

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2017

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.1586 of 2015

Syed Ali

... Appellant/Claimant

..Vs..

1. Johnson

2. The Divisional Manager,
New India Assurance Co. Ltd.,
J.N.Street, Pondicherry

.... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 29.04.2015, made in MCOP No.909 of 2013 on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Puducherry.

For Appellant : Mr. G.Ramar

For Respondents : Mr. P.P.Purushothaman, for,
M/s. P.G.Padmanabhan, for R-2,
No Appearance, for R-1.

J U D G M E N T

The claimant, who suffered a road traffic accident on 13.07.2002, has suffered the following injuries, leading to disablement of 48%, as certified by the Doctor. The details of the nature of injuries, as described by the Tribunal reads as under:-

(a) Minimally Mal united Hang Man's fracture (C-2 body fracture at the level of pedicels and though it i.e. Second cervical Vertebra)	--
(b) Recurrent edema of posterior aspect of nect	6%
(c) Complaining of pain on and off at the fracture site with tenderness at the fracture site (5% + 6% = 11%)	11%

(a) Minimally Mal united Hang Man's fracture (C-2 body fracture at the level of pedicels and though it i.e. Second cervical Vertebra)	--
(d) Muscle wasting of upper aspect of posterior neck	
(e) Muscle weakness of upper aspect of posterior neck with power 4/5 and has to wear Philadelphia neck collar for support.	
(f) Restriction in movements of neck 30° in flexion, 20° each lateral rotation with difficulty in fending neck down and up, driving vehicle walking long distance, running, lifting objects over head and doing his to any activities.	25%
(g) complaining of vertigo and off	6%
Total	48%

2. Considering the fact that the possibility of percentage of disability getting reduced, if proper physiotherapy exercise are taken, the Tribunal has fixed the percentage of disability at 36% while making quantification. The Tribunal has quantified the compensation under the following break up details:-

S.No.	Head	Amount Awarded / Rs.
1.	Pain and suffering	10,000/-
2.	Loss of income during treatment period (2 months)	20,000/-
3.	Medical expenses	11,000/-
4.	Rich and Nutritious food	5,000/-
5.	Transportation	63,000/-
6.	Permanent disability (Rs.3,000/- x 36)	1,08,000/-
	Total	2,17,000/-

3. The learned counsel for the claimant / appellant would point out that when the permanent disablement was 48%, which would have an adverse impact upon the earning capacity, the Tribunal ought to have adopted multiplier method of quantification.

4. The learned counsel appearing for the second respondent would submit that the Tribunal is justified in awarding disablement compensation at the rate of Rs.3,000/- per percentage of disability, in respect of 36% disability.

4.1. This contention cannot be accepted as the person with a complaint of vertigo and complaint of mal-united Hang Man's fracture cannot be expected to earn as before. Because of the restriction in movement of neck, certainly loss of earning capacity would be there. Therefore, it is a case where multiplier method of quantification has to be adopted and it is adopted accordingly. Hence, the amount awarded under the head 'loss of earning capacity' on account of permanent disability' is to be enhanced, by adopting multiplier method.

4.2. In order to quantify the compensation, the monthly income of the injured, his age, his future prospective increase in income, the impact of disability upon his earning capacity are relevant factors to be considered. So far as age is concerned, the injured is aged 36 years and in respect of a person aged 36 years, the proper multiplier to be adopted is '15'. Considering the future prospective increase in income by 30%, in respect of the petitioner in the age group of 36-40, the loss of earning capacity should be calculated.

4.3. Fixing the monthly income at Rs.7,500/- and adding Rs.2,250/- (30% towards future prospective increase in income) and adopting multiplier of 15 and taking the functional disability also at 36%, the compensation payable is Rs.6,31,800/- (Rs.7,500/- + (30% of Rs.7500 = Rs.2,250/-) : (Rs.9,750/-) x 12x15x36/100).

5. So far as the sums awarded other heads are concerned, the enhancement should be made only in respect of loss of enjoyment of amenities and under that head a sum of Rs.5,000/- is added. As far as the compensation awarded by the Tribunal under remaining heads are concerned (excepting the loss of earning capacity), the same are in line with the reported decisions / evidence, hence, the same are confirmed, as such.

6. In the result, this Civil Miscellaneous Appeal is allowed, by enhancing the total compensation from Rs.2,17,000/- to Rs.7,45,800/- and this amount of compensation shall be deposited by the second respondent / Insurance Company, less the amount already deposited, along with interest at 7.5% per annum, from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this judgment. There is no liability to pay interest in respect of

the period during which there had been delay, if any, in respect of which, condonation of delay has been ordered, subject to waiver of interest. On such deposit being made, the claimant / appellant herein is permitted to withdraw the entire amount of compensation lying in court deposit. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

srk

To

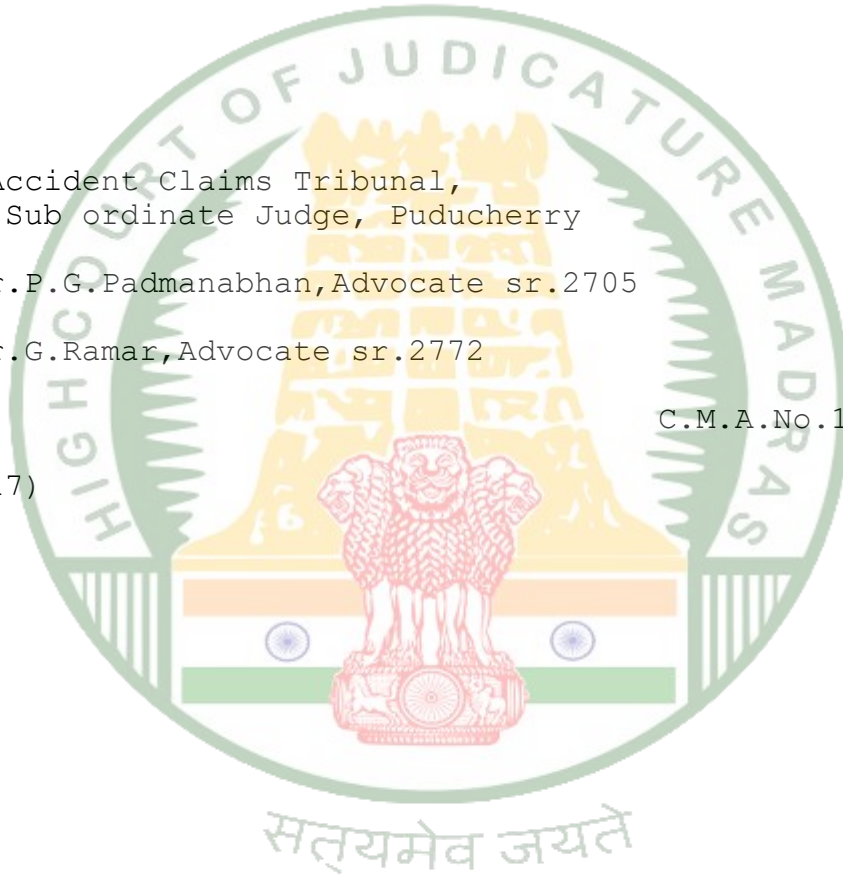
1. Motor Accident Claims Tribunal,
Principal Sub ordinate Judge, Puducherry

+1cc to Mr.P.G.Padmanabhan,Advocate sr.2705

+1cc to Mr.G.Ramar,Advocate sr.2772

C.M.A.No.1586 of 2015

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