

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.NO.3101 of 2010

K.Ramar

...Appellant/
Petitioner in Tribunal Below

vs.

1. Jothimani
2. United India Insurance Co. Ltd.,
13.A, Nethaji Road,
Manjakuppam,
Cuddalore.

...Respondents/
Respondents in Tribunal Below

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act 1988 against the judgment and decree dated 30.09.2009 made in M.C.O.P.No.2967 of 2008 on the file of the Motor Accident Claims Tribunal, District Court, Cuddalore.

For Appellant : Mr.D.S.Thirumavalavan

For Respondents : Mr.J.Chandran for R2

JUDGMENT

The appeal has been preferred by the claimant, aggrieved over the quantum of Rs.4,33,000/- for the injury sustained by him in the accident, which occurred on 27.04.2008. There is no appeal by the Insurance Company and only the claimant has filed the appeal aggrieved over the quantum of compensation.

2. Heard Mr.Thirumavalavan, learned counsel appearing for the appellant and Mr.J.Chandran, learned counsel appearing for the second respondent-Insurance Company.

3. The appellant left leg was amputated and there is a fracture of right leg, fracture of right hand, removal of the knee ball, lacerated and cut injury over forehead, fracture of the left thigh, fracture of the right leg big toe and lacerated injury over the left eye brow. Though P.W.2, Doctor spoke about disability at 75% for amputation of left leg and 50% disability for fracture of his right hand and right leg big toe, 40% disability was determined by the Tribunal. The said determination is too low. As per P.W.2's evidence as well as medical records, it is evident that the claimant left leg was amputated and there are four fractures in the left and right legs and therefore, the disability suffered by the claimant should not less than 70% and therefore, 70% disability is determined by this Court.

4. The appellant claims to be a Barber and earning about Rs.7,500/- per month. However, the Tribunal determined Rs.5,000/- as monthly income and adopted multiplier 17 and determined the loss of income at Rs.4,08,000/-. In the year 2008, the loss of income fixed at Rs.5,000/- is too low and the same is enhanced to Rs.6,000/-. Following the judgment of the Honourable Supreme Court in Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 (2) TNMAC 1, 50% is required to be added as future prospects as the appellant is aged about 27 years and the loss of income would be $Rs.6,000 + 50\% \times 12 \times 17 \times 70 / 100 = 12,85,200/-$. Rs.15,000/- awarded towards pain and suffering is too low and the same is enhanced to Rs.50,000/-. No amount was awarded towards loss of amenities and hence, Rs.50,000/- is awarded. Since the petitioner admitted more than thrice in Chennai Hospital, a sum of Rs.25,000/- is awarded towards transportation. Rs.5,000/- awarded towards grievous injuries is unwarranted and the same is deleted. A sum of Rs.5,026/- awarded towards medical expenses is confirmed. No amount was awarded towards nourishment and therefore, a sum of Rs.35,000/- is awarded. Totally, this Court awards a sum of Rs.14,50,026/- as compensation, rounded off to Rs.14,50,000/-. The rate of interest awarded by the Tribunal is at 6% p.a remains unaltered.

5. This Civil Miscellaneous Appeal is partly allowed by enhancing the amount of Rs.4,33,000/- to Rs.14,50,000/- along with interest at 6% p.a. No costs.

6. Though the appeal is restricted to Rs.5 Lakhs, taking into consideration all over the circumstances and evidence on record, this Court awards totally a sum of Rs.14,50,000/-, in an endeavor to award just compensation, invoking Order 47 Rule 33 of the Code of Civil Procedure. Moreover, the provisions of Motor Vehicles Act are

beneficial in nature.

7. The second respondent/Insurance Company is directed to deposit the entire amount along with interest and costs, as per the modified award passed by this Court, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant is permitted to withdraw the entire amount with accrued interest, within one week thereafter.

Sd/-
Deputy Registrar(J)

//True Copy//

Sub Assistant Registrar

vsm

To

The Motor Accident Claims Tribunal/
District Judge, Cuddalore.

2 CCs to Mr.D.S.Thirumavalavan, Advocate SR.No.4355

Copy to

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

C.M.A.NO.3101 of 2010

JP (CO)
PSI (26.02.2015)

सत्यमेव जयते

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