

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2017

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.602 of 2015
and M.P.No.1 of 2014

M.C.Shanmugam

... Appellant/Claimant

..Vs..

1. V.Amuthumani
2. The National Insurance Company Ltd.,
Division Office No.2, Second Floor,
11 Ramakrishna Road, Salem 636 007... Respondents/Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 12.02.2014, made in MCOP No.809 of 2012 on the file of the Motor Accident Claims Tribunal cum Special Subordinate Court No.1, Salem.

For Appellant : Mr. C.Rajasekaran

For Respondents: Mr. J.Chandran, for R-2,
No Appearance, for R-1

J U D G M E N T

The estate and lodge owner, by name, M.C.Shanmugam, who was aged 61, at the time of accident, has filed the claim petition for compensation claiming a sum of Rs.5,00,000/- for the injuries sustained in the accident.

2. The Tribunal accepted the claim for a sum of Rs.1,10,000/-, which was payable by the second respondent (before the Tribunal) / Insurance Company, along with interest at 7.5% per annum, from the date of petition till the date of payment. The second respondent / Insurance Company was also given liberty to recover the same from the first respondent / owner. Challenging the quantum of compensation awarded, the claimant has filed this Appeal. The breakup details of the award passed by the Tribunal is as follows:-

Disability	
(15 x Rs.2,000)	- Rs. 30,000.00
Medical expenses	- Rs. 52,500.00
Pain and sufferings	- Rs. 20,000.00
Transport Expenses	- Rs. 1,000.00
Food and Extra nourishment	- Rs. 5,000.00
Loss of Personal belongings	- Rs. 1,500.00

	Rs.1,10,000.00

3. The learned counsel appearing for the appellant / claimant would submit that, when the disablement as assessed by the Doctor was 30%, the Tribunal is not justified in fixing the percentage of disability at 15%, without any valid and acceptable reason. It is also pointed out that when the accident was on 05.05.2012, the disablement compensation ought to have been awarded not at Rs.2,000/- per percentage, but at Rs.3,000/- per percentage.

4. This principle and mode of calculation in respect of disablement compensation is acceptable, in view of the decision of this Court reported in the case of National Insurance Co. Ltd., v. G.Ramesh and another, decided on 22.02.2013. in respect of 30% disablement, and the disablement compensation at the rate of Rs.3,000/- per percentage would be Rs.90,000/- and it is awarded accordingly.

5. The medical expenses under Ex.P-5 is awarded at Rs.52,500/- which is reasonable, but the Tribunal has refused to accept the bill (Ex.P-7) regarding physiotherapy treatment. The physiotherapy treatment is not an unauthorized / unwanted treatment and it is a treatment advised by the Orthopedics Surgeons and therefore, the Tribunal is not justified in rejecting the bill pertaining to physiotherapy treatment.

6. It is also pointed out that even though the bill amount is Rs.5,000/-, it is wrongly described in paragraph 4 of the counter as Rs.1,400/-. Therefore, physiotherapy bill, as submitted by the claimant, is awarded at Rs.5,000/-.

7. The bill pertaining to scooter repair has been filed for a sum of Rs.6,000/-. But, alleging that there is no estimation made by a qualified surveyor, to assess the damages of the Scooter, the Tribunal has not awarded any compensation under that head. Just because Surveyor's Report is not filed, it may not be fair to reject the claim as there is a possibility to consider the Motor Vehicle Inspector's report to ascertain the details of damage and to ascertain the money required to repair.

Therefore, under the head of repair to article, a sum of Rs.6,000/-, as stated in the bill, is awarded.

8. Considering the period of treatment, nature of injury and the age of the claimant, pain and suffering is estimated at Rs.30,000/-, transport expenses is enhanced to Rs.5,000/-, food and extra nourishment is enhanced to Rs.10,000/-. The loss of personal belongings, as awarded by the Claims Tribunal, at Rs.1,500/- is confirmed. The re-structured amount of compensation reads thus:-

Disability	
(30 x Rs.3,000)	- Rs. 90,000.00
Medical expenses	- Rs. 52,500.00
Pain and sufferings	- Rs. 30,000.00
Transport Expenses	- Rs. 5,000.00
Food and Extra nourishment	- Rs. 10,000.00
Loss of Personal belongings	- Rs. 1,500.00
Physiotherapy treatment bills	- Rs. 5,000.00
Repair to scooter	- Rs. 6,000.00

	Rs.2,00,000.00

9. The learned counsel appearing for the claimant / appellant also claims future medical expenses on the ground that the fixation made and the implant used during surgery has to be removed. In the absence of any evidence regarding the future medical expenses, that claim cannot be considered.

10. Therefore, there will be an overall enhancement of Rs.90,000/- and the total amount of compensation is enhanced from Rs.1,10,000/- to Rs.2,00,000/-, which is payable with interest at 7.5% per annum, from the date of petition till the date of deposit.

11. It is represented by the learned counsel for the second respondent / Insurance Company that the amount, as determined by the Claims Tribunal, has been already deposited and the enhanced amount shall be deposited within a period of four weeks from the date of receipt of a copy of this judgment.

12. In view of the said submission, the second respondent / Insurance Company shall deposit the enhanced compensation amount, i.e., Rs.90,000/-, along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the amount lying in deposit to the Savings Bank Account of the claimant / appellant herein, through RTGS.

13. It is needless to point out that that the claimant shall pay the necessary court fee, for the enhanced compensation amount, before receiving the copy of this judgment. The pay and recovery, as ordered by the Claims Tribunal, shall remain unaltered, since the appeal is only on quantum.

14. In the result, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected MP is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

srk

To

1. Motor Accident Claims Tribunal cum Special Subordinate Court
No.1,
Salem.

2. The Section Officer, V.R.Section, High Court, Madras

+ 1 cc to Mr. J.Chandran, Advocate,SR.64425

+ 1 cc to Mr. C.Rajasekaran Advocate,SR.64729

C.M.A.No.602 of 2015

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