

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.08.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2170 of 2017

Ganesan

..Appellant/Petitioner

/Vs/

1.K.Parvathi

2.Reliance General Insurance Company Ltd.,

Branch Office, No.408, 3rd Floor,

Perundurai Road, Erode.

..Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 21.08.2015 made in M.C.O.P.No.80 of 2014 on the file of the Motor Accident Claims Tribunal, (Additional District Court) at Namakkal.

For Appellant : Mr.Ma.P.Thangavel

For Respondent : Ex-parte before tribunal

No.1

For Respondent : Mr.K.Moorthy

No.2

JUDGMENT

The claimant, Ganesan, an amputee on account of the accident on 16.12.2013, aged 56, working as chief cook at Hotel Gowtham, earning a sum of Rs.15,000/- per month, has filed the claim petition claiming a sum of Rs.15,00,000/- as compensation. The tribunal, on consideration of materials placed before it, has passed an award for a sum of Rs.8,21,487/- under the following break-up details:

Loss of income	:	Rs.4,91,400.00
Medical expenses (as per bills)	:	Rs.2,10,087.00
Pain and suffering	:	Rs. 50,000.00
Extra nourishment	:	Rs. 5,000.00
Transport expenses	:	Rs. 5,000.00
Attender charges	:	Rs. 10,000.00
Loss of enjoyment of amenities	:	Rs. 50,000.00

Total : Rs.8,21,487.00

2. Contending that the tribunal has not properly assessed the loss of earning capacity, pain and suffering and loss of enjoyment of amenities, the claimant has filed this appeal.

3. It is the case of the learned counsel for the appellant that the percentage of disablement fixed at 70% is very low and loss of earning capacity should have been considered as 100%, having regard to the age and the amputation suffered by the claimant. Further, the learned counsel for the appellant relied upon the reported decision in 2015 (1) TN MAC 161 (SC) (Neeta Vs. Divisional Manager, MSRTC, Kolhapur), for the proposition that when the claimant is not able to provide documents to prove the income i.e., in the absence of documentary evidence in support of the claim, the tribunal and High Court ought to have taken monthly salary at Rs.12,000/- (for a carpenter) as fixed by the State Government under The Minimum Wages Act or else, should have reasoned that Minimum Wage as fixed in Notification was not fair wage. Pointing out the experience of the claimant and craving for food it is contended that the monthly income of the injured must be taken at Rs.12,000/- and it is also contended that with experience in cooking the taste is also enhances.

4. If a person with young age suffers amputation, he may have physical strength to do work at least some extent or to learn some other work and to discharge the work to do some extent so far as the case is concerned, the injured is aged 56 where he would loss physical strength completely and therefore, compensation on account of loss of enjoyment of amenities and compensation for loss of earning capacity should be more.

5. So far as this case is concerned, there are minimum wages fixed for the Chief cook. When it is the case of the claimant that he was employed in Hotel Gowtham, Paramathi Road, Namakkal and it would not have been difficult for the claimant to produce the salary certificate. The tribunal should have examined the employer. A perusal of the award of the tribunal would go to show that no salary certificate has been filed and no proof has been adduced for income. However, in the absence of documentary proof, minimum wages having been taken, it is appropriate to take monthly income at Rs.8,000/- and adopting multiplier of 9, the loss of income would be arrived at Rs.8,64,000/-.

6. The learned counsel for the appellant also pointed out that no award has been passed for purchase of artificial calipers, when there is an amputation. A perusal of the details of award of the tribunal would go to show that no amount has been awarded towards for purchase of artificial calipers. Therefore, the award of the tribunal has to be reconstructed.

7. So far as the loss of earning capacity is concerned, the tribunal has taken Rs.6,500/- as monthly income and multiplier of 9 has been adopted and for the loss of earning capacity at 70%, when the claimant has suffered loss of one leg, aged 56, it must result in loss of earning capacity of 100% and not 70%. He will not be able to do any work at the age of 56 with loss of one leg. Therefore, loss of earning capacity is fixed at 100%.

8. The following is the amount of compensation, as modified as under the various heads :-

S. No.	Head of award	Amt. Awarded by Trial Court	Amount awarded by this Court	Enhanced Amount
1.	Loss of income	Rs.4,91,400/-	Rs.8,64,000/-	Rs.3,72,600/-
2.	Medical expenses (as per bills)	Rs.2,10,087/-	Rs.2,10,087/-	-
3.	Pain and suffering	Rs.50,000/-	Rs.1,00,000/-	Rs.50,000/-
4.	Extra nourishment	Rs.5,000/-	Rs.25,000/-	Rs.20,000/-
5.	Transport expenses	Rs.5,000/-	Rs.35,000/-	Rs.30,000/-
6.	Attender charges	Rs.10,000/-	Rs.25,000/-	Rs.15,000/-
7.	Loss of enjoyment of amenities	Rs.50,000/-	Rs.1,00,000	Rs.50,000/-
8.	for purchase of artificial calipers	-	Rs.1,50,000/-	Rs.1,50,000/-
9.	Total	8,21,487/-	Rs.15,09,087/-	Rs.6,87,600/-

9. In the result, over all compensation is enhanced from 8,21,487/- to 15,09,087/- with interest at 7.5% per annum and costs 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 is closed, if any.

10. The second respondent/Insurance Company is directed to deposit the entire award amount, along with interest at 7.5% per annum and costs, 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 six 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. 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 claimant shall not be entitled to interest for the period of delay.

Encl:Deficit court fee paid for a
sum of Rs.6,150/- vide USR 9974 enclosed.

Sd/--
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sms/GLN

To

- 1.The Motor Accident Claims Tribunal,
(Additional District Court) at Namakkal.
2. The Section Officer, VR Section,
High Court, Madras.

+lcc to Mr.K.Moorthy, Advocate Sr.No.60088
+lcc to Mr.Ma.P.Thangavel, Advocate Sr.No.60426

KJ(CO)
sm:28.4.2018

C.M.A.No.2170 of 2017

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