

N THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2015

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA No.693 OF 2015

and

M.P.No.1 of 2015

National Insurance Company Ltd.,
Motor Third Party Claims Cell,
No.751, Anna Salai,
Chennai - 600 002.

...Appellant/2nd Respondent

vs.

1.V.Kasi
2.V.Raman

...1st Respondent / Petitioner

...2nd Respondent/1st Respondent

Prayer :- Civil Miscellaneous Appeal filed under Section 173 of M.V. Act 1988 against the judgment and decree dated 27.10.2014 and made in MCOP No.2126/2012 on the file of the Motor Accidents Claims Tribunal, Chennai (in the IV Court of Small Causes, Chennai).

For Appellant : Mr.S.Vadivel

For Respondents : Mr.M.Swamikannu,
for R1 & R2.

JUDGMENT

The appeal has been preferred by the insurance company against the award of Rs.4,63,185/- as compensation, for the disability sustained by the claimant/first respondent in the accident occurred on 12.04.2012.

2. Heard Mr.S.Vadivel, learned counsel appearing for the appellant and Mr.M.Swamikannu, learned counsel appearing for the respondents / claimants.

3. The claimant is already a polio attack person and he sustained Grade 1 open fracture both bones mid. 3rd of left leg and had undergone surgery closed interlocking nailing of left tibia. He was treated as in-patient from 13.04.2012 to 15.04.2012. PW2 doctor assessed the disability based on medical records at 35% who deposed that the two bones got malunited and there is restriction in movement of the leg. The claimant is unable to squat properly on the floor and use the toilets. There is difficulty in standing for a long time and lifting heavy articles and walk. Therefore 35% was rightly determined by the doctor based on medical records and therefore the same cannot be found fault with. The tribunal awarded a sum of Rs.60,000/- towards disability and the said award of Rs.60,000/- is too low and therefore awarding of Rs.3,000/- per percentage, this court enhances the same to Rs.1,05,000/- under the head disability.

4. The claimant was hospitalised only for three days and therefore Rs.40,000/- awarded towards transportation, Rs.50,000/- towards extra nourishment, Rs.1,00,000/- towards Pain & Sufferings, Rs.50,000/- towards attender charges, Rs.60,000/- towards loss of income and Rs.30,000/- towards loss of amenities are all on the higher side and they are reduced to Rs.20,000/-, Rs.25,000/-, Rs.50,000/-, Rs.15,000/-, Rs.30,000/- and Rs.25,000/- respectively. Similarly, Rs.40,000/- awarded towards future medical expenses is reduced to Rs.25,000/-. However, Rs.3000/- awarded towards damages to clothes and Rs.30,185/- towards medical bills are all confirmed. Thus, the amount of Rs.4,63,185/- awarded by the tribunal is hereby reduced to Rs.3,28,185/-, rounded off to Rs.3,28,000/- break-up as follows -

(1) Disability	...	Rs. 1,05,000/-
(2) Transportation	...	Rs. 20,000/-
(3) Extra nourishment	...	Rs. 25,000/-
(4) Pain & Suffering	...	Rs. 50,000/-
(5) Medical expenses	...	Rs. 30,185/-
(6) Attender charges	...	Rs. 15,000/-
(7) Damages to clothes	...	Rs. 3,000/-
(8) Loss of income	...	Rs. 30,000/-
(9) Loss of amenities	...	Rs. 25,000/-
(10) Future medical expenses		Rs. 25,000/-
Total	...	Rs. 3,28,185/-
		=====

Rounded off to Rs.3,28,000/-.

The rate of interest awarded by the tribunal at 7.5% shall remain unaltered.

5. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

7. The appellant/insurance company is directed to deposit the compensation awarded by this Court alongwith interest and costs, if not already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the 1st respondent/claimant is permitted to withdraw the amount alongwith interest and costs, less the amount already withdrawn, if any. If the award amount has already been deposited, the appellant/insurance company is permitted to withdraw the excess amount available in the deposit.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

rgr

To

The IV Judge,
Court of Small Causes,
Chennai.

1 CC to Mr.S.Vadivel, Advocate SR.No. 29221

1 CC to Mr.M.Swamikannu, Advocate SR.No. 29153

CMA No.693 OF 2015

KK (CO)
PSI (10.07.2015)

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