

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.09.2017

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THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.1951 of 2017

S.Jesuraj

Appellant

/Vs/

1. S.Janaki

2. The Oriental Insurance Co. Ltd.,
Motor Third Party Hub,
No.115, Broadway, Chennai.

Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.07.2013 made in M.C.O.P.No.2757 of 2011 on the file of the Motor Accident Claims Tribunal cum VI Small Causes Court, Chennai.

For Appellant : Mr.D.Sampath

For Respondent : Ex-parte
No.1

For Respondent : Mr.J.Chandran
No.2

JUDGMENT

Challenging the inadequate compensation awarded at Rs.42,000/- as against the claim made for a sum of Rs.2,00,000/-, this appeal has been filed by the claimant.

2. The claimant S.Jesuraj aged 51 years employed in a Provision Store earning a sum of Rs.600/- per day, met with an accident on 11.05.2011. He was admitted in the hospital on 11.05.2011 and discharged on 08.06.2011 i.e., after a period of 28 days. Claiming that the injury sustained in the accident has resulted in permanent disablement, the claimant has filed a claim petition for compensation claiming a sum of Rs.2,00,000/-.

3. The insurance company disputed the claim of the claimant on the ground that the injuries are very simple in nature and claimant is not entitled to a sum of Rs.2,00,000/-.

4. The Tribunal, on consideration of the materials placed before it, after recording that there was no fracture, has awarded a sum of Rs.42,000/- under the following break-up details:

Loss of income for 2 months	: Rs. 9,000/-
Transportation, Extra nourishment & Damage to clothes	: Rs. 5,000/-
Medical expenses	:Rs. 8,000/-
Attender Charges	:Rs. 5,000/-
Disability of 15% at the rate of	

Rs.1000/- per percentage	:Rs.15,000/-

Total compensation	:Rs.42,000/-

The claimant, challenging the compensation as inadequate, has filed the present appeal.

5. The learned counsel for the appellant submits that when the claimant had taken continuous treatment in the hospital for a period of 28 days, the Tribunal should have awarded sufficient compensation on account of pain and suffering and extra nourishment.

6. The learned counsel for the second respondent submits that when there is no fracture, the disablement, as spoken to by the doctor, cannot be believed and therefore, no extra amount could be awarded on account of the pain and suffering, extra nourishment and the compensation awarded under the head of disability at Rs.15,000/- is more than sufficient to satisfy the claim of the claimant.

7. A perusal of the award of the Tribunal reveals that the

Tribunal has recorded the fact that there had been hospitalisation of the claimant as evident from the discharge summary issued by A.C.S.General Medical College and Hospital, Vellappanchavadi, Chennai. It is evident from the records that the claimant has suffered partial permanent disability. However, the Tribunal has recorded a finding that no fracture has been suffered by the claimant and, therefore, there is no question of disability and, therefore, has not awarded adequate compensation towards disability.

8. It is to be stressed that partial permanent disability is not always associated with any fracture and even any other kind of injury could very well disable the claimant from discharging his regular work. What is necessary to be seen is whether after the accident the claimant is able to perform his duties as he was performing prior to the accident. Curiously, the Tribunal has discussed the nature of the disablement and has fixed 15% as disablement for the purpose of awarding compensation. However, the Tribunal has not taken into consideration the period of hospitalisation undergone by the claimant and the pain and suffering that he would have undergone during the said period on account of the injuries suffered by him. Considering all the above aspects, this Court is of the considered view that a sum of

Rs.15,000/- towards pain and suffering would be a just and reasonable compensation. Further, the Tribunal has awarded a consolidated sum of Rs.5,000/- towards transportation, extra nourishment and damage to clothes. The said amount is on the lower side. The claimant having been in hospital for a period of 28 days, would definitely need to nourish himself well to regain his health. Therefore, this Court, while confirming the compensation of Rs.5,000/- awarded by the Tribunal above, however, confirms the said amount under the head transportation expenses. This Court further awards a sum of Rs.5,000/- towards extra nourishment and Rs.5,000/- towards damage to clothes and articles. In all, under the head transportation and extra nourishment, an amount of Rs.5,000/- each is awarded and under the head damage to clothes and articles an amount of Rs.3,000/- is awarded, which would be just and reasonable compensation.

