

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.581 of 2017

M/s.United India Insurance Co. Ltd.

28, Mailam Road, 2nd Floor,

Meenakshi Complex,

Tindivanam.

... Appellant / 2nd respondent

versus

1. Panneerselvam ...1st respondent / petitioner

2.Sankar ... 2nd respondent/1st respondent
(Ex-Parte in the Lower Court)

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 07.10.2003 made in M.A.C.T O.P.No.50 of 2003 on the file of the Motor Accident Claims Tribunal (II Additional District Judge), Pondicherry.

For Appellant : Mrs.R.Sreevidhya

JUDGMENT

Challenging the quantum of compensation, the Insurance Company has filed this Appeal.

1.1. The claimant, Panneerselvam, aged 24 years, a Lab Technician at Pondicherry, met with an accident on 25.06.2002 and sustained fracture in the right leg apart from sustaining grievous injuries all over the body. Hence, he filed a claim petition in M.C.O.P.No.50 of 2003 before the Motor Accident Claims Tribunal (II Additional District Judge), Pondicherry, claiming a sum of Rs.15,00,000/- as compensation.

1.2. The Doctor, who examined the claimant, has certified the disability at 64%. Taking the monthly income of the claimant at Rs.3,000/- and adopting the multiplier of '17', the loss of earning capacity has been awarded at Rs.3,91,680/-

(Rs.3000/- x 12 x 17 x 64/100); Loss of income has been awarded at Rs.900/-; Medical expenses, which is supported by bills, has been awarded at Rs.1,54,338/-; transport expenses which is supported by Ex.P10, has been awarded at Rs.6,700/-; mental agony has been awarded at Rs.10,000/-; pain and sufferings has been awarded at Rs.5,000/- and the total compensation awarded is Rs.5,68,618/-.

3. The learned counsel appearing for the appellant submitted that it is not an appropriate case for adopting multiplier method. The learned counsel also contended that disability was not assessed in accordance with the Schedule-I of the Workmen's Compensation Act, 1923.

4. Now, the issue to be considered is as to whether the disability suffered by the claimant will have a direct impact upon his earning capacity.

4.1. When the claimant has suffered multiple fracture in right leg, it is difficult for him to discharge his duty as Lab Technician. The nature of the job requires long hours of standing, while performing the experiment. Because of 64% disability, the likelihood of the petitioner being considered for promotion is remote. Important assignments are not likely to be given to the petitioner because of the disability. The injured petitioner may have future problems in continuing the job. The injury sustained has a direct and deep impact upon the earning capacity of the injured. Therefore, the Tribunal has rightly adopted the multiplier method of quantification in respect of loss of earning capacity.

4.2. This view is substantiated by the decision reported in Dhian Chand Singla v. Joga Singh and Others, 2011 (3) T.A.C. 70 (P&H), where, there is a reference to decision of the House of Lords in Vale v. William Huns and Sons Limited, 1912 A.C.

"496. The House of Lords held: "... that the incapacity of work included inability to work or in other words, there is incapacity for work when a man has a physical defect which makes his working un-saleable in any market reasonably accessible to him. Applying the same logic, a person who has suffered an injury may not come by immediate loss if he is retained in the same employment and does not lose his job, but in his own saleability elsewhere as a fresh recruit to a new employer, he may come by a serious handicap. That shall be a justification enough to provide for compensation in such types of cases." Even though there is no specific proof that the claimant

has lost employment, the loss of vision in one eye certainly would effect his ability as fresh recruit to a new employer. It can only be hoped that the facial disfigurement suffered by him would not add to his woes in this regard. The tribunal has reasoned that the claimant would be able to carry on his avocation with one eye but his efficacy would be compromised owing to excess strain suffered by the remaining eye. Such reasoning and placement of loss of earning power at Rs.3,750/- per month is justified. However, we consider it necessary that the claimant separately be afforded compensation towards disfigurement to the face suffered by him as also for loss of amenity of the left eye. As the claimant was aged 30 years, the correct multiplier would be 17. The tribunal has not afforded any compensation towards loss of amenity which this court assesses at Rs.1,00,000/-. The grant towards pain and suffering may be enhanced to Rs.50,000/- and that towards temporary loss of income to Rs.50,000/-. We find reasonable the award under other heads.

