

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.12.2016

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THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.234 of 2014

Palanisamy

.. Appellant /Petitioner

Versus

1. Muthukumar

(Set exparte before the Tribunal)

2. Sri Ram General Insurance Co Ltd,
E-8, EPIR, RIICO, Sitapura, Jaipur,
Rajasthan-302 022

.. Respondents /Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the order made in M.C.O.P.No.581 of 2010 on the file of Motor Accident Claims Tribunal cum III Additional District and Sessions Court, Salem dated 30.01.2013.

For appellant : Mr.C.Kulanthaivel

For respondent : R1-Exparte before the tribunal
R2- No appearance

JUDGMENT

The appellant by name Palanisamy, aged about 40 years, employed as Power Loom Weaver suffered with an accident on 09.11.2009 and sustained injuries. In respect of the injuries sustained in the accident, he filed a claim petition in M.C.O.P.No.581 of 2010 before the Motor Accident Claims Tribunal cum III Additional District and Sessions Court, Salem, claiming compensation of Rs.10,00,000/-.

2.The Tribunal has quantified the compensation in respect of injuries sustained by him at Rs.34,200/-. The break-up details of the compensation awarded is as follows:

Partial Permanent Disability	-	Rs.20,000/-
Medical Expenses	-	Rs. 200/-
Pain and Suffering	-	Rs.10,000/-
Transport Expenses	-	Rs. 2,000/-
Extra Nourishment	-	Rs. 2,000/-

Total

Rs.34,200/-

<https://hcservices.ecourts.gov.in/hcservices/>

3. A perusal of the award passed by the Tribunal would show

that the Tribunal has disbelieved the disability certificate issued by the Doctor and also given a finding that for the disablement of the appellant, there is no medical evidence. This finding is under challenge in this Civil Miscellaneous Appeal.

4. The learned counsel for the appellant has relied upon Disability Certificate (EX.P8), Wound certificate (Ex.P2), Discharge summary (Ex.P3) and CT Scan report (Ex.P4).

5. In wound certificate, it is mentioned that the injuries sustained were grievous in nature. In the CT scan report, it is mentioned as hereunder:

"Resolving haemorrhagic contusion in left temporo parietal lobe.
Hypodense oedema in left fronto parietal region with mild midline shift to right.
Diffuse Cerebral Oedema."

6. Therefore, when there is evidence to show that the grievous injuries were suffered by the appellant, the disablement as spoken to by the petitioner must be true. The appellant has stated that he has double vision in the left eye after the RTA head injury and therefore, he is not able to walk on a straight line and finds difficult to climb stairs.

7. When the evidence of doctor is supported by C.T. Scan report, there is no reason to disbelieve the percentage of disability assessed by him. The Tribunal ought not to have fixed the percentage of disability at 10%, when the disability assessed is 30% and therefore, the award for permanent disablement has to be enhanced.

8. The learned counsel for the appellant submitted that when the loss of earning capacity is not taken as a ground for awarding compensation, partial permanent disablement should be taken at least Rs.3,000/- per percentage of disability and this contention is well founded.

9. Hence, the permanent disablement is assessed at 30% and by awarding a compensation of a sum of Rs.3000/- for each one of the percentile point of the disability and thereby, a sum of Rs.90,000/- (Rs.3,000/- x 30%) is to be awarded under the head permanent disablement. Since the loss of enjoyment of amenities is not quantified, the award amount is quantified at Rs.20,000/- under the head loss of amenities. The overall enhancement is Rs.90,000/-, which is over and above the compensation awarded by the Tribunal.

10. In the result, the Civil Miscellaneous Appeal is allowed. The enhanced compensation of Rs.90,000/-, which is awarded over and above the compensation awarded by the Tribunal, shall be payable by the Insurance Company along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

11. It is represented that already a sum of Rs.34,200/- has been deposited by the Insurance Company along with interest and costs which has been withdrawn by the claimants. The Insurance Company shall deposit the enhanced amount of Rs.90,000/- 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 Judgment. On such deposit being made, the appellant is permitted to withdraw 50% of the enhanced amount and the balance amount shall be in deposit for a period of three years. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional District and Sessions Judge,
Motor Accident Claims Tribunal
Salem.
2. The Section Officer, VR Section,
High Court, Madras.

+lcc to Mr.C.Kulanthaivel, Advocate SR.No.73426(30/11/2017)

C.M.A. No.234 of 2014

GP(CO)
GN(27/10/2017)

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