

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2016

CORAM

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

C.M.A. No.959 of 2016

Asaithambi

..Appellant/Petitioner

Vs.

1.M/s.Gas Links,
No.390/240/3, P.H.Road,
Aminjikarai, Chennai-600 029.

2. United India Insurance Co. Ltd.,
No.23/81, Nainiappa Naicken Street,
Chennai-600 003. ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal as against the order and decretal order dated 05.11.2015 made in M.C.O.P. No.1099 of 2013 on the file of Motor Accident Claims Tribunal III Court of Small Causes, Court, Chennai.

For Appellant :: Mr.S.Ravikumar

J U D G M E N T

Not being satisfied with the award passed by the Tribunal, the present appeal is filed by the claimant as against the award dated 05.11.2015 made in M.C.O.P.No.1099 of 2013 on the file of the Motor Accidents Claims Tribunal, (IV Judge, Court of Small Causes) Chennai.

2. The learned counsel appearing for the appellant/claimant submitted that on account of the accident, the victim had sustained fracture in his both legs, facial injury, injury in his both hands and multiple internal and external injuries all over the body. The doctor who was examined as P.W.2 had assessed the disability at 70%. The Tribunal ought not to have reduced the disability fixed by PW.2/doctor and had erroneously fixed the disability at 50% and that the compensation awarded under the head 'disability' has to be enhanced. Further, learned counsel for the appellant contended that the Tribunal ought to have applied multiplier method for awarding compensation under the head loss of earning power, though the appellant sustained

fracture in both legs for which, he prays that the amount awarded by the Tribunal under the head "loss of earning capacity" has to be enhanced. That apart, the amount awarded by the Tribunal under other heads are also not adequate compensation. Hence, the amount awarded by the Tribunal under those heads also have to be enhanced.

3. Per contra, the learned counsel appearing for the respondents has made his submissions in support of the award passed by the Tribunal.

4. Keeping the submissions made by the learned counsel appearing for the claimant and after going through the reasoning given in the award, I find that the Tribunal has discussed about the disability certificate and stated that the doctor/PW2 has assessed the disability at 70% and that the doctor has not assessed the whole body before issuing the certificate and as there is no worksheet and guidelines produced by Doctor/PW2, the Tribunal is not in a position to accept Ex.P5-Disability Certificate, issued by Doctor/PW2 and fixed the disability at 50% and awarded the compensation. Considering the fracture and surgeries undergone by the appellant, the Tribunal has rightly awarded a sum of Rs.39,000/- under the head 'loss of earning capacity' and the same is confirmed. The amount awarded by the Tribunal under other heads are reasonable and the same are also hereby confirmed. Accordingly, the Civil Miscellaneous Appeal is dismissed.

5. The Second Respondent/Insurance Company is directed to deposit the entire award amount together with proportionate costs and interest @ 7.5% per annum from the date of claim petition to the credit of M.C.O.P.No.1099 of 2013 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai, if not already deposited, within a period of six weeks from the date of receipt of a copy of this order and on such deposit being made, the appellant herein/claimant is entitled to make necessary application to withdraw the same.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The IV Judge,
IV Court of Small Causes,
Chennai.

2. The Section Officer, V.R. Section,
High Court, Madras-104

Copy to: The United India Insurance Co. Ltd., NO.23/81,
Nainiappa Naickenn Street, Chennai 600 003.

+ 1 cc to M/s. S. Ravikumar, Advocate Sr.25939

C.M.A. No.959 of 2016

RSK(CO)
Eu 03.08.16



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