

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 29.04.2016

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.173 of 2016

The Divisional Manager,
The New India Assurance Company Ltd.,
Divisional Office,
No.1, Bharathi Road,
Cuddalore - 607 001.

..Appellant/2nd Respondent

Vs.

1. K. Kumar ..1st Respondent/Petitioner
2. MD. Ramzal Ali ..2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 28.07.2015 made in M.C.O.P.No.2499 of 2013 on the file of the Motor Accidents Claims Tribunal, II Additional Subordinate Judge, Cuddalore.

For Appellant : Mr.J.Chandran

For 1st Respondent: Mr.R.Sreedhar

J U D G M E N T

The Insurance Company has come up with the present appeal mainly challenging the quantum of compensation awarded by the Tribunal.

2. In an accident which occurred on 19.08.2013, about 8.30 p.m., the claimant sustained grievous injuries and immediately, he was admitted in Government Headquarters Hospital, Cuddalore for treatment. Thereafter, the claimant underwent treatment in various private hospitals. He filed a claim petition before the Tribunal seeking a sum of Rs.25,00,000/- as compensation for the injuries.

3. The Tribunal, on consideration of the oral and documentary evidence, held that the accident occurred due to the rash and negligent driving of the Driver of the Lorry and awarded a sum of Rs.11,80,500/- as compensation to the claimant with interest at 7.5% per annum. Break-up details of the award as thus:

Heads	Amount
Loss of earning capacity	Rs. 9,90,000.00
Transport to Hospital	Rs. 5,000.00
Special Diet	Rs. 5,000.00
Loss of Income (3 months)	Rs. 15,000.00
Pain and Suffering	Rs. 57,500.00
Attendant charges	Rs. 5,000.00
Medical expenses	Rs. 13,000.00
Loss of amenities for whole body (30% x 3000)	Rs. 90,000.00
Total	Rs.11,80,50 0.00

4. Learned counsel appearing for the appellant/Insurance Company strenuously contended that the compensation awarded by the Tribunal is highly excessive. It is his further contention that the Tribunal erred in fixing the permanent disability of the claimant at 90%, in the absence of any wound certificate. In all, he sought reduction of the compensation awarded by the Tribunal.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. According to the claimant, he was aged 52 years at the time of accident and was carrying on his avocation as a Fisherman, doing whole sale Fish business, earning a sum of Rs.20,000/- per month. But, the Tribunal fixed the notional income of the claimant at Rs.5,000/- and the same is acceptable by this Court.

7. Coming to the disability fixed by the Tribunal, on a perusal of Ex.P17 - Disability Certificate issued by P.W.2 - Doctor, it is seen that the claimant sustained Degloving injury right distal arm, right elbow right forearm, Monteggia fracture dislocation right elbow median nerve palsy, Degloving injury right leg C Undisplaced fracture medial malleous, and P.W.2-Doctor fixed the disability of the claimant at 90%. Since the injuries sustained by the claimant would restrain him from continuing his avocation as a Fisherman, the Tribunal fixed his permanent disability at 100%.

8. Undoubtedly, due to the injuries sustained, the claimant will not be in a position to continue his avocation. But, this Court is of the view that future prospects need not be considered on account of the age of the claimant. Thus, taking the monthly income of the claimant at Rs.5000/-, applying the multiplier of '11' and fixing his permanent disability at 90%, the compensation towards "Loss of earning capacity" is reduced to a sum of Rs.5,94,000/- (Rs.5,000/- x 12 x 11 x 90%).

9. As far as the compensation awarded towards 'Loss of amenities' is concerned, this Court feels it appropriate to reduce the compensation to a sum of Rs.40,000/-. The compensation awarded under other heads are confirmed. Details of the revised award are thus:

Heads	Amount awarded by the Tribunal	Amount awarded by this Court
Loss of earning capacity	Rs. 9,90,000.00	Rs. 5,94,000.00
Transport to Hospital	Rs. 5,000.00	Rs. 5,000.00
Special Diet	Rs. 5,000.00	Rs. 5,000.00
Loss of Income (3 months)	Rs. 15,000.00	Rs. 15,000.00
Pain and Suffering	Rs. 57,500.00	Rs. 57,500.00
Attendant charges	Rs. 5,000.00	Rs. 5,000.00
Medical expenses	Rs. 13,000.00	Rs. 13,000.00
Loss of amenities for whole body	Rs. 90,000.00	Rs. 40,000.00
Total	Rs.11,80,500.00	Rs. 7,34,500.00

10. In fine, the claimant is entitled to a sum of Rs.7,34,500/- (Rupees Seven Lakhs Thirty Four Thousand Five Hundred only) as revised compensation and the interest at 7.5% per annum is confirmed. The appellant/Insurance Company is directed to deposit the compensation awarded by this Court along with accrued interest to the credit of M.C.O.P.No.2499 of 2013 on the file of the Motor Accidents Claims Tribunal, II Additional Subordinate Judge, Cuddalore, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimant shall be paid the entire amount awarded by this Court along with accrued interest, by means of a crossed Account Payee Cheque, favouring only him and it shall not be issued in favour of any other person/Company.

11. The Trial Court is expected to follow the procedures contemplated in the order dated 11.03.2016 passed by a Division Bench of this Court in C.M.A.No.428 of 2016, scrupulously.

The Civil Miscellaneous Appeal is allowed to the extent indicated above. No costs. Consequently, connected C.M.P.No.1644 of 2016 is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

aeb

To:

The II Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Cuddalore.

+1cc to M/s. R. Sreedhar, Advocate, S.R.No.27553

+1cc to M/s.J. Chandran, Advocate, S.R.No.27626

RSI (CO)

EU(09/11/2016)

C.M.A.No.173 of 2016

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