

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.484 of 2017
and C.M.P.No.3488 of 2017

The Oriental Insurance Co. Ltd.,
Office situated at TSM Complex,
Railway Station Road,
Palakkad,
Kerala - 678 001

... Appellant / 3rd respondent

versus

1. Sathees @ Satheeskumar ... 1st Respondent / Petitioner

2. M.Chandrasekar ... 2nd respondent / 1st respondent

3. S.Marasamy ... 3rd respondent / 2nd respondent

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 02.01.2006 made in M.C.O.P.No.350 of 2004 on the file of the Motor Accident Claims Tribunal (II Additional Subordinate Judge), Erode.

For Appellant : Mr.S.Arun Kumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal.

2. Sathish @ Sathish Kumar, aged 27 years, working as Mini Bus Driver, earning a sum of Rs.3,500/- p.m., met with an accident on 28.12.2003 and sustained grievous injuries, thus, leading to loss of earning as well as loss of earning capacity. Hence, he filed a claim petition in M.C.O.P.No.350 of 2004 before the Motor Accident Claims Tribunal (II Additional Subordinate Judge), Erode, claiming a sum of Rs.3,00,000/- as compensation.

3. The Tribunal, after considering the oral and documentary evidence, has quantified Rs.2,02,100/- as compensation, payable with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. The break-up details of the compensation read as under:

<https://hcservices.ecourts.gov.in/hcservices/>
Grievous injuries and pain and sufferings, etc.
Loss of earning power

- Rs. 25,000.00
- Rs.1,35,000.00

Medical expenses	-	Rs.	33,096.91
Transport expenses and extra nourishment	-	Rs.	4,000.00
Loss of earning for two months	-	Rs.	5,000.00
Total	-	Rs.	2,02,096.91
Rounded off	-	Rs.	2,02,100.00

4. The learned counsel appearing for the appellant Insurance company submitted that when there is no proof to show the earnings of the claimant, the Tribunal ought not to have awarded the compensation of Rs.1,35,000/- towards loss of earning power. It is further submitted that the Tribunal ought to have deducted 1/3rd towards his personal expenses and multiplier of '18' ought not to have been adopted. Hence, the award needs to be interfered with.

5. When the question of deduction (from the compensation to be awarded has to be made) towards personal expenses would arise, is the basic question. The compensation is paid for what is lost. When the income had been spent by the deceased on himself while being alive that amount would not enure for the benefit of the remaining persons. Therefore, that part of the amount which had been spent by the deceased on himself would be liable to be deducted while computing the quantum of compensation. In other words, while assessing the loss on account of death, the contribution of the deceased towards the family is calculated by adopting the method of calculating his total income and deducting the amount, which the deceased would have been spent on himself, while he had been alive. Thus, it is the exact loss of income that is sought to be compensated.

5.1. The deduction of 1/3rd towards personal expenses cannot be done in a case, where, the injured person is alive and on account of the injury, the injured is not able to earn, the loss is suffered not only by the family members, but, by the injured himself; the injured had to spend not only for his normal living, but also he had to spend additional money towards his medical expenses. Therefore, the contention of the learned counsel for the Insurance Company that 1/3rd had to be deducted from the monthly earnings of the injured cannot be sustained.

5.2. It is appropriate to point out that in a case of death, the compensation is directly payable to the legal representatives of the deceased and in a case of injury, the compensation is payable to the injured himself and therefore, there is no question of deducting any amount towards the personal expenses of the injured.

5.3. From the award passed by the Tribunal, it is seen that the claimant, while adducing evidence, has produced Ex.A9-Driving licence and deposed that he was earning a sum of Rs.3,500/- p.m.; P.W.6-Doctor assessed 20% disability for the defect in the right eye vision and P.W.7-Doctor also assessed

18% disability for malunion of the bones at the wrist; since the claimant suffered defects in the right eye and malunion of bones, which would certainly affect his earning capacity. Still the Tribunal did not take the physical disability as equivalent to functional disability, but, has assessed the disability at 25% only. Taking the monthly income of the claimant at Rs.2,500/- and adopting the suitable multiplier of 18, has awarded a sum of Rs.1,35,000/- towards loss of earning capacity. It is relevant to point out that the future prospective increase in earning has not been taken into account at all, while quantifying the compensation.

5.4. The Tribunal has also awarded a sum of Rs. Rs.33,096.91 towards medical expenses based on the medical bills and awarded Rs.4,000/- towards transport expenses and extra nourishment towards and Rs.5,000/- towards loss of earning for two months. When the monthly income has been taken at a lower level and when the award is based on documents and when the conventional amount are also awarded at a nominal rate, the award cannot be said to be excessive.

6. Hence, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 02.01.2006 passed in M.C.O.P.No.350 of 2004 by the Motor Accident Claims Tribunal (II Additional Subordinate Judge), Erode.

7. The Insurance Company is directed to deposit the entire award amount, 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 being made, the claimant is permitted to withdraw the same. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Motor Accident Claims Tribunal
(II Additional Subordinate Judge), Erode.

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RJ (CO)

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