

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2016

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.961 of 2016

Angammal

... Appellant / Claimant

versus

1. K.Kaviyarasu

2. Oriental Insurance Co. Ltd.,
Motor TP Hub, Oriental House, II Floor,
115, Broadway, Chennai - 600 108. ... Respondents/Respondents

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 24.02.2016 made in M.C.O.P.No.77 of 2014 on the file of the learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam.

For Appellant : Mr.S.Udhayakumar

For R1 : No appearance

For R2 : Mr.S.Manohar

JUDGMENT

Angammal, aged about 47 years, employed as a Cooly, earning a sum of Rs.7,500/- per month, met with an accident and suffered permanent disability, in respect of which, she made a claim of Rs.8,00,000/- before the Motor Accident Claims Tribunal, III Additional District and Sessions Judge, Cuddalore at Vridhachalam.

2. As against the claim made for Rs.8,00,000/-, the Tribunal has awarded a sum of Rs.4,98,000/- as compensation. The break up details of the compensation read as under:

Loss of income for three months	-	Rs. 12,000/-
Transportation	-	Rs. 20,000/-
Extra nourishment	-	Rs. 10,000/-
Cost of attendant	-	Rs. 10,000/-
Pain and suffering	-	Rs. 30,000/-
Medical expenses	-	Rs. 2,96,000/-
Disability (60% at the rate of Rs.2000/-)	-	Rs. 1,20,000/-

Total - Rs. 4,98,000/-

Challenging the award as grossly inadequate, the claimant has preferred this appeal seeking enhancement of compensation.

3. The learned counsel for the appellant/claimant pointed out that when the claimant is a woman, discharging household work, apart from performing her duty as a cooly worker outside the house, the loss of earning capacity due to the disablement ought to have been considered and it has not been considered by the Claims Tribunal at all. The learned counsel also pointed out that when fracture has been in both bones in the legs, the loss of enjoyment of amenities and future medical expenses, that would be incurred towards removal of plate and screws, have not been considered by the Tribunal. Hence, it is pleaded that the amount awarded by the Tribunal should be enhanced.

4. A perusal of the discharge summary would go to show that the claimant has been admitted for surgery on 16.03.2014 and has been discharged only on 11.04.2014. The date of surgery has been mentioned as 16.03.2014, 20.03.2014, 23.03.2014, 28.03.2014 and 04.04.2014. Five stages on which procedure has been done, has been explained in the discharge summary, which reads as under:

Procedure:

Stage - I : External fixator / wound debridement done
State - II : Inter locking nailing done for right tibia
State - III : Orif with plate and screws for segmental fracture left fibula
State - IV : Orif with anterolateral plating with iliac bone grafting done
State - V : SSG done for raw areas in right/left legs.

4.1. At the time of discharge, the claimant was advised not to carry weight in both lower limbs for one month. Therefore, from the nature of the advice given at the time of discharge, it would be evident that the claimant would not have been in a position either to discharge household work or to discharge her cooly work at least for a period of three months. Considering the nature of the injury, gravity of injury and consequences of disablement, the Tribunal should have quantified the compensation under proper heads. Having regard to the details of surgery done and the part of the body affected, this Court is of the view that the compensation should have been awarded under the following heads:

(i) Future Medical Expenses:

The claimant would have been under the necessity of removal of implant, that is inserted during the surgery at the appropriate time and therefore, future medical expenses should have been quantified taking into account the possible expenses in future. Having regard to the reasonable expenditure that could have been incurred, future medical expenses is estimated at Rs.25,000/-.

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(ii) Permanent disability:

So far as permanent disability is concerned, the Tribunal should have adopted the multiplier method and should have

quantified the compensation for loss of earning capacity. But, the Tribunal has awarded Rs.2,000/- per percentage of the disability. When the multiplier method is not adopted, at least, quantification should have been granted at Rs.3,000/- per percentage. In that event, the disablement compensation would be fixed at Rs.1,80,000/-.

4.2. Having regard to the impact of disability in the discharge of regular household activities, the award under the head of Loss of enjoyment of amenities would be fixed at Rs.50,000/-.

4.3. Having regard to the five stages of operation done, pain and sufferings is enhanced by Rs.15,000/-.

4.4. Totally, a sum of Rs.1,50,000/- is enhanced and that is over and above the amount already awarded by the Tribunal.

5. In the result, the Civil Miscellaneous Appeal is partly allowed to the extent of enhancement.

6. The Insurance Company is directed to deposit the entire amount of compensation including the enhanced compensation along with interest at the rate of 7.5% p.a., from the date of petition till the date of payment, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the claimant is permitted to withdraw the entire award of compensation, less the amount already withdrawn if any. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

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To

1. The III Additional District and Sessions Judge,
Cuddalore at Vridhachalam.

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

+1cc to M/s.S.Manohar, Advocate sr.72856

+1cc to M/s.S.Udayakumar, Advocate sr.72863

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ss(18/4/2017)

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