

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 09.02.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.403 of 2017

and

CMP.No.2846 of 2017

The Oriental Insurance Co. Ltd.,
Pondicherry. .. Appellant/Respondent

Versus

1. Thirumavalavan .. 1st Respondent/Petitioner
2. Gowri .. 2nd Respondent/1st Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree 30.05.2005 made in M.C.O.P.No.120 of 2005 on the file of the Motor Accident Claims Tribunal/Additional District Court, (FTC-II), Cuddalore.

For appellant : Mr.S.Arunkumar

J U D G M E N T

Challenging the quantum of compensation awarded by the Claims Tribunal, in M.C.O.P.No.120 of 2005 dated 30.05.2005, the Insurance Company has preferred this Civil Miscellaneous Appeal.

2. The claimant, Thirumavalavan, aged 18 years a student met with an accident on 03.11.2002, while travelling in the bus belonging to the second respondent due to which he suffered fracture in the left hand, left wrist and left elbow and also sustained multiple injuries. Hence, he filed a claim petition in M.C.O.P.No.1535 of 2003, claiming compensation for a sum of Rs.3,00,000/-.

3. The Claims Tribunal, on consideration of oral and documentary evidence has awarded a sum of Rs.1,89,000/- (Rupees One Lakh eighty nine thousand) as compensation with interest @ 9% per annum from the date of petition till the date of realization. The break-up of the same are as follows:

Permanent disability	-	Rs. 30,000/-
Loss of earnings	-	Rs.1,44,000/-
Pain and suffering	-	Rs. 15,000/-

		Rs.1,89,000/-

Challenging the compensation awarded as excessive and disproportionate to the injuries sustained, the present appeal has been filed by the appellant.

4. The learned counsel appearing for the appellant contends that the compensation awarded by the Tribunal is very high and the same needs to be reduced. He further submitted that the Tribunal has erred in adopting the multiplier method while quantifying the compensation towards Loss of earnings and the same needs to be interfered with.

5. A perusal of the award passed by the Claims Tribunal reveals that P.W.2-the Doctor who examined the claimant has stated that there was malunion of bones in the left hand. He has assessed the disability @ 35% and issued Ex.P9- disability certificate. However, the Claims Tribunal has fixed the disability only at 30%. Further, adopting the percentage method, the Tribunal has quantified the disability compensation at Rs.30,000/- fixing Rs.1,000/- per percentage of disability. A sum of Rs.15,000/- has been awarded towards pain and sufferings. Fixing monthly income of the petitioner at Rs.1,000/-, by adopting multiplier 12, the Tribunal has awarded a sum of Rs.1,44,000/- (1000x12x12) towards Loss of Earnings.

6. From a careful perusal of the award passed by the Tribunal it is evident that the Tribunal has taken into consideration the evidence of the doctor and has appraised the documentary evidence in right perspective and has fixed the percentage of disability at 30%. Further, the Tribunal taking into consideration the injuries sustained by the claimant, the period of treatment and the impact of the injuries on the day-to-day living of the claimant, while fixed Rs.1,000/- per percentage of disability and awarded disability compensation, further rightly adopted multiplier of 12 and quantified the loss of earnings. The Claims Tribunal, on considering the fracture in the left hand and also malunion of bones has chosen to adopt multiplier method, which cannot be found fault with. It is also pertinent to note that Tribunal did not grant any compensation under the head of Loss of enjoyment of amenities. There is no award for medical expenses, transport expenses, cost of attendant, extranourishment etc., also. The award even if found high, should be adjusted to those heads. Therefore, by no

means could the compensation awarded be said to be excessive or unreasonable. This Court is of the considered view that the compensation awarded under different heads are reasonable and the same requires no interference.

7. In the result, this Civil Miscellaneous Appeal is dismissed, confirming the Judgment and Decree of the Claims Tribunal, in M.C.O.P.No.120 of 2005 dated 03.11.2002. No costs. Consequently, connected Miscellaneous petition is closed.

8. The appellant is directed to deposit the entire award amount as quantified by the Tribunal along with interest and costs, less the amount, if any, already deposited to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-

Assistant Registrar (CS-ii)

//True Copy//

Sub Assistant Registrar

arr/GLN

To

1. The Motor Accident Claims Tribunal/
Additional District Court,
(FTC-II), Cuddalore

2. The Section Officer, VR Section,
High Court, Madras. (2 copies)

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MR (CO)
TR (02/04/2018)

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