

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.2891 of 2009
and M.P.No.1 of 2009

Cholamandalam MS General
Insurance Co. Ltd.,

.. Appellant

Vs.

1.S.Mani

2.S.N.Senthil Kumar
(R2 was set ex parte)

.. Respondents

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.935 of 2006 dated 21.10.2008 on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.5, Coimbatore at Tiruppur.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.S.Sounthar [for R1]
R2 - Ex parte

JUDGMENT

The Insurance Company which is arrayed as second respondent in MCOP.No.935 of 2006 in Motor Accidents Claims Tribunal (Sub Court) Tiruppur, has preferred an appeal challenging the quantum of compensation awarded by the Tribunal.

2.The claimant is a lorry driver aged 43 years, suffered fracture to his leg in a road accident that took place on 12.02.2006. At the time of accident, the claimant was walking along the road and he was knocked down by a speeding motor cycle. On various heads including loss of capacity to make future income, the claimant made claim for a total sum of Rs.5,00,000/-, against which the Tribunal has passed an award for Rs.2,86,000/-. Out of this, Rs.2,43,000/- forms the major component and this relates to loss of earning capacity in determining which the Tribunal resorted to multiplier method. This is now in attack before me.

3. The learned counsel for the appellant argued that there is no material to support that due to the fracture suffered by the claimant the latter has lost his capacity to earn and at any rate to adopt a multiplier of 15 by fixing his income Rs.4,500/- per month is disproportionate to the nature of injury suffered and is neither just nor fair.

4. The learned counsel for the claimant/first respondent contended that the fracture of the leg has left the claimant in great inconvenience in pursuing the avocation he was engaged a lorry driver by profession. P.W.2, the doctor who assessed the disability has determined it at 36% vide his certificate Ex.A7. However, the Tribunal has brought down the percentage of disability to 30%.

5. A decade has passed since the date of accident. The compensation law during this decade has witnessed enormous growth and this cannot be ignored. I would like to re-fix the award amount, taking into consideration all the circumstances, the nature of injury suffered and the possible impact on his earning capacity. I find the extent of disability needs to be lowered to 20% and at Rs.4,500/- per month as the monthly income of the injured with 15 as the multiplier, the amount awardable on this head is Rs.1,62,000/-; On the head of pain and suffering, I enhance the compensation amount from Rs.10,000/- to Rs.25,000/-; for loss of amenities compensation of Rs.6,000/- is granted; for loss of income Rs.27,000/- is granted; for future medical expenses Rs.25,000/- is awarded and towards transportation and nourishment and other medical and incidental expenses Rs.5,000/-.

Heads	Amount (Rs.)
Loss of earning power	1,62,000
Pain and sufferings	25,000
Transportation, Nourishment, Other medical & incidental expenses	5,000
Loss of income during treatment	27,000
Future medical treatment	25,000
Loss of amenities	6,000
	2,50,000

6. Accordingly the appeal is partially allowed but without costs, as indicated in the tabulation above. Consequently, connected miscellaneous petition is closed.

7. The appellant is directed to deposit Rs.2,50,000/- with interest @ 7.5% per annum, less any amount already deposited within six weeks from the date of receipt of a copy of this order. If the appellant had already deposited the entire award amount as per the award of the Motor Accidents Claims Tribunal, it is permitted to withdraw that portion of the amount deposited with interest in excess of Rs.2,50,000/- The claimant is permitted to withdraw the entire amount if he has not withdrawn it already forthwith. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To:

1. The Motor Accident Claims Tribunal,
Fast Track Court No.5
Coimbatore at Tiruppur.

2. The Record Keeper, VR Section,
High Court, Madras.

+ 1 cc to Mr.S. Sounthar, Advocate Sr.68250

C.M.A.No.2891 of 2009

SSK(CO)
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