

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2017

CORAM:

THE HON'BLE DR.JUSTICE.S.VIMALA

Civil Miscellaneous Appeal No.2172 of 2017

S.R.Palani

... Appellant

Vs

1. N.Chinnadurai
(R-1 already set exparte in lower court,
hence notice is dispensed with to R-1)

2. The United India Insurance Co. Ltd.,
Motor III Party Claims Office,
No.38 Anna Salai, Chennai - 2

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set-aside the decree and Judgment, dated 09.04.2009 made in M.C.O.P.No.406 of 2006 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court No.I, Poonamallee.

For Appellant : Mr. J.Mahalingam

For Respondents: Mr. A.Dhiraviyanathan, for R-2

J U D G M E N T

The claimant, S.R.Palani, aged 32, a Collection Agent, earning a sum of Rs.3,500/- per month, met with an accident, on 14.05.2006. The claimant filed a claim petition for compensation claiming a sum of Rs.4,00,000/-. The Tribunal has passed an award for a sum of Rs.90,500/- under the following breakup details:-

Loss of earnings from	
14.05.2006 to 13.05.2007	- Rs.10,500.00
Transport to Hospital	- Rs. 5,000.00
Extra Nourishment	- Rs. 5,000.00

Medical expenses	- Rs.20,000.00
Pain and sufferings	- Rs. 5,000.00
Continuous and permanent disability-	Rs.45,000.00

	Rs.90,500.00

2. The learned counsel for the appellant / claimant would submit that, when there are two fractures, one in the upper portion and another in the lower portion, i.e., the fracture of right femur and fracture of tibia, the loss of earning capacity should have been considered at 45%, which is equivalent to the functional disablement and that the Tribunal should have adopted multiplier method of quantification.

2.1. The other contention is that, considering the two fractures on the right leg, the Tribunal should have considered the corresponding increase with reference to the loss of enjoyment of amenities, pain and sufferings and medical expenses.

3. It is relevant to point out that the Doctor has stated, in his evidence, that for the removal of implant, the claimant may require future medical expenses at Rs.50,000/-, but, still, the Tribunal has chosen to award only a sum of Rs.15,000/-.

3.2. The claimant had been admitted at Government General Hospital, Chennai, for the period from 14.05.2006 to 17.05.2006. For the fractures sustained, plaster of paris has been applied, later he has been admitted at Royapettah Government Hospital from 18.05.2006 to 30.05.2006 during which time surgery has been performed using implant in respect of the fractures sustained by the claimant in the right thigh. According to the claimant, the fractures operated did not result in perfect union of the bone, but has resulted in mal-union. The Doctor has certified the consequences of the surgery and the implant used. The two fractures in the same leg would certainly cause functional disablement to the claimant, whose nature of duty as a Collection Agent would involve extensive travel.

4. The next issue to be considered is, with reference to the loss of earning capacity.

5. In the claim petition, it is stated that the injured was functioning as a Collection Agent. When the job of the Collection Agent requires extensive travelling, because of the disablement suffered, he may not be in a position to tour for a long time and earn. Further, the fact remains that even if the travelling job is not possible, he will be able to do the desk work. Considering the possibility of doing the desk work, the percentage of loss of earning capacity must be fixed at 25%, even though the physical disablement is 45%. Therefore, the loss of earning capacity is estimated at Rs.1,78,500/- (Rs.3,500/- x 25/100 x 12 x 17).

6. Considering those circumstances, the compensation awarded by the Claims Tribunal is re-structured and the compensation is passed under appropriate heads:-

Head	Amount in INR
Medical expenses already incurred and to be incurred.	25,000/-
loss to article	1,000/-
extra nourishment	10,000/-
transport expenses	10,000/-
loss of earnings for six months (Rs.3,500/- x 6)	21,000/-
cost of attendant	20,000/-
Pain and sufferings	30,000/-
loss of enjoyment of amenities	25,000/-
Loss of earning capacity	1,78,500/-
Total	3,20,500/-

7. In the result, the Civil Miscellaneous Appeal is partly-allowed, by enhancing the quantum of compensation from Rs.90,500/- to Rs.3,20,500/-, which is payable with interest at the rate of 7.5% per annum, from the date of petition till the date of deposit. No costs.

8. It is represented that the amount of compensation, as determined by the Claims Tribunal, has already been deposited by the second respondent / Insurance Company. Therefore, the compensation amount, as determined by this Court, shall be deposited by the Insurance Company, less the amount already deposited, if any, after the deposit of the award amount of the

Tribunal, along with interest at 7.5% per annum, from the date of petition, till the date of deposit, within a period of six weeks from the date of receipt of a copy of this judgment. The Insurance Company is not liable to pay any interest on the compensation amount, in respect of the default period, for which, condonation of delay has been ordered. On such deposit being made, the Tribunal shall transfer the compensation amount to the savings banks of the claimants, through RTGS, as apportioned by the Claims Tribunal. The claimants shall pay the necessary court fee before receiving the copy of this judgment.

s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

srk

To

1. Motor Accident Claims Tribunal,
Additional District and Sessions Judge,
Fast Track Court No.I, Poonamallee.

2. The Section Officer, V.R.Section,
Madras High Court, Chennai - 104

+2 Ccs to Mr.J. Mahalingam, Advocate sr 55974.

+1 CC to Mr.A. Dhiraviyanathan, Advocate sr 55776.

C.M.A.No.2172 of 2017

KS (CO)

SP(10/01/2018)

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