

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.2315 of 2014

and M.P.No. 1 of 2014

M/s. Reliance General Insurance Co. Ltd.,
Rep. By its Branch Manager,
1st Floor, Geejay Argade,
No.141/71, T.V. Swamy Road West,
R.S. Puram, Coimbatore. ... Appellant/3rd Respondent

versus

1. Sivasubbu ...1st Respondent/Claimant
2. Saravanakumar2nd Respondent/1st Respondent
3. Sriram
(R2 and R3 remained Ex parte before
the Tribunal) ...3rd Respondent/2nd Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 14.08.2009 made in M.C.O.P.No.831 of 2008 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Tiruppur.

For Appellant : Mr.M.B. Gopalan
For R1 : Mr. Ma. P. Thangavel

JUDGMENT

As against the claim made for a sum of Rs.5 Lakhs, the Tribunal has awarded a sum of Rs.2,24,300/- and the challenging the same, the insurance company has filed this appeal.

1.1. The claimant, aged 55 years, mixer master, earning a sum of Rs.5,000/- per month, met with an accident on 04.06.2008. Alleging that the claimant has suffered fracture of both bones in the leg and other simple injuries and there is consequent permanent disablement, leading to loss of earning capacity, the claimant has filed the claim petition for compensation claiming a sum of Rs.5 lakhs.

1.2. The Tribunal, on consideration of material placed before it, awarded compensation under the breakup following breakup details:

SL. NO.	HEAD OF CLAIM	QUANTUM (RS.)
1.	Loss of Income	1,61,700/-
2.	Pain and Sufferings	15,000/-
3.	Extra Nourishment	2,000/-
4.	Transport Expenses	1,000/-
5.	Loss of Comfort	6,000/-
6.	Medical Expenses	38,600/-
	Total	2,24,300/-

2. The main contentions of the learned counsel for the appellant are:

(i) The Tribunal failed to appreciate the nature of injuries and that the nature of injuries would not lead to permanent disablement.

(ii) The Tribunal committed mistake in adopting multiplier method of quantification to assess loss of earning capacity, which is unwarranted.

3. In order to appreciate the contentions raised, it is necessary to look into the parameters adopted while assessing the quantum of compensation.

3.1. The Tribunal has relied upon the evidence of the doctor as well as the evidence of the claimant. According to the claimant, the fractured bones did not unite and he suffered loss of earning capacity on account of the disablement, which arose due to non-union of fractured bones. The Doctor has certified that the claimant has suffered reduction in height, reduction in the circumference and the reduction in the flesh and the consequent dis-figuration. The doctor has certified the disability at 40.6%. The claimant is stated to have suffered pain and difficulty in discharging his day-to-day activities. The nature of the job requires long hours of standing and as there had been multiple fracture, certainly he would suffer loss of earning capacity. Finding that the evidence of the claimant is corroborated by the evidence of the doctor, after fixing the monthly income at Rs.3,500/- per month and adopting multiplier of 11 and taking the percentage of functional disability at 35% the loss earning capacity has been quantified at Rs.1,61,700/-.

3.2. The nature of injuries sustained the period of treatment and the non-union of bones would have led to the conclusion that the quantification has to be done using the multiplier method and therefore, the contention that this is not a fit case for adopting multiplier method cannot be accepted.

3.3. The award under other heads which are consequential to the fracture suffered cannot be said to be excessive and it is just and reasonable.

4. In the result, the appeal has no merits and the appeal is dismissed, confirming the award dated 14.08.2009 passed in M.C.O.P. No.831 of 2008 by the Motor Accident Claims Tribunal, Principal Subordinate Court, Tiruppur.

5. The Insurance Company shall deposit the entire amount of compensation, less the amount already deposited if any, along with interest at the rate of 7.5% p.a. 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. On such deposit, the claimant is permitted to withdraw the same. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ogy/ibm
To:

1. The Principal Subordinate Court,
The Motor Accident Claims Tribunal,
Tiruppur.
2. The Section Officer, VR Section,
High Court, Madras.

+1 cc to Mr.Ma.p.Thangavel Advocate sr 1540

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