

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.1825 of 2017

I.Madhiazhagan

... Appellant/Petitioner

..vs..

1. K.Kumar

2. The New India Assurance Co. Ltd.,
No.40 Lakshmi Complex,
Opp. to Vani Vilas Hospital,
K.R.Road Board, Bangalore ... Respondents/Respondents

Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree, dated 06.08.2010 made in M.C.O.P.No.1058 of 2008 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate Court, Dharmapuri.

For Appellant : Mr. M.Selvam

For Respondents: Mr. J.Chandran, for R-2

J U D G M E N T

The claimant, I.Madhiazhagan, aged 27, Cleaner in a lorry and an Agriculturist, earning a sum of Rs.7,500/- per month, met with an accident on 14.08.2008. He suffered fracture in the thigh bone for which he underwent a surgery, which involved placement of rod during surgery. He also suffered a fracture in the left jaw bone for which also implant has been used. Alleging that this injury resulted in the permanent disablement and consequent loss of earning capacity, the claimant filed the claim petition for compensation claiming a sum of Rs.10,00,000/-. As against the claim made, the Tribunal has passed an award for a sum of Rs.1,96,000/-, under the following breakup details:-

Loss of income (Rs.4,000/- x 5)	-	Rs. 20,000.00
Medical expenses	-	Rs. 68,000.00
Extra Nourishment	-	Rs. 5,000.00
Transport expenses	-	Rs. 3,000.00
Pain and sufferings	-	Rs. 20,000.00
Permanent disability	-	Rs. 80,000.00

Rs. 1,96,000.00

2. Challenging the award as inadequate and insufficient, the claimant has filed this appeal.

3. It is the case of the claimant / appellant herein that the award passed by the Tribunal below is inadequate, when the claimant has suffered fractures on both the left and right sides femurs in the thigh, left patellar and right side zygoma and when the Doctor has assessed the disability at 55%, the award of Rs.80,000/- towards disablement is highly inadequate.

4. The main contention raised by the learned counsel appearing for the appellant is that when the employment of the claimant is stated to be a Cleaner, which involves extensive physical work, the Tribunal, without appreciating the loss of earning capacity, has omitted to award adequate compensation, by adopting multiplier method of quantification to assess the loss of earning capacity or by awarding disablement compensation. It is also pointed out that the loss of enjoyment of amenities has not been considered by the Tribunal.

5. In order to appreciate the contentions raised, it is necessary to re-look into the details of the award passed.

6. The claimant has very clearly stated in his evidence that the injuries sustained by him are grievous in nature and that immediately after the accident he has taken treatment at Krishnagiri Government Hospital and later shifted to St. John Hospital, where he took treatment as inpatient from 14.08.2008 to 27.08.2008. After the first surgery over left femur, there was a second surgery in the left cheek. The wound certificate dated 13.07.2010 describes the following injuries:-

- (i) Fracture right side femur.
- (ii) Fracture left side femur.
- (iii) Left patellar fracture.
- (iv) Fracture Right side Zygoma.

7. The Doctor has stated that because of several fractures suffered by the claimant, there is restriction in the movement and therefore there will be difficulty in standing, walking, carrying heavy objects and also in squatting. Disfigurement has also stated to be one of the consequence. Considering all the cumulative facts and circumstances, the Doctor has certified the disablement at 55%. It is also to be pointed out that, when there had been fracture on both sides thigh bones, there will be difficulty in moving during physical work and consequently, there would be loss of earning capacity.

8. As rightly contended by the learned counsel appearing for the claimant / appellant herein, at least, disablement compensation should have been considered at the rate of Rs.3,000/- per percentage. If that is taken into account, the disablement compensation would be Rs.1,20,000/-. The pain and sufferings should have been awarded at Rs.30,000/-. Thus, the award of pain and sufferings is enhanced from Rs.20,000/- to Rs.30,000/- and the disablement compensation is enhanced from Rs.80,000/- to Rs.1,20,000/-. The amount of compensation awarded under other heads are reasonable and hence, the same are confirmed as such. Thus, there will be an overall enhancement of Rs.50,000/- towards the entire amount of compensation.

9. In the result, the Civil Miscellaneous Appeal is allowed, by enhancing the quantum of compensation from Rs.1,96,000/- to Rs.2,46,000/-, which is payable with interest at 7.5% per annum, from the date of petition till the date of deposit. No costs.

10. The Insurance Company / second respondent shall deposit the entire amount of compensation, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. The claimant / appellant herein is not entitled to any interest for the default period. On such deposit being made, the Tribunal is directed to transfer the said sum to the Savings Bank Account to the claimant / appellant, through RTGS. The claimant shall pay the necessary court fee for the enhanced compensation before receiving the copy of this judgment.

Sd/-
Assistant Registrar (CS-vi)

//True Copy//

Sub Assistant Registrar

srk
To

1. Motor Accident Claims Tribunal cum Chief Judicial Magistrate Court, Dharmapuri.
2. The Section Officer, V.R.Section, Madras High Court, Chennai 104

+1cc to Mr.M.SELVAM, Advocate, S.R.No. 65011
+1cc to Mr.J.CHANDRAN, Advocate, S.R.No. 64823

C.M.A.No.1825 of 2017

SJ(CO)
TR(05/02/2018)