

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.1840 of 2017

Amaran

... Appellant

versus

1. Kumar

2. The New India Assurance Co. Ltd,
Spencer Towers, 3rd Floor,
No.770A, Anna Salai,
Chennai - 600 002.

... Respondents

(1st Respondent exparte in lower Court)

Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 06.08.2015 made in M.C.O.P. No.171 of 2013 on the file of the Motor Accidents Claims Tribunal cum III Additional District Court, Thiruvallur at Poonamalle.

For Appellant : Mr.Suryanarayanan for Mr.M.Selvam

For Respondents : Mr.J. Chandran for R2

J U D G M E N T

This appeal has been filed by the claimant expressing grievance over the award of compensation at Rs.1,28,048/-, as against the claim made for a sum of Rs.2,00,000/-.

2. The injured Amaran, aged 45, employed as a Biscuit Seller, earning a sum of Rs.9,000/- per month met with an accident on 31.01.2013. He filed a claim petition, claiming a sum of Rs.2,00,000/-, as compensation, in respect of injuries sustained by him. The Tribunal has awarded the compensation with the following break up details :

1. Loss of Income	Rs.	4,500/-
2. Medical Expenses	Rs.	3,548/-
3. Transportation to Hospital	Rs.	5,000/-

4. Compensation towards Nutrition	Rs. 5,000/-
5. Pain and Suffering	Rs. 20,000/-
6. Disability at 45% at Rs.2,000/- per month.	Rs. 90,000/-

Total	Rs.1,28,048/-

3. Challenging the award as inadequate, the claimant has filed this appeal.

4. The main grievance of the learned counsel for the appellant is that the Tribunal did not take note of fact that the appellant herein has sustained Intertrochanteric fracture of left Femur (This fracture relates to the proximal or upper part of the femur or thigh bone. The proximal femur consists of the femoral head, the femoral neck, and the trochanteric region), Shaft in Left leg and other injuries, as the same is evident from the evidence of P.W.2 as well as Exs.P.2 to P.5 and Ex.P.7 and Ex.P.9; Future loss of earning should have been calculated by applying the multiplier method and that has not been done while awarding compensation by the Tribunal.

5. It is also pointed out by the learned counsel for the second respondent / Insurance Company that it is not the fit case of awarding compensation, by applying multiplier method of quantification, as there is no loss of earning capacity, as the disability has been certified by the Doctor only at 45% and not at 100%.

6. Considering the contentions on both sides, and the nature of injury, the disablement compensation is enhanced by Rs.1,000/- per percentage of disability, i.e., by applying Rs.3,000/- per percentage and if the same is applied, the loss on account of permanent disablement would be Rs1,35,000/- (45 x 3,000/-). This Court is of the opinion that the compensation would be made reasonable, with this enhancement. In all other respects, the compensation awarded under other heads by the Tribunal is confirmed as such.

7. In the result, this Civil Miscellaneous Appeal is partly-allowed. No costs.

8. The insurance company / second respondent herein is directed to deposit the enhanced compensation, as awarded by this Court, less the amount already deposited, if any, with interest @ 7.5% from the date of petition till the date of deposit to the credit of MCOP No.171 of 2013 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the claimant / appellant herein is

permitted to withdraw the same. Necessary court fee, if any, shall be paid on the enhanced compensation amount by the claimant herein before receiving the copy of the judgment.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vsi2/rkp

To

The Motor Accidents Claims Tribunal
cum III Additional District Court,
Thiruvallur at Poonamalle.

+1cc to M/s.M.Selvam, Advocate, S.R.No.45453

C.M.A. No.1840 of 2017

CP(CO)
CA(06/11/2017)



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