

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.02.2017

CORAM

THE HONOURABLE Dr. JUSTICE. S.VIMALA

C.M.A.No.73 of 2017

J.Shanmugam

... Appellant/Petitioner

versus

1. Animesh Kumar Jha
 2. ICICI Lombard General Insurance Co. Ltd.
Chottabhai Centre,
No.140, 2nd and 3rd Floor,
Nungambakkam High Road,
Chennai - 3. ... Respondents/Respondents
- (R1 remained ex parte before the Tribunal)

Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 02.07.2015 made in M.C.O.P.No.341 of 2012 on the file of the Motor Accident Claims Tribunal (III Small Causes Court), Chennai.

For Appellant : Mr.U.Chithambaram
for Mr.K.Varadhakamaraj
For R2 : M/s.R.Sreevidhya

JUDGMENT

The claimant, J.Shanmugam, aged about 29 years, working as a Supervisor at Eldam Square, Alwarpet, Chennai, earning a sum of Rs.10,000/- per month, met with an accident on 22.08.2011 and sustained injuries. Hence, he filed a claim petition in M.C.O.P.No.341 of 2012 before the Motor Accident Claims Tribunal (III Small Causes Court), Chennai, claiming the compensation of Rs.4,50,000/-.

2. The Tribunal, on consideration of oral and documentary evidence, awarded a sum of Rs.1,44,500/- only as compensation, the break-up details of which are as under:

Loss of Income	-	Rs. 20,000/-
Transport to Hospital	-	Rs. 7,000/-
Extra nourishment	-	Rs. 7,000/-
Damage to clothing	-	Rs. 500/-
Loss of amenities	-	Rs. 5,000/-
Pain and suffering	-	Rs. 25,000/-
Disability at 40% at Rs.2,000/- per percentage-		Rs. 80,000/-

Total	-	Rs.1,44,500/-

Challenging the quantum of compensation as inadequate, the claimant has filed this appeal.

3. The learned counsel appearing for the appellant submitted that though the doctor P.W.2 has assessed the disability at 45% for the injuries sustained by the claimant, the Tribunal was wrong in fixing the percentage of disability at 40% and was wrong in awarding Rs.2,000/- per percentage of disability instead of Rs.3,000/-, which is very low. The claimant had produced bills for medical expenses incurred to the tune of Rs.21,350/-, but, the said amount has not been awarded by the Tribunal. Furthermore, the injured would be required to undergo surgery in future for removing the interlocking nail, which would incur expenses and, therefore, the Tribunal ought to have granted future medical expenses. In such circumstances, it is submitted that the award of the Tribunal needs enhancement.

4. The learned counsel appearing for the second respondent Insurance Company submitted that the Tribunal, after careful consideration of oral and documentary evidence, has awarded just compensation and it need not be interfered with.

5. This Court gave its anxious consideration to the contentions advanced by the learned counsel on either side and perused the materials available on record as also the order passed by the Tribunal.

6. A perusal of the order passed by the Tribunal reveals that the claimant examined himself as P.W.1 and has deposed that he sustained fracture of both bones and underwent closed reduction internal fixation with interlocking nail (sun nail 9 x 360 mm) on left leg. He was hospitalised as inpatient at Fortis Malar Hospital from 22.08.2011 to 25.08.2011. P.W.2, Dr.K.J.Mathiazhagan, in his evidence has deposed that the injured suffered pain and stiffness over the left knee and the injuries sustained by the claimant would put the claimant to difficulty while climbing steps, sitting across legged, squatting, etc.. The Doctor assessed the disability at 45%. However, on consideration of the entire materials, the Tribunal has fixed the functional disability at 40% on the ground that P.W.2 has only issued the disability certificate, but has not treated the injured. The Tribunal, on an overall consideration of all the injuries coupled with the disability, awarded disablement compensation at Rs.80,000/- fixing Rs.2,000/- per percentage of disability.

7. This Court, on consideration of the entire factual matrix, more especially the evidence of the doctor, who has opined that the claimant would have difficulty in climbing steps, sitting across legged, squatting, finds that the fixation of 40% disability by the Tribunal is justified. However, considering the injuries and the age of the claimant, which is

said to be 29 years, this Court is of the view that the Tribunal should have granted compensation at Rs.3,000/- per percentage of disability. Accordingly, this Court enhances the compensation under the head permanent disablement at Rs.3,000/- per percentage and, accordingly, awards a sum of Rs.1,20,000/-.

8. Insofar as compensation awarded under other heads are concerned, the Tribunal, considering the nature of multiple injuries sustained in the accident, which would prevent the injured to move freely and do his work for two to three months, has awarded a sum of Rs.20,000/- towards loss of income. The Tribunal has also awarded Rs.5,000/- towards loss of amenities, Rs.25,000/- towards pain and sufferings, Rs.7,000/- towards transport to hospital, Rs.7,000/- towards extra nourishment and Rs.500/- towards damage to clothing. The compensation, as noticed above, awarded under various heads, in the light of the injuries suffered by the claimant are just and reasonable and does not warrant interference.

9. It is claimed that for removal of the interlocking nail which was implanted during surgery, has to be removed, for which the claimant needs to undergo another surgery. However, that aspect has not been taken into consideration by the Tribunal and no compensation has been awarded towards future medical expenses. Therefore, this Court is of the considered view that a sum of Rs.25,000/- under the head future medical expenses would be a just and reasonable compensation.

10. It is evident from the records that the claimant has produced medical bills for a sum of Rs.21,350/-, but the Tribunal has not awarded any amount towards medical expenses. There is no dispute with regard to the medical expenses incurred by the claimant towards treatment taken. In such circumstances, this Court awards a sum of Rs.21,350/- towards medical expenses, which stands supported by medical bills.

11. For the reasons stated above, the award passed by the Tribunal is modified and the same is restructured as hereunder :-

Loss of Income	-	Rs. 20,000/-
Transport to Hospital	-	Rs. 10,000/-
Extra nourishment	-	Rs. 10,000/-
Damage to clothing	-	Rs. 500/-
Loss of amenities	-	Rs. 25,000/-
Pain and suffering	-	Rs. 25,000/-
Medical Expenses	-	Rs. 21,350/-
Future Medical Expenses	-	Rs. 25,000/-
Attendant charges	-	Rs. 10,000/-
Disability at 40%	-	Rs.1,20,000/-

Total	-	Rs.2,66,850/-

12. Accordingly, the Civil Miscellaneous Appeal is allowed, enhancing the compensation from Rs.1,44,500/- to Rs.2,66,850/- payable with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

13. The Insurance Company is directed to deposit the compensation awarded as enhanced by this Court above, less the amount, if any, already deposited, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, to the credit of 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 shall transfer the same directly to the Bank Account of the claimant through RTGS within a period of two weeks thereafter. The appellant shall pay the necessary court fee on the enhanced amount before obtaining the copy of the Judgment.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

ogy/GLN

To

1. The Motor Accident Claims Tribunal
(III Small Causes Court),
Chennai.

+lcc to M/s.R.Sreevidhya, Advocate Sr.No.7284

+lcc to Mr.K.Varadharamaraj, Advocate Sr.No.6606

NMI (CO)

sm:16.4.2018

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