

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.611 of 2017

and

C.M.P.No.3566 of 2017

M/s.New India Assurance Co. Ltd.,
No.39-C, Bye Pass Road,
Dharmapuri. Appellant/3rd Respondent

Vs.

1.Rathinavel 1st Respondent/Claimant

2.Madhu

3.Saravanan ... Respondents 2 & 3/
Respondents 1 & 2

Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 15.12.2015 made in M.C.O.P.No.1817 of 2014 on the file of the Motor Accident Claims Tribunal, [Special Sub Judge], Dharmapuri District.

For Appellant : Mr.J.Chandran

For Respondents : Mr.Amal D.Pandya for R1
No appearance for R2 & R3

J U D G M E N T

The claimant Rathinavel, aged 38 years, an agricultural coolie, earning a sum of Rs.10,000/- per month, met with an accident on 30.12.2012, in respect of which, he made a claim for a sum of Rs.15,00,000/- in M.C.O.P.No.1817 of 2014 on the file of the Motor Accident Claims Tribunal, [Special Sub Judge], Dharmapuri District.

2. The Claims Tribunal awarded a sum of Rs.10,11,400/- as compensation and the break up details are under.

i. Permanent disability 80%	Rs.7,20,000/-
ii. Pain and suffering	Rs. 50,000/-
iii. Loss of Income Rs.5000/- x 4	Rs. 20,000/-
iv. Medical expenses	Rs.1,01,400/-

v. Transport expenses	Rs. 10,000/-
vi. Nourishment and damages to articles	Rs. 10,000/-
vii. Mental agony	Rs. 40,000/-
viii. Attender charges	Rs. 10,000/-
ix. Future medical expenses	Rs. 50,000/-

Total Rs.10,11,400/-

3. Aggrieved over the quantum of compensation, the Insurance Company has preferred this appeal contending that the quantum of compensation awarded under disability and other heads are exorbitant and therefore, the amount of compensation should be reduced.

4. The main contention of the learned counsel for the appellant is that when the claimant has suffered zygomatic fracture, 80% disability assessed by the Doctor is excessive and this disability of 80% will not have the same percentage of functional disability. In other words, the contention is that even though the physical disability is 80%, the functional disability would be much less and it could be fixed reasonably at 60%. This contention is well founded and the fracture suffered may not have critical impact upon the earning capacity of the claimant. It may have impact on a lesser extent as the claimant is an agriculturist. Therefore, the loss of earning capacity on account of disability is assessed at Rs.5,40,000/-.

5. Learned counsel for the appellant would further contend that the compensation of Rs.50,000/- awarded under pain and suffering and compensation of Rs.40,000/- awarded towards mental agony is unsustainable.

5.1 This contention is tested on well settled legal principles and therefore, the claim granted under mental agony is deleted.

6. In respect of future medical expenses, the Tribunal has awarded a sum of Rs.50,000/-. The future medical expenses are claimed towards removal of implant i.e., used during surgery. The removal of implant may not require Rs.50,000/- and therefore, the claim granted towards future medical expenses is reduced to Rs.30,000/-. The compensation granted under nourishment and transport expenses are enhanced as Rs.20,000/- respectively.

7. In the result, the appeal is partly allowed and the compensation granted by the Tribunal is modified to Rs.7,91,400/- which will carry interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. The said amount shall be deposited within a period of six weeks, from the date of receipt of copy of this judgment. 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. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gya

To

1.The Motor Accident Claims Tribunal,
[Spl. Sub Judge],
Dharmapuri District.

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

+1cc to Mr.J.Chandran, Advocate, S.R.No.12392

C.M.A.No.611 of 2017
and
C.M.P.No.3566 of 2017

KGK(CO)
CA(23/06/2017)



WEB COPY