सत्यमेव जयते

9. A perusal of the award reveals a sum of Rs.8,000/- is awarded under the head medical expenses, which, in the considered view of this Court seems to be a bit low. This Court, on consideration of the matter, enhances the compensation by another Rs.2,000/- under the head medical expenses. In fine, a sum of Rs.10,000/- is

awarded under the head medical expenses.

10. Accordingly, the compensation awarded by the Tribunal is enhanced and restructured as hereunder :-

Loss of income for 2 months	: Rs. 9,000/-
Pain & Suffering	: Rs.15,000/-
Transportation	: Rs. 5,000/-
Extra Nourishment	:Rs. 5,000/-
Damage to clothes & articles	:Rs. 3,000/-
Medical expenses	:Rs.10,000/-
Attender Charges	:Rs. 5,000/-
Disability of 15% at the rate of Rs.1000/- per percentage	:Rs.15,000/-
Total compensation	:Rs.67,000/-

11. Accordingly, this Court enhances the compensation by Rs.25,000/- over and above the award passed by the Tribunal which is payable with interest at 7.5% p.a. from the date of claim petition till date of deposit.

12. In the result, the civil miscellaneous appeal is allowed in the above terms. No costs.

13. The second respondent/Insurance Company is directed to deposit the award amount as ordered by this Court above along with interest at 7.5% per annum and from the date of petition till the date of deposit, less the amount, if any, already deposited to the credit of the claim petition, 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/appellant through RTGS within a period of two weeks thereafter.

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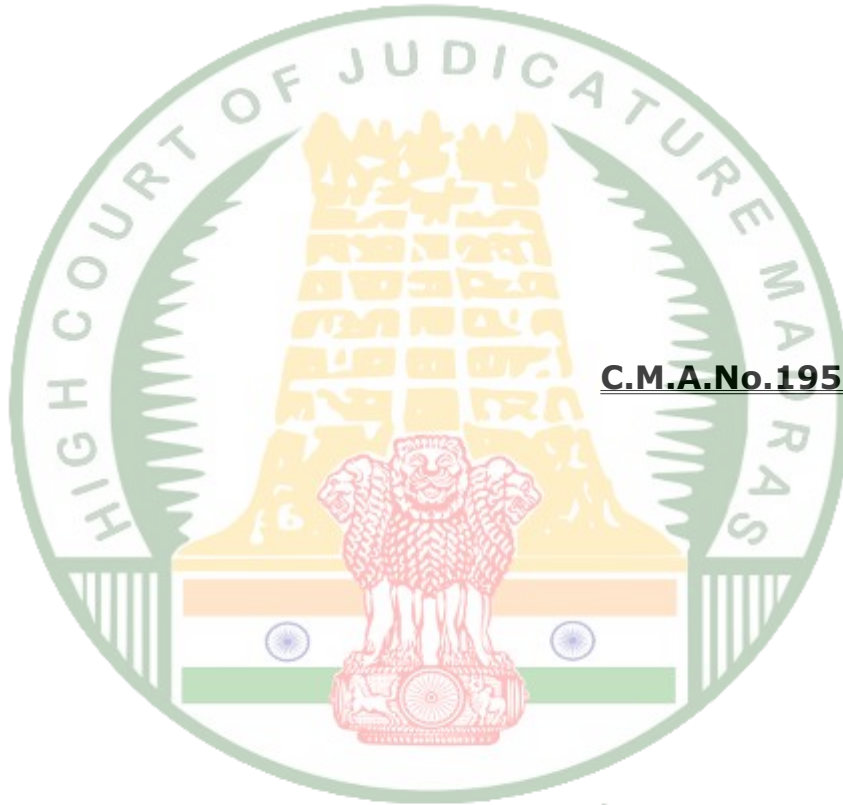
Index : Yes/No
Internet : Yes/No
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To

1. The Motor Accident Claims Tribunal
(VI Small Causes Court)
Chennai.

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

DR. S.VIMALA, J.

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