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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.2367 of 2014

Thambidurai

... Appellant/Petitioner

versus

1.M/s.Delhi Gujarath Carriers Pvt. Ltd.,
No.1/143, Shivaji Nagar,
Gurhaon, Hariyana State - 122 001.

2.The Branch Manager,
The Oriental Insurance Co. Ltd.,
D.O.5, Kolkatta,
Room No.33, Steepon House,
4, BBD, BAG East, 2nd Floor,
Kolkatta - 700 001.

(R1 remained ex parte before the Tribunal)

... Respondents/Respondents

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.11.2011 in M.C.O.P.No.753 of 2010 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Salem.

For Appellant : Mr.R.Nalliyappan

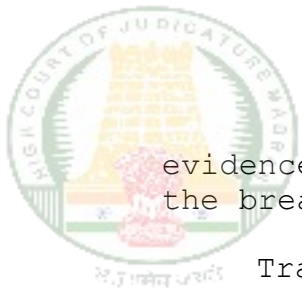
For R2 : Mr.D.Bhaskaran

For R1 : Exparte

JUDGMENT

The claimant, P.Thambidurai, aged about 26 years, a mason, earning a sum of Rs.10,000/- p.m. met with an accident on 17.05.2010 and sustained injuries. Hence, he filed a claim petition in M.C.O.P.No.753 of 2010 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Salem, claiming compensation of Rs.10,00,000/-.

2. The Tribunal, on consideration of oral and documentary



evidence, has awarded a sum of Rs.1,90,000/- as compensation, the break-up details of which are as follows:

Transport to Hospital	-	Rs. 5,000/-
Extra nourishment	-	Rs. 10,000/-
Medical Expenses	-	Rs. 25,000/-
Pain and suffering	-	Rs. 75,000/-
Disability	-	Rs. 1,00,000/-

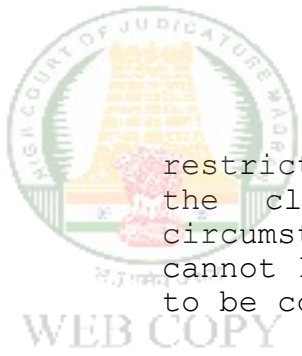
Total	-	Rs. 1,90,000/-

Challenging the quantum of compensation as inadequate, the claimant has filed this appeal.

3. The learned counsel appearing for the appellant/claimant submits that due to accident, the claimant had sustained grievous injuries and the left leg had been amputated, thereby causing total disablement, which prevents the claimant from discharging his regular duties as mason. It is further submitted that though the doctor has assessed the disability at 60%, however, the Tribunal has reduced the same to 50% without assigning any proper reason. Therefore, the compensation awarded under the head 'disability' is very low and it requires enhancement. Furthermore, the Tribunal has not awarded any amount towards attendant charges, future loss of income, loss of amenities of life, loss of happiness and loss of expectation of life. Therefore, the compensation awarded by the Tribunal requires enhancement.

4. The learned counsel appearing for the second respondent/Insurance Company submits that the award passed by the Tribunal is very reasonable and justifiable. Therefore, it does not require any interference.

5. A perusal of the award passed by the Tribunal reveals that Ex.P6-Medical report issued by the Government Hospital, Salem disclose that the left leg of the claimant was amputated. Ex.P8-treatment book produced by the claimant reveals that he had undergone treatment from 17.05.2010 to 07.06.2010. Ex.P9-disability certificate was issued by P.W.2-Orthopedic Doctor, who examined the claimant with reference to the medical records, wherein, the doctor opined that due to amputation of left leg below the knee joint, the claimant has sustained 60% disablement. However, the Tribunal, considering the above documentary evidence, fixed the disability at 50%. Though it is contended that the reduction of the disability from 60% to 50% is without any justification, it is to be pointed out that the Tribunal has fixed the functional disability at 50%, which



restricts the mobility of the claimant. It is not the case of the claimant that he is completely immobile. In such circumstances, the fixation of functional disability at 50% cannot be said to be illegal and, therefore, the same is liable to be confirmed.

6. From the perusal of the records, it is seen that due to the accident, the claimant had suffered amputation of left leg below the knee, which prevented him from doing masonry work permanently. Therefore, the disablement suffered by the claimant is a functional disablement and totally a permanent disablement. In such circumstances, it is the duty of the Tribunal to award compensation under the heads 'disablement' as well as 'loss of earning capacity'. However, a perusal of the order passed by the Tribunal reveals that the Tribunal has awarded compensation only under the head 'disability'. Considering the nature of injuries, period of treatment and impact of the injuries on earning capacity, this Court feels that the compensation awarded by the Tribunal is inadequate as claimed by the claimant and the same requires enhancement.

7. It is claimed by the claimant that he was working as a mason and earning a sum of Rs.10,000/- p.m. However, there is no documentary evidence to prove the same. Therefore, based on the ratio laid down in the case of Syed Sadiq vs. United India Insurance Co. Ltd., (2014 (2) SCC 735), wherein, the Hon'ble Supreme Court, even in case of a vegetable vendor, an unskilled labour, has fixed the income at Rs.6,500/- p.m., this Court fixes the income of the claimant at Rs.6,500/- p.m. This Court, in respect of future prospective increase in income, fixes 50% under the said head, considering the fact that the claimant was aged 29 years at the time of the accident. Accordingly, fixing the monthly income at Rs.6,500/- and adding 50% towards future prospective increase in income and adopting multiplier of 17 for the 50% functional disability suffered by the claimant, the compensation under the head loss of earning is quantified at Rs.9,94,500/- (Rs.6,500 + 50% FP x 12 x 17 x 50%).

8. Insofar as compensation under the non-pecuniary heads are concerned, considering the nature of injuries sustained, the amputation of left leg below the knee as well as the period of treatment and the impact of the said injury on the day-to-day life and routine of the claimant, this Court is of the considered opinion that the compensation granted by the Tribunal under few of the heads are wholly meagre and the same requires enhancement. Accordingly, this Court enhances the compensation under the non-pecuniary heads and awards the following amounts by restructuring the award passed by the Tribunal:- The break-up details of the restructured compensation are as under:



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Loss of earning	-	Rs. 9,94,500/-
Transport charges	-	Rs. 50,000/-
Extra nourishment	-	Rs. 50,000/-
Medical expenses	-	Rs. 1,00,000/-
Pain and suffering	-	Rs. 1,00,000/-
Attendant charges	-	Rs. 50,000/-
Loss of amenities	-	Rs. 1,00,000/-

Total	-	Rs.14,44,500/-

9. In the result, the Civil Miscellaneous Appeal is allowed enhancing the compensation from Rs.1,90,000/- to Rs.14,44,500/- payable with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. No costs.

10. The 2nd respondent/Insurance Company is directed to deposit the enhanced amount of Rs.14,44,500/- as awarded by this Court, less the amount, if any, already deposited, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, to the credit of claim petition, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the same directly to the bank account of claimant through RTGS, within a period of two weeks thereafter. The claimant shall pay the necessary court fee, if any, on the enhanced amount before obtaining the copy of the Judgment.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

ogy/GLN

To

1.The Motor Accident Claims Tribunal
(Principal Sub Judge), Salem.

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

+1cc to Mr.R.Nalliyappan, Advocate Sr No.3783

+1cc to Mr.D.Bhaskaran, Advocate Sr No.4125

C.M.A.No.2367 of 2014

NRJK (CO)

PR (17/11/2021)