

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2017

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

C.M.A.No.1003 of 2015

N.Ponniah

... Appellant

vs.

1. D.Kasinathan
(Set exparte in the trial Court)

2. Royal Sundaram Alliance
Insurance Co. Ltd.,
No.1, Club House Road,
2nd Floor, Anna Salai,
Chennai 600 002.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree, made in M.A.C.T.O.P.No.4939 of 2013, dated 23.01.2015, on the file of the Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

For Appellant : Mr.M.Swamikkannu
For 2nd Respondent : Mr.C.Harini,
for Mr.N.Vijayaraghavan

JUDGMENT

(Judgement of this Court was made by Justice M.GOVINDARAJ)

Not satisfied with the quantum of compensation, the injured claimant has preferred this appeal, on the ground that the compensation awarded by the Tribunal is very meagre, on the heads, loss of amenities, pain and suffering, loss of expectation of life, continuous permanent disability and future earning capacity.

2. When the matter was taken up for hearing, Mr.M.Swamikkannu, learned counsel for the appellant submitted that the injured was a driver in Tamil Nadu State Transport Corporation and he continued the service, till his retirement.

3. In fact, if a person is disabled, the said person is entitled to an alternative employment, in terms of Section 47 of the Right of Persons with Disabilities Act, 2016 and he will not be thrown out of the job. It cannot be said that the injured employee has put to loss of income or income would be reduced. As per the abovesaid Act, even if the injured is placed in the alternative job, his pay is protected. In the instant case, the injured claimant has continued to work in the same post and got all the benefits. In such circumstances, he is not entitled to any loss of future earning.

4. Further, PW.2, Doctor, who clinically examined the injured claimant, has assessed the disability at 30% and issued Ex.P7 - Disability Certificate. Learned counsel for the appellant would submit that the compensation of Rs.2,000/- per percentage, is less. We have considered that point and we deem it fit to award Rs.3,000/- per percentage. Insofar as loss of expectation of life is concerned, we do not consider that the claim is justifiable and sustainable.

5. Insofar as loss of income for a period of three months is concerned, upon consideration of the treatment period, the Tribunal has rightly fixed a sum of Rs.75,000/- and therefore, we do not interfere with the compensation under the said head. The Tribunal has rightly awarded Rs.10,000/- towards transportation and Rs.15,000/- towards extra nourishment and also Rs.1,000/-, towards damages to clothes.

6. A sum of Rs.1,65,000/- awarded for medical expenses, on the basis of Ex.P6 - Medical Bills, is also justified. Further award of Rs.10,000/- under the head, attendant charges and Rs.20,000/- under the head, loss of amenities and Rs.40,000/- for pain and suffering, need not be interfered with, as the Tribunal has very much justified in awarding the said compensation, taking into consideration, the nature of employment and documentary evidence, placed before it.

7. In view of the decision taken in the previous paragraphs to award Rs.3,000/- per percentage, the compensation for disability is enhanced to Rs.90,000/- (Rs.3,000/- x 30), as against Rs.60,000/- (Rs.2,000/- x 20), awarded by the Tribunal. The Tribunal has awarded a sum of Rs.3,96,000/-, as compensation. In view of the enhancement made under the head, permanent disability, the total compensation works out to Rs.4,26,000/-, with interest at the rate of 7.5% per annum, from the date of claim, till deposit.

8. In view of the above, the Civil Miscellaneous Appeal is partly allowed. The 2nd respondent-Insurance Company is directed to deposit the compensation, now determined by this

Court, with proportionate accrued interest and costs, less the amount already deposited, to the credit of M.A.C.T.O.P.No.4939 of 2013, on the file of the Motor Accidents Claims Tribunal (Court of Small Causes), Chennai, within a period of four (4) weeks from the date of receipt of a copy of this order. The appellant is at liberty to withdraw the compensation, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

skm

To

1. The Motor Accidents Claims Tribunal
(Court of Small Causes), Chennai.
 2. The Section Officer, VR Section, High Court, Madras.
- + 1 cc to M/s. M. Swamikkannu, Advocate Sr.44730
+ 1 cc to Mr.N.Vijayaraghavan, Advocate SR.45192

C.M.A.No.1003 of 2015

RR(CO)
Eu 10.08.17

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