

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2015

C O R A M

THE HONOURABLE Ms.JUSTICE K.B.K.VASUKI

C.M.A.No.270 of 2010

T.Danial

...Appellant/Petitioner

Vs.

1. M.S.Mythili
remained ex parte before Lower Court.
2. United India Insurance Co. Ltd.
No.38, Anna Salai, Chennai- 600002....Respondents/Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree, dated 30.09.2009, passed in M.C.O.P.No.1340 of 2005, on the file of the Motor Accident Claims Tribunal (V Court of Small Causes) Chennai.

For Appellant : Mr.N.M.Muthurajan
1st Respondent : Ex parte
For 2nd Respondent : M/s.R.Vijaya Kamala

JUDGEMENT

The injured/claimant is the appellant herein. This Appeal is filed for enhancement of compensation of Rs.60,650/-, against the claim of Rs.3,00,000/-.

2. The claimant met with the accident and suffered injuries and also fracture on right tibia condyle, involving articular surface, and the fracture was mal-united, which in turn, resulted in restriction in the right knee movement. He was treated at Deepam Hospital as in-patient for 2 days, and though he was advised to undergo surgery, he got discharged from the Hospital on his own volition against the medical advice. Thereafter, it is reported that he underwent some native treatment.

3. The injured was later on, examined by P.W.2/Doctor for assessing the disability and the Doctor, after advising him to take X-Ray and after examining the X-ray, and after examining

him physically, was of the view that the disability sustained by him is partially permanent, and he cannot walk, run, climb stairs and squat, and he cannot also ride two wheeler. By observing so, P.W.2, in his Ex.P.9/Disability Certificate assessed the disability at 30%.

4. The claimant has, in his claim petition, claimed specific amount under various heads, amounting to Rs.3,00,000/-. However, the Tribunal, on the basis of the available evidence, awarded total sum of Rs.60,650/- under the following heads, i) Loss of earning, ii) Transport to Hospital, iii) Extra Nourishment, iv) Damage to clothing and articles, v) Medical Expenses, vi) Compensation for Attender's charges, vii) Compensation for pain and suffering and viii) Compensation for permanent disability. For better appreciation, the amount claimed by the petitioner and the amount awarded by the Tribunal is as follows:-

Sl	Heads	Claim	Award by Tribunal
i	Loss of Earning	Rs.60,000/-	Rs.15,000
i	Transport to Hospital	Rs.5,000/-	Rs.2,000
iii	Extra Nourishment	Rs.10,000	Rs.2,000
v	Damage to Clothing and articles	Rs.5,000	Rs.1,000
vi	Medical Expenses	Rs.15,000	Rs.2,615
viii	Compensation for attender	Rs.10,000	Rs.3,000
ix	Compensation for pain and suffering	Rs.50,000	Rs.5,000
x	Compensation for permanent disability	Rs.1,00,000	Rs.30,000
xi	Compensation for the loss of Earning power	Rs.45,000	Nil
	Total	Rs.3,00,000/-	Rs.60,615 / (rounded off to Rs.60,650)

5. In this Appeal, the respondent/claimant has sought for enhancement of award not only under heads, as mentioned supra, but also under the head "Loss of Earning Power.

6. With regard to the claim for compensation for loss of income during the treatment and loss of future income due to loss of earning capacity on the ground of disability sustained by him, P.W.1 says that due to the disability sustained by him, he finds it very difficult to carry on his avocation as LIC agent, as before, as he is unable to go and meet the clients to secure new insurance policies. P.W.2/Doctor also, in his evidence, stated that, the claimant cannot ride two wheeler to go and meet his clients for canvassing LIC Policies, and his inability to do such work has resulted in reduction of income of his work and loss of income by way of commission due to the LIC Agent.

7. The learned counsel appearing for the appellant would contend that the Tribunal, having accepted the nature and extent of permanent disability sustained by the claimant, and the nature of avocation carried on by him, ought to have, by accepting the medical evidence, awarded reasonable sum towards loss of earning power. In my considered view, having regard to the nature of disability, total functional disability can be restricted to 10% and the loss of earning power can be, by applying the multiplier method, fixed at Rs.90,000/-.

8. This Court is also of the view that compensation can be reasonably enhanced under other heads, viz., Transport to Hospital, ii) Extra Nourishment, ii) Medical Expenses, iv) Pain and suffering and v) Permanent disability. Accordingly, the compensation claimed by the claimant is enhanced as follows:-

i) Loss of Earning	:	Rs.15,000/-
ii) Transport to Hospital	:	Rs. 5,000/-
iii) Extra Nourishment	:	Rs.10,000/-
iv) Damage to Clothing and articles	:	Rs.1,000/-
v) Medical Expenses	:	Rs.10,000/-
vi) Compensation for Attender	:	Rs.3,000/-
vii) Pain and suffering	:	Rs.20,000/-
viii) Permanent disability	:	Rs.45,000/-
ix) Loss of Earning power	:	Rs.90,000/-
Total	:	Rs.1,99,000/-

The said amount of Rs.1,99,000/- is rounded off to Rs.2,00,000/-, and the same is payable with interest at the rate of 7.5% from the date of Petition till the date of deposit.

9. In the result, the Civil Miscellaneous Appeal stands allowed and the compensation awarded by the Tribunal is enhanced from Rs.60,650/- to Rs.2,00,000/- with interest at 7.5% from the date of Petition till the date of deposit. Time for deposit of the balance amount is four weeks from the date of receipt of

a copy of this judgment. On such deposit, the claimant is entitled to withdraw the entire amount by filing necessary cheque application. No costs.

sd

-s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

To

1. The Motor Accident Claims Tribunal
(V Court of Small Causes) Chennai.

2. The Section Officer, V.R. Section,
High Court, Madras.

+ 1 cc to Mr.N.M.Muthurajan, Advocate SR 41196

+ 1 cc to M/s.R.Vijayakamala, Advocate SR 41313

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