

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2017

CORAM:

THE HON'BLE DR.JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.2423 of 2014
and M.P.No.1 of 2014

The Divisional Manager,
Oriental Insurance Co. Ltd.,
Divisional Office, LIC Road,
APSRTC Buildings, Balaji Colony,
Tirupati, Andhra Pradesh - 517 502 ... Appellant/2nd Respondent

..Vs..

1. G.Anandan
2. M/s. Sri Venkata Balaji Transport,
Rep. by K.Y.Narasimma Rao,
No.17/45-1, Airport Road,
Old Checkpost, Renigunta, Chittoor District,
Andhra Pradesh ... Respondents/Petitioner &
1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 22.08.2013, passed in MCOP No.494 of 2013 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Krishnagiri.

For Appellant : Mr. M.Krishnamoorthy
For Respondent : Mr. Mukund R.Pandiyan, for R-1
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J U D G M E N T

The claimant, Anandan, aged 53 years, owner of Balaji Jewellery and Pawn Broker, earning a sum of Rs.10,000/- per month, met with an accident on 01.05.2008. In respect of the injuries sustained, he filed a claim petition, claiming compensation of Rs.7,00,000/-. As against the claim made, the Tribunal has passed an award for a sum of Rs.5,79,200/- with the following breakup details:-

Loss of earning capacity -	Rs.3,16,800.00
Pain and sufferings -	Rs. 50,000.00
Nutrition and transportation-	Rs. 20,000.00
Medical Bills -	Rs.1,27,400.00
Future medical expenses -	Rs. 25,000.00

Attendant Charges	-	Rs. 10,000.00
Partial loss of income	-	Rs. 30,000.00 (Rs.6,000x5)

		Rs.5,79,200.00

2. Challenging the quantum of compensation as excessive and disproportionate, the Insurance Company has filed this Appeal.

3. The learned counsel for the appellant / Insurance Company would submit that the award of loss of earning capacity, by adopting the multiplier method of quantification, is unwarranted, especially, when the injury is only a fracture in Femur, which cannot lead to loss of earning capacity; instead, it is suggested that inspite of applying multiplier method of quantification, disablement compensation at the rate of Rs.3,000/- per percentage can be considered.

3.1. This contention of the learned counsel for the appellant is acceptable, as the scope of application of multiplier method is not available and setting aside the finding of loss of earning capacity, disablement compensation is awarded at the rate of Rs.3,000/- per percentage and in respect of 40% disability, the compensation is awarded at Rs.1,20,000/- (Rs.3,000/- x 40).

3.2. Pain and sufferings awarded at Rs.50,000/- is reduced to Rs.25,000/-, having regard to the fact that there was only one fracture in the left Femur. Medical expenses have been sanctioned only in accordance with the medical bills and therefore, it does not require any interference.

4. It is pointed out that, in respect of the future medical expenses awarded at Rs.25,000/-, there is no evidence and hence, it is liable to be set-aside.

5. On the other hand, the learned counsel for the second respondent / claimant would point out that, when the aged person has suffered fracture of femur, his qualify of life itself would get affected and therefore, loss of enjoyment of amenities, which is not awarded, should be considered and therefore, the loss of enjoyment of amenities is awarded at Rs.25,000/-, after setting aside the award for future medical expenses. The compensation awarded under other heads are reasonable and hence, the same are confirmed, as such.

6. Considering the overall circumstances, the award as granted by the Tribunal is modified and re-structured and it is awarded under the following heads:-

Disablement	-	Rs.1,20,000.00
Pain and sufferings	-	Rs. 25,000.00

Nutrition and transportation	-Rs.	20,000.00
Medical Bills	-Rs.	1,27,400.00
Loss of enjoyment of amenities	-Rs.	25,000.00
Attendant Charges	-Rs.	10,000.00
Partial loss of income	-Rs.	30,000.00 (Rs.6,000x5)

		Rs.3,57,400.00

7. Thus, the total amount of compensation to be awarded is fixed at Rs.3,57,400/-.

7.1. The Claims Tribunal has awarded compensation payable with interest at 6% per annum, which is unreasonable and the compensation should be paid with interest at the rate of 7.5% per annum, from the date of petition till the date of deposit.

8. In the result, this Civil Miscellaneous Appeal is partly allowed, by reducing the total amount of compensation from Rs.5,79,200/- to Rs.3,57,400/-, which is payable with interest at 7.5% per annum from the date of petition till the date of deposit. No costs. Consequently, the connected MP is closed.

9. It is represented by the learned counsel appearing for the Insurance Company that a sum of Rs.4,00,000/-, along with interest at the rate of 6% per annum, has been deposited by the Insurance Company.

9.1. If the award amount as deposited by the Insurance Company is more than the award passed by this Court, the Insurance Company is at liberty to withdraw the balance and if it is less, the balance shall be payable by the appellant.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk

To

- 1.The Motor Accident Claims Tribunal, Subordinate Court, Krishnagiri.
2. The Section Officer, V.R.Section, Madras High Court, Chennai.

+lcc to Mr.M.Krishnamoorthy, Advocate Sr.No.50542

C.M.A.No.2423 of 2014
& M.P.No.1 of 2014

SAI (CO)
sm:7.12.2017