

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.07.2017
CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.1784 of 2017

K.I.Nazeer Ahamed

.... Appellant

Vs.

1.G.Vijayaragavan

2. National Insurance Company Limited

53, Raja Muthaiah Road (Leather Centre)

Periamet,

Chennai - 600003.

..... Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree passed in M.A.C.T.O.P.No.4156 of 2008, dated 30.03.2012, on the file of III Judge before the Motor Accident Claims Tribunal (Court of Small Causes), Chennai.

For Appellant : Mr.K.V.Muthuvisakan

For Respondents : Mr. S.Arunkumar for R-2

J U D G M E N T

Claimant is the appellant.

2. As against the claim made by the claimant for a sum of Rs.3,00,000/-, the Tribunal has passed an award for a sum of Rs.1,76,500/- and the break up details of the award passed are as follows:-

Loss of income for three months	-	Rs. 13,500/-
Transport Expenses	-	Rs. 5,000/-
Extra nourishment	-	Rs. 5,000/-
Damage to clothes	-	Rs. 1,000/-
Cost of treatment and purchases of medicines	-	Rs. 62,000/-
Future medical expenses	-	Rs. 10,000/-
Compensation for pain and suffering	-	Rs. 10,000/-
Compensation for continuing or permanent disability if any	-	Rs. 70,000/-
Total	-	Rs.1,76,500/-

3. The learned counsel for the appellant/claimant would submit that when the percentage of the disablement has been considered at 35%, the Tribunal committed an error a) in not awarding the compensation for loss of enjoyment of amenities and b) the compensation awarded for pain and sufferings is low considering the period of treatment and the nature of injury.

4. The learned counsel for second respondent / Insurance company would submit that the percentage of disablement itself has been fixed at higher side and when there is difficulty only in the movement, it could not have come under the category of permanent disablement and the percentage of disablement fixed is, in any event, excessive.

5. The claimant has suffered fracture in the right ankle, when he is at the age of sixties. This fracture at the younger age, may not cause any problem, because of the perfect union of the bones but it would certainly cause problem at the age of 60 and this may add to his aging problem.

6. Even though the Doctor has certified the disablement at 40%, the Tribunal has taken the percentage of disability only at 35%. The fact remains that, considering the age, the loss of earning capacity has not been quantified using the multiplier method of quantification, but instead, the Tribunal has chosen to award the disablement compensation at the rate of Rs.2,000/- per percentage. Therefore the award passed under the head of disablement compensation is reasonable.

7. However having regard to his old age, a sum of Rs.10,000/- should have been awarded more on the head of pain and sufferings and a sum of Rs.10,000/- should have been awarded more under the head of loss of enjoyment of amenities, which has

not been considered. Therefore the award is enhanced from Rs.1,76,500/- to Rs.1,96,000/- . Thus, there shall be an overall increase of compensation by Rs.20,000/-, which is payable by the second respondent at 7.5% p.a. from the date of petition till the date deposit.

8. In the result, the Civil Miscellaneous Appeal is allowed to the extent indicated above. Consequently, connected miscellaneous petition is closed. No costs.

9. The second respondent / Insurance Company is directed to deposit the entire award amount, along with interest and costs as determined by this Court, 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 judgement. 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.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kv/srk

To

1. III Judge, Motor Accident Claims Tribunal
(Court of Small Causes), Chennai.
2. The Section Officer, V.R. Section, High Court, Madras.

+1 cc to M/s.K.V.Muthuvisakan Advocate sr 53713
+1 cc to M/s.S.Arunkumar Advocate sr 53239

C.M.A.No.1784 of 2017

ppa(co)
aa18/09

WEB COPY