

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2015

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

C.M.A. No. 700 of 2015

S. Nagarajan

... Appellant/Petitioner

Vs.

1. Mr. Bhagiyaraj

2. The National Insurance Company
Ltd.,
751, Anna Salai, III Floor,
Chennai - 600 002.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 11.09.2008 passed in M.C.O.P. No. 3495 of 2004 by the II Judge, Court of Small Causes, Chennai.

For Appellant : Mr.N.S. Sivakumar

For Respondents : Mr.N.B. Surekha for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the claimant aggrieved against the award of Rs. 1,27,900/- passed by the Motor Accidents Claims Tribunal (II Judge, Court of Small Causes), Chennai, for the injuries sustained by him in the accident, which occurred on 05.12.2003. सत्यमेव जयते

2. Heard Mr.N.S. Sivakumar, learned counsel for the appellant and Mrs. N.B. Surekha, learned counsel for the 2nd respondent.

3. The only question to be decided is with regard to the quantum of compensation awarded by the Tribunal.

4. It is seen from the records, especially, the evidence of Doctor P.W.2 and Exs-P2 to P10, P15 and P16, that the claimant sustained comminuted fracture of right tibia joint of upper + middle 1/3rd. Ex-P2 would prove that he took treatment in Southern Railway Hospital for 76 days as an in-patient and on 08.12.2003 and 04.02.2004, surgeries were performed on the petitioner. As per Ex-P3, he was treated as an in-patient in the said hospital for 13 days; as per Ex-P4, he had taken continuous treatment for 65 days and on 25.06.2004, he underwent a surgery; as per Ex-P5, the appellant had taken in-patient treatment in the very same hospital for 3 days and on 10.09.2004, he underwent another surgery; as per Ex-P6, he had taken continuous treatment as an in-patient for 8 days and on 20.10.2004, one more surgery was done; as per Ex-P7, he had taken in-patient treatment for 5 days; further as per Ex-P8, he had taken treatment in MIOT Hospitals on various dates as an out-patient and as per Ex-P9, he had taken continuous treatment in the said hospital for 3 days. To sum up, the appellant had taken in-patient treatment in Railway Hospital and MIOT Hospital 7 times, for nearly 173 days and had undergone five surgeries in Railway Hospital. Considering the status of the appellant, P.W.2, Doctor, assessed the disability at 70%. Since P.W.2 was not an Orthopaedic Surgeon, the Tribunal, instead of 70%, determined the disability at 58%. The said determination cannot be found fault with and the same is sustained. However, the sum of Rs.58,000/- awarded towards "Compensation for Permanent Disability" @ Rs.1000/- per percentage of disability is too low and therefore, this Court awards Rs.2000/- per percentage of disability, thereby enhancing the amount payable under the said caption to Rs.1,16,000/-.

5. As stated above, the appellant was hospitalised for 173 days and was treated as an in-patient 7 times and had undergone five surgeries. Therefore, the sum of Rs.20,000/- awarded towards "Pain and Suffering" is meagre and the same is enhanced to Rs.50,000/-. So also, the amount of Rs.1000/- awarded each towards "Extra Nourishment" and "Transportation Charges" is too negligible and the same is enhanced to Rs.30,000/- and Rs.10,000/- under the respective heads. The sum of Rs.42,000/- awarded towards "Loss of Earnings", taking into account, the continuous treatment undergone by the appellant, is reasonable and the same is confirmed. The amount of Rs. 5,900/- awarded towards "Medical Expenses" is also confirmed. Totally, a sum of Rs.2,53,900/- rounded off to Rs.2,50,000/- is payable as compensation to the appellant. The rate of interest awarded by the Tribunal at 7.5% per annum stands confirmed.

6. The 2nd respondent is directed to deposit the entire amount, as per the modified award passed by this Court, 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 the entire amount. The appropriate court-fee for the enhanced compensation amount, if any, shall be paid by the appellant.

7. In the result, the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal, to the tune of Rs.1,27,900/- is enhanced to Rs.2,50,000/- together with interest @ 7.5% per annum. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nv

To

The II Judge MACT (Court of Small Causes), Chennai.

+1cc to M/s.N.S.Sivakumar, Advocate, S.R.No.20374

+1cc to M/s.N.B.Surekha, Advocate, S.R.No.20230

C.M.A. No. 700 of 2015

MP (CO)
CA(30/04/2015)

सत्यमेव जयते

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