

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.12.2016

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.1865 of 2014

B.D.Sridhar

.. Appellant/Petitioner

Versus

1.E.Kantha

2.Royal Sundaram Alliance Insurance Co., Ltd.,
Subramaniam Buildings, 2nd Floor,
No.1, Club House Road,
Anna Salai, Chennai-2 .. Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 as against the decree and judgment dated 27.02.2014 made in M.C.O.P.No.2436 of 2012 on the file of Motor Accident Claims Tribunal, (IV Small Causes Court) Chennai.

For appellant : Mr.K.Varadha Kamaraj

For respondent : Mr.N.Vijayaraghavan (R2)
R1- No Appearance

JUDGMENT

The Claimant B.D.Sridhar, aged 55 years, employed as a Superintendent in Regional Passport Office, Chennai, earning a sum of Rs.36,511/- per month, met with an accident on 17.04.2012 at 8.00 A.M. and sustained injuries and fracture in the right hip. Hence, he filed a claim petition in M.C.O.P.No.2436 of 2012, before the Motor Accident Claims Tribunal, Chennai.

2. The Tribunal, on considering the oral and documentary evidence has awarded a sum of Rs.5,13,400/- and the break-up details of the same are as under:

Transport to Hospital	-	Rs. 10,000/-
Extra nourishment	-	Rs. 10,000/-
Damages to clothes	-	Rs. 1,000/-
Medical Expenses	-	Rs. 3,24,355/-
Loss of amenities	-	Rs. 15,000/-
Attender charges	-	Rs. 9,000/-
Pain and Suffering	-	Rs. 45,000/-
Disability of 55% at		
Rs.1,800/- per percentage	Rs.	99,000/-

Total

Rs.5,13,355/-

3. Contending that the amount awarded by the Tribunal is inadequate, the claimant has filed this appeal seeking enhancement of compensation.

4. The contention of the claimant is that the amount awarded towards permanent disablement is inadequate; the Tribunal was wrong in not awarding the compensation towards loss of earning power and it ought to have awarded the said compensation considering the nature of injuries and period of treatment. It is his further contention that the tribunal ought not to have reduced the disability from 60% to 55% and it ought to have fixed the disability as assessed by Doctor (P.W.2).

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

6. A perusal of the award passed would go to show that the Tribunal has awarded only a sum of Rs.10,000/- towards transport expenses and Rs.10,000/- towards Extra Nourishment, which are inadequate. Having regard to the nature of the injuries, period of treatment and consequences of the disablement, appropriate compensation have to be passed. Hence, compensation awarded towards extra nourishment and Transport Expenses is enhanced to Rs.20,000/- each.

7. Coming to the loss of enjoyment of amenities and compensation awarded for disablement, the Court has to consider the nature of disablement suffered, period of treatment and nature of injuries suffered. The Claims Tribunal has discussed about the same, in point No.3, paragraph 9 of the Judgment and the same is extracted hereunder:

"From the evidence of P.W.1, he sustained injuries in the accident and immediately after the accident he was taken to Bone and Joint Hospital wherein he was treated as inpatient. Ex.P3 Discharge summary issued by Soundarapandian Bone and Joint Hospital & Research Institute Pvt. Ltd., shows he sustained comminuted segmental fracture of right femur with posterior column fracture acetabulum right hip with fracture of neck of femur right hip and was treated as inpatient from 17.04.2012 to 02.05.2015 and undergone surgery thereby AFN IM nailing, and recon plate ORIF for acetabulum, wound debridement and suturing were done. Ex.P4 is the certificate regarding the above said treatment. P.W.1 deposed that he was working as Superintendent

in Passport Office, Chennai and earning Rs.36,551/- per month at the time of accident and that after the accident he walking only with the help of stick and also he finds difficulty in climbing steps and using Indian Toilet. P.W.2 Dr.K.J.Mathizhagan assessed the disability of the petitioner at 60% stating that the petitioner had suffered fracture in right hip and right thigh and surgery was performed with implantations, pain and stiffness in right hip and thigh, movement is restricted, fractured bones are malunited and the petitioner has got difficulty in walking fast, climbing steps, squatting cross legged and sitting and he walk with stick only. Exs.P10 and P11 are the disability certificate and X-ray. P.W.2 has got given treatment to the petitioner and he assessed the disability after the lapse of one year. PW2 also deposed that he has not seen the further treatment records and he has not fixed X-ray report in support of his assessment. He also admits that the injuries sustained by the petitioner is not schedule injury. Under such circumstances, the disability assessed at 60% is on the higher side. However considering the comminuted segmental fracture of right femur with posterior column fracture acetabulum right hip with fracture of neck of femur right hip, the disability caused to the petitioner is fixed at 55%. Considering the age of the petitioner as 55 years, Rs.1800/- is awarded per percentage."

8. As per the evidence of P.W.2, the nature of disability would cause certainly loss of enjoyment of amenities. But, the Tribunal awarded the compensation of Rs.15,000/- towards loss of enjoyment of amenities, which is very low and it is enhanced to Rs.50,000/-. In respect of disablement is concerned, it is estimated at Rs.1800/- per percentage of disability, which is inadequate and hence a sum of Rs.3,000/- is awarded per percentage of disability. Therefore, a sum of Rs.1,65,000/- (Rs.3,000/- x 55%) is awarded under the head 'disability'. Accordingly, the award is enhanced from Rs.5,13,355/- to Rs.6,34,355/-.

9. In the result, this Civil Miscellaneous Appeal is partly allowed, enhancing the quantum of compensation from Rs.5,13,355/- to Rs.6,34,355/-, which is payable with interest

at the rate of 7.5% from the date of petition till the date of deposit.

10. The Insurance Company is directed to deposit the enhanced amount of compensation, less the amount already deposited if any, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw on making necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
(IV Small Causes Court) Chennai.

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.74937
+1cc to Mr.M.B.Gopalan Associates, Advocate, S.R.No.76028

C.M.A. No.1865 of 2014

RSY(CO)
GN(13/10/2017)

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