

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2017

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

C.M.A.No.1766 of 2017

R.Kaliyappan

... Appellant/Petitioner

Versus

1. Mohammad Dawood

2. The Oriental Insurance Company Ltd.,
by its Branch Manager,
Lodge President Complex,
Thanjavur Road,
Thiruvarur Town

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the order and decree passed in M.C.O.P. No.273 of 2002, dated 11.11.2003 on the file of Motor Accidents Claims Tribunal, Principal Subordinate Judge of Nagapattinam.

For Appellant : Mr.Veera Kathiravan

For Respondents : M/s.R.Sivaneemae for R2

For Respondent No.1: Exparte

JUDGMENT

The claimant, Kaliyappan, aged 50, an agricultural coolie, earning a sum of Rs.4,500/- p.m., met with an accident on 05.07.2002 in which he suffered injuries. Therefore, he filed the claim petition claiming a sum of Rs.3,00,000/-.

The Tribunal, considering the oral and documentary evidence available on record, awarded compensation in a sum of Rs.7,500/-, which is challenged by the claimant by filing the present appeal.

2. The learned counsel for the appellant/claimant submitted that the Tribunal has grossly awarded lesser compensation without properly appreciating the evidence of the Doctor, P.W.2. It is further submitted that the disablement certificate and the

accident register would reveal that the injuries suffered by the claimant are not simple in nature and, therefore, the compensation awarded by the Tribunal at Rs.7,500/- is grossly inadequate, unfair and unreasonable and, therefore, warrants enhancement.

3. Per contra, learned counsel for the 2nd respondent/insurance company pointed out that there are contradictions in the evidence let in and in the documents produced by the claimant. Therefore, the Tribunal has rightly come to the conclusion that the injuries sustained by the claimant are only simple in nature and, considering the totality of the circumstances, the Tribunal has awarded a sum of Rs.7,500/- as compensation which could not be said to be unfair and unreasonable and, therefore, does not require interference at the hands of this Court.

4. To appreciate the rival contentions, it is but necessary to look into the order passed by the Tribunal and the appreciation of oral and documentary evidence. The Tribunal referred to the evidence of the Doctor, PW2, who has stated that the claimant sustained fracture and there was a malunion of the bones. PW2 has certified the disability at 31%. However, the Tribunal, on examination of the Accident register concluded that it is not clear as to whether the claimant suffered a single injury or multiple injuries. Further, referring to the entries made in the Accident Register, the Tribunal held that there arises a serious doubt as to whether the claimant has really suffered the injuries.

5. The Doctor, who treated the claimant was examined as PW2, who, in his evidence has deposed that the claimant had suffered fracture in his hands above the wrist and there is a malunion of the bones and assessed the disability at 31%. The evidence of the Doctor was not disbelieved by the Tribunal. Neither the Doctor, PW2, has been cross-examined nor his evidence discredited in any manner whatsoever by the respondents.

6. The Tribunal, on examination of the Accident Register concluded that in page Nos. 1, 2, 3 and 4 it is found that the claimant sustained 4 injuries and in the right hand side of the same pages, it is written that the claimant sustained 3 injuries. On such contradictions, the Tribunal held that the entries made in the Accident Register raises a serious doubt as to the injuries sustained by the claimant. However, the fact remains that the claimant sustained fracture, which has been spoken to by the doctor, P.W.2. Insignificant discrepancies in the accident register cannot in any way discredit the evidence of P.W.2, who has spoken about the injuries suffered by the

claimant, more so when the respondents have not elicited any contradictory evidence, nor have they produced any evidence before the Tribunal to doubt the veracity of the evidence of P.W.2. In such circumstances, there was no reason for the Tribunal to discard the evidence of P.W.2 and rely more on the minor contradictions in the accident register to come to a finding that the injuries stated to have been sustained by the claimant are doubtful.

7. Once this Court holds that the oral evidence of P.W.2 is convincing, there can be no iota of doubt that the compensation awarded by the Tribunal is minuscule.

8. Even according to the claimant, he was an agricultural coolie work and he suffered fracture in the right wrist bone. The evidence of P.W.2 shows that there is malunion of Ulna bone in the right hand wrist of the claimant, which would hinder the claimant in the day-to-day discharge of his duties. Preponderance is the standard of proof required in a claim petition filed under the Motor Vehicles Act and proof beyond reasonable doubt is required only in criminal case where the prosecution is expected to prove the case against the accused beyond all reasonable doubt. In the present case, the claimant has discharged his initial burden by examining himself and also P.W.2 to speak about the nature of injuries sustained by him in the accident. There being no contra evidence placed before the Court by the respondents, the Tribunal ought to have accepted the evidence of P.W.s 1 and 2.

9. Insofar as the quantum of compensation is concerned, the learned counsel for the claimant/appellant prays for awarding compensation by adopting the multiplier method, which is opposed by the learned counsel for the insurance company/2nd respondent contending that the injuries suffered by the claimant have not resulted in permanent disablement and, therefore, adoption of multiplier method is not necessitated.

10. The disability has been assessed at 31% by P.W.2. Therefore, even if Rs.2,000/- per percentage of disability is awarded, the claimant is entitled for Rs.62,000/- towards permanent disability. Therefore, this Court quantifies compensation for disability at Rs.62,000/=. In a case of this nature, where the claimant has sustained fracture, the Tribunal ought to have awarded compensation towards extra nourishment. Accordingly, a sum of Rs.5,000/- is awarded as compensation towards Extra Nourishment. Though the claimant has suffered fracture, however, no amount has been awarded towards medical expenses. This Court feels that a sum of Rs.15,000/- as compensation towards medical expenses would meet the ends of justice. Similarly, no amount has been awarded towards

Transportation expenses. This Court feels that a sum of Rs.5,000/- would be adequate compensation towards transportation expenses.

11. Accordingly, the award passed by the Tribunal is modified from Rs.7,500/- to Rs.87,000/- under the following heads :-

Disability Compensation	-	Rs.62,000/-
Extra Nourishment	-	Rs. 5,000/-
Medical Expenses	-	Rs.15,000/-
Transportation Expenses	-	Rs. 5,000/-

Total	-	Rs.87,000/-

12. In the result, the appeal is allowed modifying the award dated 11.11.2003, passed by the Motor Accidents Claims Tribunal, Principal Subordinate Judge of Nagapattinam, made in M.C.O.P. No.273 of 2002. However, there shall be no order as to costs.

13. The 2nd respondent / Insurance company is directed to deposit the entire compensation as determined by this Court above, less the amount, if any, already deposited, along with interest @ 7.5% per annum, from the date of petition till the date of deposit, less the interest for the default period of 1208 days, within a period of four weeks from the date of receipt of copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter, on submission of appropriate application and bank details by the claimant.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

vsi2 / GLN

To

1. Motor Accidents Claims Tribunal
Principal (Subordinate Judge)
Nagapattinam.

2. The Section Officer,
V.R. Section,
High Court, Madras - 104.

+lcc to Mr.S.T.P.Kuilmozhi, Advocate SR.No.48169

+lcc to Mr.R.Sivakumar, Advocate SR.No.48147

C.M.A.No.1766 of 2017

SJ(CO)
GN(16/03/2018)



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