

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2016

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No. 1398 of 2015

and

M.P. No. 1 of 2015

The Oriental Insurance Co. Ltd.,
No.84, Prakasam Salai,
Maharashtra Building,
Esplanade Road,
Chennai-600 108.Appellant /2nd Respondent

Versus

1. N. Venkatesan 1st Respondent/Petitioner

2. M. Chandru2nd Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicle Act,
1988 against the Award and decree dated 06.02.2015 made in O.P.
No. 3709 of 2011 on the4 file of the Motor Accident Claims
Tribunal (In the VI Court of Small Causes), Chennai.

For appellant : Mr. D. Bhaskaran

For respondent : Terry Chellaraja (R1)
No appearance (R2)

JUDGMENT

The claimant N. Venkatesan, who was aged about 24 years, a
Mason, earning a sum of Rs.300/- per day, filed a claim petition
in M.C.O.P.No.3709 of 2011, claiming a compensation of
Rs.10,00,000/- in respect of the injuries sustained by him in an
accident that took place on 16.08.2011.

2. The Tribunal, on considering the oral and documentary
evidence adduced on either side, has awarded a sum of Rs.
6,22,200/-. The break-up details of the same are as under:

Disability	-	Rs.1,65,000
Pain and Sufferings	-	Rs.1,00,000
Extra Nourishment	-	Rs. 75,000
Transport to Hospital	-	Rs. 50,000

Damages to Clothes	-	Rs. 3,000
Attender Charges	-	Rs. 40,000
Loss of earning	-	Rs. 39,000
Medical Expenses	-	Rs. 200
Loss of Amenities	-	Rs. 50,000
Loss of earning Power	-	Rs. 1,00,000

Total	-	Rs. 6,22,200

3. Challenging the quantum of compensation as excessive, this Civil Miscellaneous Appeal has been preferred by the Insurance Company.

4. The learned counsel for the appellant would submit that P.W/2- the Doctor, who examined the claimant, in his evidence, has stated that the injuries sustained by the claimant, are permanent partial disability in nature and he has given Disability Certificate (Ex. P7) stating the disability percentage as 60%, which is excessive.

5. The learned counsel for the claimant would contend that even though disability has been spoken by the Doctor @ 60%, the Tribunal has taken disability @ 55%. therefore, the compensation awarded to the claimant in respect of disability is inadequate.

6. In order to appreciate the contentions raised, it is necessary to look into the award passed by the Tribunal.

7. A perusal of the award passed by the Tribunal, it is seen that the claimant has sustained fracture shaft of femur right and he underwent surgery with implantation and also treated as inpatient for 38 days. The Doctor has certified the disability at 60%. However, the Tribunal has taken the disability at 55%. As per the decision of this Court reported in 2013(5) TNMAC 583, the disability compensation has been awarded at the rate of Rs. 1000/- per percentage of disability and in nature of avocation, nature of injuries and the period of treatment, the Tribunal has awarded a sum of Rs. 1,00,000/- towards loss of earning power and Rs.39,000/- towards loss of earning.

7.1. Considering the nature of injuries, the period of treatment and loss of earning capacity due the injuries, the Court is of the view that the compensation of Rs.1,00,000/- towards pain and sufferings, Rs.75,000/- towards extra nourishment and Rs.50,000/- towards Transportation are excessive and it has to be reduced. The compensation awarded by the Tribunal is restructured as follows:

Disability	-	Rs.1,65,000
Pain and Sufferings	-	Rs. 50,000
Extra Nourishment	-	Rs. 50,000
Transport to Hospital	-	Rs. 25,000
Damages to Clothes	-	Rs. 3,000
Attender Charges	-	Rs. 40,000
Loss of earning	-	Rs. 39,000
Medical Expenses	-	Rs. 200
Loss of Amenities	-	Rs. 50,000
Loss of earning Power	-	Rs. 1,00,000

Total	-	Rs. 5,22,200
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8. In the result, the Civil Miscellaneous Appeal is party allowed, reducing the compensation from Rs. 6,22,2000/- to Rs. 5,22,000/-, payable with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

9. It is represented that the Insurance Company has already deposited the entire amount of compensation awarded by the tribunal. Therefore, the claimant is entitled to withdraw a sum of Rs.5,22,000/-, along with proportionate interest. The balance amount will be payable to the Insurance Company. No Costs. Consequently, connect Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ogy/arr

To

1. The Motor Accidents Claims Tribunal (In the IV Court of Small Causes), Chennai.

COPY TO

The Section Officer, VR Section,
High Court, Madras.

- +1cc to Mr.M.Malar, Advocate, S.R.No.73155
- +1cc to Mr.D.Bhaskaran, Advocate, S.R.No.73385

C.M.A. No. 1398 of 2015

RSY(CO)
GN(12/10/2017)