

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2016

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.563 of 2014

Vinayagam @ Vinayagamoorthy

... Appellant / Claimant

versus

1. M.Kumar ... 1st respondent/1st Respondent
2. The Oriental Insurance Co. Ltd.,
Motor Third Party Claims,
New No.216, Old No.115,
Prakasam Salai,
Chennai - 1. ... 2nd respondent/2nd Respondent
(1st respondent remained ex parte
before the Tribunal)

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 19.12.2013, made in M.C.O.P.No.1309 of 2012 on the file of the Motor Accident Claims Tribunal (IV Small Causes Judge), Chennai.

For Appellant : Mr.K.Varadha Kamaraj
For R1 : Ex parte
For R2 : Mr.S.Arunkumar

JUDGMENT

Vinayagam @ Vinayagamoorthy, aged about 17 years, employed as Cooly, earning a sum of Rs.500/- per day, met with an accident on 11.11.2011 and sustained injuries, in respect of which, he filed a claim petition the Motor Accident Claims Tribunal (IV Small Causes Judge), Chennai, claiming compensation of Rs.4,00,000/-. The Tribunal has quantified the compensation at Rs.2,60,000/-, payable along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. The break-up details of the compensation read as under:

Loss of earning	:	Rs. 20,000/-
Transport to Hospital	:	Rs. 10,000/-
Extra nourishment	:	Rs. 15,000/-
Medical expenses	:	Rs. 15,000/-
Pain and suffering	:	Rs. 40,000/-
Disability of 80% at Rs.2,000/- per percentage	:	Rs.1,60,000/-
Total	:	Rs.2,60,000/-

Challenging the award as inadequate, the claimant has filed this appeal for enhancement.

2. In order to appreciate the claim for enhancement, it is necessary to understand the nature of the injury, period of treatment, nature of disability, impact of the disablement, which would have impact upon the earning capacity of the claimant.

2.1. The Tribunal has discussed the period of treatment and nature of injury in para-9 of the Judgment.

2.2. From the perusal of the award passed by the claims Tribunal, it is evident that the claimant suffered posterior dislocation of left hip with Pipkin's type-I fracture on the head of left femur with fracture of shaft of left femur and he was treated as inpatient from 12.11.2011 to 23.11.2011. Apart from that, there is multiple abrasions in chin, laceration upper lip, loss of upper 4 incisors, loose teeth (lower 4 incisors) and the disability caused to the petitioner is fixed at 40% + 40% = 80%.

2.2. It is also necessary to extract the details of the disability suffered, loss of teeth as well as disfigurement on account of the accident. The relevant observation as extracted in para-9 of the Judgment of the Tribunal, reads as under:

"Again, Dr. T. S. Kalkura is examined as P.W.4 regarding dental problems, he assessed the disability at 45% and stating that the petitioner had suffered bilateral echymosis of eye, bilateral Le Fort type 2 fracture, mid plate split, upper 4 teeth missing, lower 4 teeth displaced due to which, TM Joint fibrosis, midline shift to right side, loss of upper 4 teeth and displacement of lower 4 teeth and the petitioner is having deranged occlusion causing masticatory dysfunction and disfigurement and also loss of sensation in the mid face. Ex.P9, P10 and P11 are the X-ray film, X-ray report and disability certificate."

3. Learned counsel for the appellant would submit that having regard to the fact that a part of the claimant's body became dis-functional due to the fracture, the Tribunal should have considered compensation towards loss of enjoyment of amenities, which is not at all considered by the Tribunal and it should be quantified at Rs.30,000/-. It is also pointed out that compensation towards loss of earning has been awarded only at Rs.20,000/- which has to be enhanced to Rs.40,000/- on account of inability to go for employment at least for six months to one year. It is further contended that the Tribunal has awarded only a sum of Rs.1,60,000/- towards disability and it is a fit case where the multiplier method ought to have been adopted to compensate the loss of earning capacity that has not been done by the Tribunal. However, if the compensation is at the rate of Rs.3000/- per percentage of disability, in respect

of 80% of disability, the compensation towards disability would be at Rs.2,40,000/- (Rs.3000 x 80%).

4. Having regard to the nature of injury, percentage of disability and consequence of disability, the compensation awarded is restructured as follows:

Loss of earning	:	Rs. 40,000/-
Transport to Hospital	:	Rs. 10,000/-
Extra nourishment	:	Rs. 15,000/-
Medical expenses	:	Rs. 15,000/-
Pain and suffering	:	Rs. 40,000/-
Disability of 80% at Rs.3,000/- per percentage	:	Rs.2,40,000/-
Loss of enjoyment	:	Rs. 30,000/-
Total	:	Rs.3,90,000/-

5. In the result, the Civil Miscellaneous Appeal is partly allowed enhancing the quantum of compensation from Rs.2,60,000/- to Rs.3,90,000/-, payable along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

6. The second respondent Insurance Company shall deposit the entire 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, 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 amount awarded by this Court. The claimant shall pay the court fee due, if any. No costs.

-s/d-

Assistant Registrar (CS-VIII)

True Copy

Sub-Assistant Registrar

To

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

+1 CC to Mr.K. Varadha Kamaraj, Advocate sr 74231.
+1 CC to Mr.S. Arunkumar, advocate sr 74344.

C.M.A.No.563 of 2014

SJ(CO)

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

SP(21/08/2017)