This decision applies to the facts of this case. In this case, the compensation should have been awarded for the loss of enjoyment of amenities, loss on account of career advancement/new career acceptance.

5. The claimant had been initially admitted as in-patient in Zipmer Hospital, Pondicherry, from where, he had been referred to Chennai for further treatment. He has been admitted in the MIOT Hospital, Chennai, from 28.06.2002 to 30.07.2002.

6. According to the claimant, three surgeries have been performed in the right leg itself and stainless steel rods have been inserted during surgeries. It is his further case that he was in continuous treatment for a period of 10 days and the fracture did not unit properly; again he was admitted on 02.09.2002, when another operation was made and subsequently, he was discharged on 09.09.2012; again he was admitted in the hospital on 25.10.2002, one another operation was made and he was discharged on 29.10.2002. These operations were made on account of multiple fractures in the right leg. Certainly, those series of surgeries on the right leg would have an impact in the earning capacity. Therefore, the amount awarded by the Tribunal cannot be said to be excessive and the appeal has no merits.

7. Hence, the Civil Miscellaneous Appeal is dismissed, confirming the award dated dated 07.10.2003 passed in

M.C.O.P.No.50 of 2003 by the Motor Accident Claims Tribunal (II Additional District Judge), Pondicherry.

8. The Insurance Company is directed to deposit the award amount, less the amount already deposited if any, along with interest at the rate of 9% 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.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

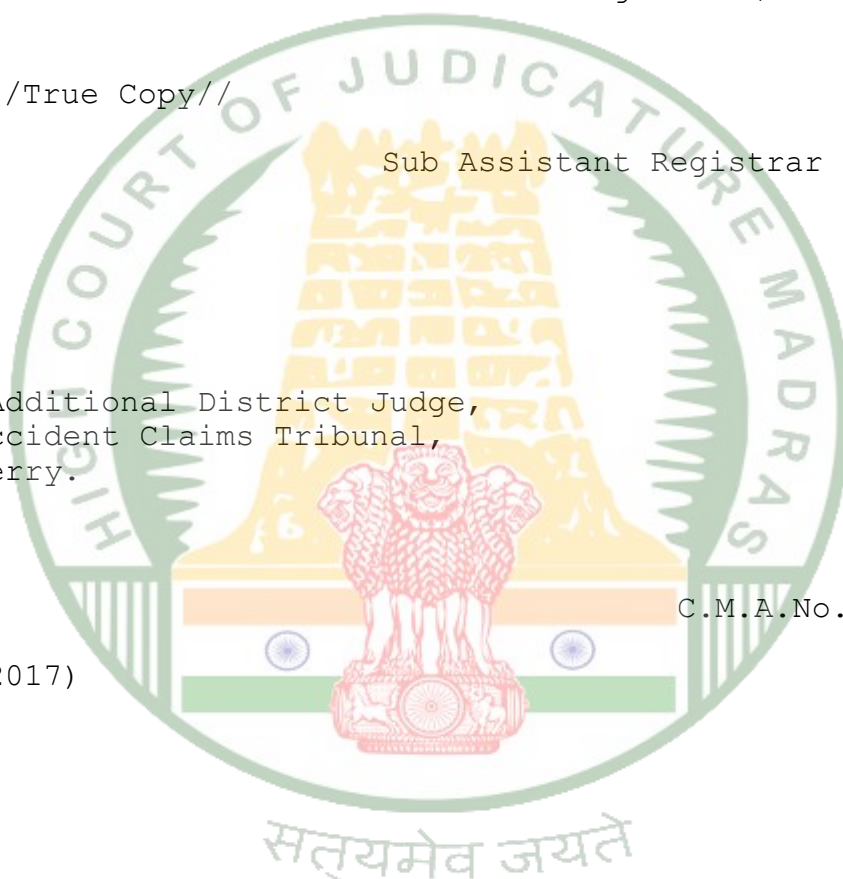
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To

1.The II Additional District Judge,
Motor Accident Claims Tribunal,
Pondicherry.

KK (CO)
GN (25/07/2017)

C.M.A.No.581 of 2017



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