



IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED : 28.07.2017  
CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.250 of 2016  
and  
C.M.P.No.2133 of 2016

National Insurance Company Ltd.,  
No.751, Anna Salai,  
3<sup>rd</sup> Floor, Chennai-2. ....2<sup>nd</sup> Respondent/Appellant

Vs.

1. R.Gopi ... Petitioner/1<sup>st</sup> Respondent  
2. D.Jayasuriya ... 1<sup>st</sup> Respondent/2<sup>nd</sup> Respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree passed in M.C.O.P.No.1631 of 2014, dated 31.08.2015, on the file of the Motor Accidents Claims Tribunal, Chennai (In the V Court of Small Causes, Chennai)

For Appellant : Mr.S.Vadivel

For Respondents: Mr. A.A.Venkatesan

#### J U D G M E N T

The claimant, aged 30 years, Coolie (water supplier), self employed, earning a sum of Rs.500/- per day, met with an accident on 05.01.2014 and sustained injuries. Therefore, he filed a claim petition claiming a sum of Rs.10,00,000/- as compensation.

2. The Tribunal, on appreciation of oral and documentary evidence, passed an award for a sum of Rs.7,27,000/- and the break up details of the award passed are as follows:-

|                                                      |   |               |
|------------------------------------------------------|---|---------------|
| Transport, Extra nourishment and Miscellaneous       | - | Rs. 50,000/-  |
| Pain and suffering                                   | - | Rs. 50,000/-  |
| Medical expenses                                     | - | Rs. 5,000/-   |
| Attender charges                                     | - | Rs. 2,000/-   |
| Disability Rs.3,000 x 40                             | - | Rs.1,20,000/- |
| Loss of income during treatment period 6 xRS.7,500/- | - | Rs. 45,000/-  |



Loss of earning capacity

Rs.7,500x12x18x25%

Loss of amenities

- Rs.4,05,000/-

- Rs. 50,000/-

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Rs.7,27,000/-

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Total

3. Challenging the quantum of compensation as exorbitant, the Insurance company has filed this appeal.

4. The learned counsel for the appellant submits that the claims Tribunal committed an error in quantifying the loss of earning capacity by adopting the multiplier method of quantification when there is no proof of disability. It is further submitted by the learned counsel for the appellant that the fracture, being in the ankle portion, considering the age of the claimant, there is every possibility that the fracture in the ankle would not make any trouble to the claimant and therefore, there is no scope for awarding of compensation using multiplier method.

5. In order to appreciate this contention, it is necessary to consider the evidence of the Doctor and the evidence of the claimant.

6. So far as the claimant is concerned, he has deposed that he has suffered fracture and loss of muscles in the right foot and in the ankle bone. Due to the fracture, he is not able to stand for a long time. So far as the evidence of the Doctor is concerned, he has deposed that there was mal-union on account of fracture and that the disability is stated to be partial and permanent disability. On the basis of the above evidence, the Tribunal has come to the conclusion that the injuries coupled with the disability and the impact of the injuries on the day-to-day life of the claimant, will definitely lead to loss of earning capacity. However, the finding given by the Tribunal falls short of sufficient reasoning. The Tribunal has not stated the basis for adopting multiplier method for quantifying the loss of earning. In such circumstances, this Court feels that the compensation awarded under the said head is not warranted and, accordingly, the said compensation deserves to be modified.

7. A perusal of the award reveals that the compensation given under some of the other non-pecuniary heads are also on the higher side. The Tribunal has not given any reasons for awarding such high compensation. In such circumstances, this Court is of the considered view that the compensation under certain of the heads require modification by reducing the



compensation.

8. In the above circumstances, the award granted by the claims Tribunal is restructured and the compensation is reduced/modified under the following heads :-

|                                                         |   |               |
|---------------------------------------------------------|---|---------------|
| Transport,                                              | - | Rs. 5,000/-   |
| Extra nourishment                                       | - | Rs. 10,000/-  |
| Pain and sufferings                                     |   | Rs. 20,000/-  |
| Medical expenses                                        | - | Rs. 20,000/-  |
| Attender charges                                        | - | Rs. 6,000/-   |
| Disablement compensation                                | - | Rs.1,20,000/- |
| Loss of income during treatment period (3 x Rs.5,000/-) | - | Rs. 15,000/-  |
| Loss of amenities                                       | - | Rs. 25,000/-  |
| Damage to Articles                                      | - | Rs. 4,000/-   |
|                                                         |   | -----         |
| Total                                                   | - | Rs.2,25,000/- |
|                                                         |   | -----         |

9. In the result, the Civil Miscellaneous Appeal is allowed in part reducing the compensation from Rs.7,27,000/- to Rs.2,25,000/-, which is payable with interest at 7.5% p.a. from the date of petition till the date of deposit. Consequently, connected miscellaneous petition is closed. No costs.

10. It is represented that the entire amount, as awarded by the Claims Tribunal, has been deposited by the appellant. The Tribunal is directed to transfer the award amount as quantified by this Court above along with interest and costs directly to the bank account of the claimant through RTGS within a period of two weeks from the date of receipt of a copy of this judgment. Insofar as the excess amount deposited by the appellant, the Tribunal is directed to refund the balance amount to the appellant, after satisfying the award passed by this Court.

Sd/-  
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

kv/GLN



To

1. The Motor Accidents Claims Tribunal, Chennai  
(In the V Court of Small Causes, Chennai)

2. The Section Officer, V.R. Section,  
High Court, Madras. (2 copies)

+1cc to Mr.S.VADIVEL, Advocate, S.R.No. 53643

+1cc to Mr.A.A.VENKATESAN Advocate, S.R.No. 54549

C.M.A.No.250 of 2016

PVS (CO)  
TR(27/04/2018)