

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 28.11.2016

Judgment Pronounced on : 04.08.2017

CORAM: THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.994 of 2011
and M.P.No.1 of 2011

The Manager,
National Insurance Company Ltd.,
No.35, North Usman Road,
T.Nagar,
Chennai - 17.

... Appellant/2nd Respondent
Vs.

1.S.Ashok Kumar

...1st Respondent/petitioner

2.N.Saraswathi

... 2nd Respondent/1st respondent

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 17.06.2010 made in O.P.No.1469 of 2007 on the file of the Motor Accidents Claims Tribunal (in the V Court of Small Causes), Chennai.

For Appellant : Mr.D.Bhaskaran
For Respondents : No appearance

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JUDGMENT

This Civil Miscellaneous Appeal is preferred against the award passed in MCOP.No.1469 of 2007 on the file of the Motor Accident Claims Tribunal (V Court of Small Causes), Chennai by the second respondent, the Insurance Company.

2. On 22.12.2006, while the first respondent/claimant was riding his bicycle on the M.B.T. Road, Walaja, a lorry bearing Registration No.TN 04 C 6739 belonging to the second respondent (first respondent before the Tribunal) dashed against it and knocked the cyclist down, owing to which, the claimant suffered twin fractures to his right foot. His right big toe too was amputated. PW.2, the doctor Vide his Ext.P8 disability certificate, has assessed the extent of disability at 35%. The claimant was 27 years at the time of accident and was stated to be a hair stylist. For the injuries suffered, the claimant moved the Tribunal seeking both general as well as special damages to a tune of Rs.5,00,000/-, as against which the Tribunal has awarded a total sum of Rs.3,50,000/- . A sizable component of this award is the compensation awarded on the head of partial permanent disability. In arriving at it, the Tribunal notionally fixed the income of the claimant at Rs.3,000/- p.m. and after determining 35% of the same, it applied a multiplier of 18. The various heads of claim and compensation awarded are tabulated below:

Heads	Amount claimed (Rs.)	Amount awarded (Rs.)
Loss of earning from 22.12.2006 to 21.10.2007	60,000	
Permanent partial disablement		2,26,800
General damages		
Transportation	5,000	2,000
Extra nourishment	5,000	10,000
Damages to clothing & articles	1,000	1,000
Medical Expenses	14,000	5,000
Attendant charges	25,000	5,000
Loss of amenities	30,000	25,000
Disfigurement		25,000

Heads	Amount claimed (Rs.)	Amount awarded (Rs.)
Mental Agony	30,000	25,000
Pain and sufferings	50000	25,000
Permanent disability	2,00,000	
Loss of earning power	80000	
	5,00,000	3,49,800 rounded off to 3,50,000/-

3. Notice is yet to be served on claimant in this appeal as the notice earlier issued was returned with the bailiff's endorsement that the whereabouts of the claimant was not known. Since the appeal is of the year 2011 and it is already ten years since the date of accident, I chose to hear the counsel for the appellant and having heard him and having arrived at the conclusion to be spelt out below, I dispense with any fresh notice to the claimant/first respondent.

4. The learned counsel for the appellant raised a solitary point as his objection to the award. While P.W.2 has determined the permanent disability of the appellant at 35%, inasmuch as the claimant is only a barber the schedule percentage of disability should be resorted to and the percentage of disability should be fixed at 10%.

5. For an accident that had taken place in December, 2006, this court witnesses a contention disputing the quantum of compensation awarded on the head of permanent disability a decade later. At the very outset, I am convinced that the total amount awarded appear just, fair and reasonable given the fact that the claimant has lost a toe for no fault of his. It is not however, the value of this body part is explicitly disputed even though the appellant has managed to couch it as what its counsel perceives as excessive compensation for the permanent disability. Having stated thus, it needs to be acknowledged that the appellant was only a hair-stylist/barber and loss of a toe may not have a serious impact on his earning capacity though it may still handicap him marginally. Hence, I choose to interfere with the compensation awarded in this head. Even as I tinker with the award on this head, I notice that some of the heads of general damage have been inadequately compensated which prompt me to take a relook at the adequacy of compensation awarded by the Tribunal.

6.While the medical evidence is to the effect that the claimant has suffered 35% disability I find a need to lower its value in the context of his funtional disability. I consider 20% would be an ideal extent of permanent disability as affecting his earning capcity in the circumstance in which the claimant finds himself in. Accordingly, the amount awardable in this head would be (3,000 x 12 x 18 x 20%) is Rs.1,29,600/-. This rounded to Rs.1,30,000/-.

7.As indicated ealier, the damages in certain heads of general damages where I notice there is a necessity to enhance it to make it just, fair and reasonable under circumstance, are refixed as below:

Heads	Amount refixed (Rs.)
Permanent Partial Disablement	1,30,000
General Damages :	
Disfigurement	1,00,000
Mental agony	50,000
Pain and suffering	50,000

However, the compensation awarded by the Tribunal on the other heads of general damages remains the same, and therefore the revised enhanced amount is Rs.3,78,000/-.

8. In the result, the appeal is dismissed and the appellatant/insurance company is directed to deposit the enhanced revised amount of Rs.3,78,000/- to the claimant/first respondent with accrued interest @ 7.5% per annum as determined by the Tribunal, less any amount already deposited within a period of four weeks from the date of receipt of a copy of this order and the claimant/first respondent is entitled to withdraw the same forthwith, upon payment of necessary court fee, if any. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS IV)

Sub Assistant Registrar

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To:

1.The Motor Accidents Claims Tribunal
V Court of Small Causes,
Chennai.

2.The Manager National Insurance Company Limited
No.35 North Usman Road, T.Nagar Chennai-600 017

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

+1 cc to M/s.D.Bhaskaran Advocate sr 56077

C.M.A.No.994 of 2011

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