

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.1.2015

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA.No.3492 of 2009

Selvam @ Muttaiakannan ... Appellant / Petitioner

-Versus-

1.Mahalingam
2.The Divisional Manager,
The New India Assurance Co.Ltd.,
No.106,Periya Street,
Tiruvannamalai. ... Respondents/ Respondents

This civil Miscellaneous appeal is filed under Section 173 of the Motor Vehicles Act 1988 against the judgement and decree dated 9.9.2009 made in MCOP.No.855/2006 on the file of the Motor Accident Claims Tribunal-cum-Additional Sub Judge, Tiruvannamalai.

For Appellant : Mr.F.Terry Chellaraja

For Respondents :Mr.R.Neethi Perumal for R2
R1-Exparte

J U D G E M E N T

The appeal has been preferred by the claimant aggrieved over the award of Rs.5,60,842/- for the injuries sustained by him in the accident occurred 17.1.2006.

2. Heard Mr.F.Terry Chellaraja, learned counsel appearing for the appellant and Mr.R.Neethi Perumal, learned counsel appearing for the second respondent-Insurance Company. The quantum of compensation is not required to be gone into as there is no appeal filed by the insurance company. The only question in the appeal is with regard to the quantum.

3. Though, the learned counsel appearing for the first respondent would submit that the insurer is not liable, as cattles were transported in the goods vehicle, there is oral evidence of

RTO, that no Rule of Motor Vehicles Act, prohibits for carrying cattle and there is no requirement of permission from the authority. In view of that, the contention of the insurance company is rejected.

4. The victim was aged about 21 years, who is stated to have worked as a cleaner at the time of accident. He sustained injuries leading to amputation of right leg above the knee. The Tribunal based on PW2 Doctor's evidence, Ex.P3, wound certificate, Ex.P6, discharge summary and Ex.P8, Disability Certificate, fixed the disability at 80%. Though PW2 doctor, determined the disability at 85%, the Tribunal awarded Rs.4,89,600/- for 80% disability.

5. Firstly, the claimant who is a cleaner, lost his leg above the knee and therefore, there is loss of avocation. Secondly he has to depend someone even to do his own work. Therefore, he cannot do any work like a normal man or he cannot function as he was before the accident. Hence, 100% loss of earning power because of accident is proved and the loss of income has to be enhanced. The Tribunal, as per the claim petition fixed the monthly income at Rs.3000/- per month. As the claimant is aged about 21 years at the time of accident, following the judgement of the Hon'ble Supreme Court in Sarla Verma v. DTC, reported in 2009 (2) TN MAC 1 (SC), 50% is required to be added as future prospects. If 50% is added to, the loss of income would be Rs.4500/- per month. As per Sarla Verma case appropriate multiplier is-18 and hence, the loss of income is calculated as follows:
$$\text{Rs.3000/-} + 50\% \times 12 \times 18 = \text{Rs.9,72,000/-}.$$

6. Rs.8750/- awarded towards transportation is confirmed. Rs.10,492.45/- awarded towards medical expenses is also confirmed. Rs.2000/- awarded towards extra nourishment is very low and the same is enhanced to Rs.25000/-. Considering the nature of injury and amputation of leg above knee, Rs.25,000/- awarded towards pain and suffering is low and the same is enhanced to Rs.50,000/-. Since no amount is awarded towards loss of amenities, Rs.25,000/- is awarded. For fixation of artificial leg, a sum of Rs.25,000/- is awarded. Since the claimant was admitted in the hospital for a long time of 42 days, appropriate attender charge has to be given. Therefore, a sum of Rs.10,000/- is awarded. 7.5% interest given by the Tribunal is confirmed. The award of the Tribunal Rs.5,60,842/- is enhanced to Rs.11,01,242.45/- rounded to Rs.11,00,000/-.

7. The second respondent is directed to deposit the entire award amount along with interest and costs as per the order of this court within four weeks from the date of the receipt of a copy of the order after deducting the amount, which was already deposited and on such deposit, the appellant is permitted to withdraw 50% of the entire award amount and the balance 50% of the entire award amount is directed to be deposited in an interest bearing fixed

deposit in any one of the nationalized banks. The office is directed to issue order copy directly to the appellant at free of cost. The appeal is allowed. No costs.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

vk

To: Motor Accident Claims Tribunal-cum-Additional Sub Judge,
Tiruvannamalai.

Copy to

Selvam @ MuttaiKannan
S/o. Elumalai
Karuveppilaipalayam Village
Sathanur Veethi
Madppattu post
Ulundurpettai Taluk
Villupuram District

Copy to

The Section Officer
VR Section,
High Court, Madras

1 cc to M/s.R. Neethiperumal, Advocate, Sr. 1887
1 cc to M/s.M. Malar, Advocate, sr. 1880

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