

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.08.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2100 of 2017

S.Selva Kumar

.. Appellant/Petitioner

/Vs/

1. M.Vishnu Sharma

2. The Manager,
National Insurance Company Ltd.,
No.751, Anna Salai, IIIrd Floor,
Chennai - 600 002.

.. Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.08.2009 made in M.C.O.P.No.1897 of 2005 on the file of the Motor Accident Claims Tribunal, V Judge, Court of Small Causes, Chennai.

For Appellant : Mr.A.A.Venkatesan
For Respondent : Ex-Parte before tribunal
No.1
For Respondent : Mr.R.Ravichandran
No.2.

JUDGMENT

The claimant Selvakumar, aged 34, employed as a coolie, earning a sum of Rs.150/- per day (Rs.4,500/- per month), suffered fracture of the thigh bone and abrasion over right knee, made a claim for a sum of Rs.1,75,000/-. The tribunal, after consideration of materials placed before it, has passed an award for a sum of Rs.61,000/-. Challenging the award as grossly inadequate, the claimant has filed this appeal.

2. The learned counsel for the claimant would submit that when there is a fracture of thigh bone, the tribunal should have considered the loss of earning capacity and loss of enjoyment of amenities, which are sine-qua-non in a claim for compensation filed by a person, who suffered disablement. It is pointed out that in any event, the disablement compensation at the rate of Rs.2,000/- per percentage should have been considered.

3. The learned counsel for the second respondent would

submit that when the accident had taken place in the year 2003 i.e. on 30.11.2003, the disablement compensation, at that point of time, was only at Rs.1,000/- per percentage and therefore, the claim, at the rate of Rs.2,000/- per percentage, is the high demand and therefore, it cannot be accepted.

4. In order to appreciate the contention, it is necessary to find out the parameters considered by the tribunal, while assessing the quantum of compensation. The tribunal has relied upon Ex.P1 case sheet and Ex.P3 discharge summary issued by the Government General Hospital, Chennai. The discharge summary disclosed that the injured had taken treatment as an inpatient from 06.12.2003 to 11.12.2003. He had suffered fracture of proximal shaft of RF4 and the disability certificate issued by the doctor disclosed that he has suffered disability to the extent of 45%. The tribunal has felt that the percentage of disability is on the higher side. Hence, disablement compensation has been awarded only at Rs.35,000/-. The award under the other heads are loss of income for a period of three months at the rate of Rs.3,500 x 3 = Rs.10,500/-, Transportation at Rs.2,000/-, Extra nourishment at Rs.2,000/-, damages of articles at Rs.500/-, Medical expenses at Rs.3,000/-, Attender charges at Rs.3,000/-, Pain and suffering at Rs.5,000/-.

5. Considering the fact that even though the date of accident is of the year 2003, the award has been passed in the year 2009 and this appeal is coming in the year 2017 and considering the money value in the year 2017, the award already passed has to be restructured.

6. Transport expenses awarded at Rs.2,000/- is enhanced to Rs.5,000/-, extra nourishment awarded at Rs.2,000/- is enhanced to Rs.5,000/-, attender charges awarded at Rs.3,000/- is enhanced at Rs.5,000/-, loss of earning awarded at Rs.10,500/- is enhanced at Rs.14,000/-, pain and suffering awarded at Rs.5,000/- is enhanced at Rs.15,000/- and disability compensation awarded per percentage at Rs.1000/- is enhanced to Rs.2000/-per percentage and arrived at Rs.70,000/-. The damages for clothes and medical expenses already awarded is confirmed.

7. There is an over all increase in the compensation by Rs.56,500/-. The total amount of compensation is awarded at Rs.1,17,500/-.

8. In the result, the Civil Miscellaneous Appeal is allowed to the extent indicated. No costs. Consequently, connected miscellaneous petition is closed, if any.

9. The Insurance Company/the second respondent is directed

to deposit the 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, 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 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 appellant /claimant for the enhanced amount before obtaining the copy of the judgment. It is also made clear that the appellant/claimant shall not be entitled to interest for the delay period.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sms/kv

To

1. The Motor Accident Claims Tribunal,
V Judge, Court of Small Causes, Chennai.
2. The Section Officer, VR Section,
High Court, Madras. (2 Copies)

C.M.A.No.2100 of 2017

SJ(CO)
CS/08/05/18

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