... Respondents/ Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the judgement and decree dated 6.9.2010 made in M.A.C.T.O.P.No.19 of 2004 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Thiruvannamalai.

For Appellant : Mr.F.Terry Chellaraja

For Respondents : Mr.P.Sankaranarayanan for R2

JUDGMENT

Aggrieved over the quantum of Rs.1,80,000/- awarded by the Tribunal, the claimant who sustained injuries in the accident occurred on 4.3.2002 has come before this Court for enhancement.

2. Heard Mr.F.Terry Chellaraja and Mr.P.Sankaranarayanan, learned counsel appearing for the second respondent-insurance company. The only question is with regard to the quantum of compensation as the claimant alone has come before this court by way of this appeal.

3. Taking note of amputation of right hand below the shoulder, PW2 Doctor, fixed the disability at 80%. Whereas, the

Tribunal fixed the disability at 50% and awarded Rs.50,000/- towards permanent disability. Totally Rs.1,80,000/- has been awarded.

4. Since the claimant sustained grievous injuries resulting in amputation of right hand below the shoulder by surgery dated 27.3.2002, PW2-Doctor assessed the disability at 80% considering the amputation of right knee four inches below the shoulder. In the absence of contra or rebuttal evidence, the Tribunal wrongly fixed disability at 50%. That apart the claimant cannot do any normal work which he could have done before the accident. Accordingly, the claimant should have sustained 100% loss of earning capacity. Therefore, this Court determines 100% loss of earning capacity.

5. Though Rs.5,000/- per month was claimed as income of the injured, in the absence of any evidence, this Court determines a sum of Rs.3000/- per month as per the judgment in The New India Assurance Company Limited vs. Smt.Kalpna and Ors reported in MANU/SC/0498/2007 = (2007)3SCC 538. 50% is to be added as future prospects as per the judgement in Syed Sadiq etc. vs. the Divisional Manager, United India Insurance Company Limited reported in 2014 (1) TN MAC 459. Accordingly 50% of the monthly income is added as future prospects and therefore, Rs.3000/- + 1500 = Rs.4500/- per month is awarded as loss of earning. The claimant was aged about 35 years and the appropriate multiplier is-16. The loss of earning is calculated as follows:
$$\text{Rs.3000/-} + 50\% \times 12 \times 16 = \text{Rs.8,64,000/-}.$$

6. The claimant would have suffered much more pain and suffering and mental agony because of the injuries sustained in the accident occurred on 4.3.2002 and by the subsequent surgery. Therefore, the award of Rs.40,000/- is enhanced to a sum of Rs.50,000/- towards pain and suffering. No amount was awarded towards amenities and therefore, Rs.50,000/- is awarded. The claimant was hospitalized from 4.3.2002 to 29.3.2002 and thereafter he took treatment as out patient. Hence a sum of Rs.10,000/- is awarded towards transportation. A separate amount was awarded towards extra nourishment and hence Rs.25,000/- is awarded towards extra nourishment. In all Rs.9,99,000/- rounded off to Rs.10,00,000/- is awarded. The appeal is allowed with the enhancement from Rs.1,80,000/- to Rs.10,00,000/-. No costs.

7. Since the loss of income has been arrived at Rs.8,64,000/-, the sum of Rs.50,000/- awarded towards permanent disability and Rs.50,000/- awarded towards loss of income are deleted. The rate of interest at 7.5% per annum awarded by the Tribunal is unaltered.

8. Mr.F.Terry Chellaraja, learned counsel appearing for the appellant would submit that the appellant restricted the interest due to the enhanced award amount from today till the date of deposit of the amount. In view of that the appellant is entitled to interest for the enhanced amount from today till the amount is deposited before the Tribunal. The respondent is directed to deposit the entire modified award amount along with interest and costs within four weeks from the date of the receipt of a copy of the order. On such deposit, the appellant is permitted to withdraw only 50% of the deposited award amount and the balance 50% amount is directed to be deposited in an interest bearing fixed deposit in any one of the nationalized banks even for the a period of six years. The appellant is also permitted to withdraw the interest once in every three months. The appellant is directed to pay the necessary additional court fee payable for the enhanced award amount within two weeks from the date of the receipt of a copy of the order.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

vk

To

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Thiruvannamalai.

1 cc to M/s.M. Malar, Advocate, Sr. 17537

1 cc to Mr.P. Senkaranarayanan, Advocate, sr. 17507

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