

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.2493 of 2016

and

C.M.P. No.17622 of 2016

The Divisional Manager
Cholamandalam MS General
Insurance Company Ltd.,
Chennai.

.. Appellant/2nd
Respondent

Versus

1. Kadhar @ Kadhar Basha

2. Daiveegan ... Respondents/Petitioner/
1st Respondent

Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the Judgment and Decree in MCOP No.331 of 2013, dated 16.10.2015, on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Thiruvannamalai.

For Appellant : Mr. N.Vijayaraghavan

JUDGMENT

The injured Kadhar @ Kadhar Basha, aged 42, earning a sum of Rs.15,000/- p.m, who suffered 55% disability in the accident that took place on 18.03.2011 filed MCOP No. 331 of 2013 before the Tribunal seeking compensation of Rs.7,00,000/- for the injuries sustained by him.

2. The Tribunal passed an award for Rs.4,23,000/- as against the claim for a sum of Rs. 7,00,000/-. Challenging the award as highly excessive and disproportionate, the insurance company/appellant has filed the appeal.

3. Two claims were made in respect of a single accident, one by the claimant by filing M.C.O.P. No.331 of 2013 and another injured - Kareem @ Abdul Kareem, who was the pillion rider in the two wheeler - TVS Star Motor Cycle bearing Registration No.TN-25 L 4178 filed MCOP No 330 of 2013.

4. Heard the learned counsel appearing for the appellant and perused the materials available on record.

5. It is the case of the claimant that he suffered fracture of Patella, Femur and Tibia in the right knee. Four injuries were grievous in nature. There was deformity in the right leg, apart from disfigurement. It is the evidence of the doctor that the claimant cannot squat, fold his right leg and could not walk without the support of the stick on account of stiffening of the right knee muscles and that the disability has been assessed at 55%.

6. The age of the claimant was 42 years at the time of accident. Before the Tribunal, even though the claimant claimed that he was earning a sum of Rs.15,000/- per month, in the absence of documentary evidence, the Tribunal has taken the notional income of the claimant at Rs.4,500/- per month. Considering the fact that it is not possible for the claimant to do some business or some work in the sitting posture, the Tribunal adopted multiplier method for quantification of the compensation. Accordingly, while fixing the loss of earning at Rs.2,250/- p.m. and adopting multiplier of 14, the loss of earning was quantified at Rs.3,15,000/-, That apart, the Tribunal awarded a sum of Rs.15,000/- towards medical expenses; Rs.30,000/- towards pain and suffering, though the amount claimed under these heads were Rs.1,00,000/-. Only on the above three heads, viz., loss of earning capacity, medical expenses, pain and sufferings, award has been passed.

7. Even, if it could be stated that the award under loss of earning capacity is slightly higher, under many heads like loss of enjoyment of amenities, extra nourishment, cost of attendant charges, etc., no amount has been awarded by the Tribunal. The Tribunal has quantified compensation only for loss of earning capacity, and in the absence of award of compensation on many of the heads, the award under the head loss of earning by adopting multiplier method cannot be said to be wrong and that the award cannot be termed to be excessive warranting interference. Having regard to the nature of injuries and the impact that the injuries have on the present and future earning capacity of the claimant, this Court finds that there is no merit in the ground of excessive compensation.

8. Accordingly, finding no merit, this appeal fails and the same is dismissed. Consequently, connected miscellaneous petition is also dismissed. However, there shall be no order as to costs.

9. The appellant / Insurance Company is directed to deposit the entire award amount, along with interest and costs as

ordered by the Tribunal, less the amount already deposited, if any before, the Tribunal, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit, the Tribunal is directed to transfer 50% of the award amount directly to the bank account of the claimant on the claimant providing the bank details and the remaining amount shall be deposited in a Nationalised Bank in an interest bearing account for a period of three years and the claimant is permitted to withdraw the accrued interest once in three months.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal
Special Subordinate Court,
Thiruvannamalai.
2. The Section Officer
VR Section,
High Court, Madras.

+lcc to Mr.C.Munusamy, Advocate, S.R.No.52635

+lcc to Mr.M.B.Gopalan Associates, Advocate, S.R.No.53529

C.M.A. No.2493 of 2017

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