

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:08.08.2017
CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.1922 of 2017

Dulkib Ali @ Mohamed Iqbal .. Appellant/Petitioner

/Vs/

1.Sundara Varadan

2.Bajaj Allianz General Insurance Company Ltd.

Rep.by its Managing Director,

GE Plaza, Airport Road,

Yerawada, Pune 411 006. .. Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 14.08.2014 made in M.A.C.T.O.P.No.168 of 2012 on the file of the Motor Accidents Claims Tribunal (District Court) at Karaikal.

For Appellant : Mr.N.V.Prasanaa
for M/s.Sai Bharath and Ilan
For Respondent : Mr.D.Baskaran
No.2

JUDGMENT

This appeal has been filed by the claimant, challenging the quantum of compensation as inadequate.

2. The claimant, aged 48, Hotel Manager, earning a sum of Rs.500/- per day, met with an accident on 18.07.2012.

3. The claim was made for a sum of Rs.8,00,000/-. As against the claim made, the tribunal has passed an award for Rs.2,89,000/- under the following break-up details:

Compensation for 49% permanent : Rs. 98,000/-
disability @ Rs.2,000/- per percentage
of disability.
Compensation for mental agony, pain
and sufferings : Rs. 10,000/-
medical expenses : Rs.1,66,000/-
Damage to clothes : Rs. 1,000/-
extra nutritious : Rs. 2,000/-
travelling expenses : Rs. 2,000/-
loss of income : Rs. 10,000/-

Total

: Rs.2,89,000/-

4. The first contention of the learned counsel for the appellant is that when the Doctor has certified the disablement at 49%, the tribunal should have adopted multiplier method of quantification to assess the loss of earning capacity and instead, the tribunal has passed an award only for disablement compensation. It is also pointed out that the disablement compensation awarded was also at a lesser rate of Rs.2000/- per percentage and should have been Rs.3,000/- per percentage.

5. A perusal of the award would go to show that for 49% disablement, compensation has been awarded at Rs.98,000/-. Though the learned counsel for the appellant submitted that the disablement compensation must be given by adding another Rs.49,000/-, the details of the injuries suffered have been spoken to by doctor, which has been marked as Ex.P9. The doctor has certified the disability by describing the details of the treatment taken and effect of injuries upon the functional disability of the claimant, which has been described by the tribunal and it reads thus;

"According to PW2 Dr.Rajagopal, the petitioner has sustained genu varus deformity in the right thigh and wasting and weakness present in the right thigh and stiffness present in the right hip joint and knee point and the movement is completely restricted and shortening about 3 cms in the right lower limb than left lower limb and malunion of I.T with non-union of right femur with interlocking nail with screws and situ and joint space is narrowed and a healed scar mark is present over the right thigh. PW2 has evaluated the total permanent disability at 49%."

6. When the evidence shows that there had been serious consequences out of the injuries sustained in the right thigh. the tribunal should have awarded a higher rate of compensation.

7. The learned counsel appearing for the respondent would submit that when the disablement has been certified by the doctor as 49% and normally, there would be variation leading to 5 to 10% difference in the percentage fixed, the tribunal should have taken the disability not at 49% but at a lesser percentage. It is also pointed out that the award of compensation under each and every head is reasonable and does not require any enhancement.

8. Considering the nature of injury, period of treatment and the consequence of the injury upon the quality of life, this Court is of the view that the award must be enhanced at least on three grounds.

i) Loss of income for the period of treatment has not been awarded at all. Taking the income earned at Rs.6,000/- per month, loss of income for a period of 5 months is awarded at Rs.30,000/-.

ii) Loss of enjoyment of amenities, which is not awarded, is awarded at 25,000/-, having regard to the age, occupation and the injuries sustained by the claimant.

iii) So far as the disablement compensation is concerned, it is awarded at the rate of Rs.3,000/- per percentage to which this court make an addition of Rs.49,000/- to the amount already awarded to the claimant. There is an overall enhancement of compensation to the extent of Rs.1,04,000/-.

9. In the result, overall compensation is enhanced from 2,89,000/- to 3,93,000/- which is payable with interest at 7.5% per annum from the date of petition till the date of deposit. This appeal is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition are closed, if any.

10. The appellant/Insurance company is directed to deposit the entire award amount along with interest at 7.5% per annum, as determined by this Court, from the date of petition till the date of deposit, 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 judgment. 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 thereafter. Additional Court fee shall be paid by the claimant for the enhanced amount before obtaining the copy of the judgment. It is also made clear that the claimant shall not be entitled to interest for the delay period.

Sd/-

Assistant Registrar(J)

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

sms/kv

To

1. The Motor Accidents Claims Tribunal
(District Court) at Karaikal.

2. The Section Officer, VR Section,
High Court, Madras.

+1cc to M/s.Sai Bharath & Ilan, Advocate Sr.No.56978

+1cc to M/s.D.Bhaskaran, Advocate SR.No.56994

VGII(CO)

sm:23.2.2018