IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.910 of 2017

1. M/s.Oriental Insurance Co. Ltd., Cuddalore. ... Appellant / 2nd respondent

versus

1. Rajkumar ... 1st respondent/Petitioner
2. Gowri Nagarajan ... 2nd respondent/1st respondent

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.09.2004 made in M.C.O.P.No.1264 of 2002 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge), Cuddalore.

For Appellant : Mrs.R.Sreevidhya

JUDGMENT

The claimant, Rajkumar, aged 20 years, an Electrician and Plumber, working on contract basis and earning a sum of Rs.5,000/- p.m., met with an accident that took place on 09.06.2002 and sustained injuries. Hence, he filed a claim petition in M.C.O.P.No.1264 of 2002 before the Motor Accident Claims Tribunal (Principal Subordinate Judge), Cuddalore, claiming compensation of Rs.5,00,000/-.

2. Considering the oral and documentary evidence placed before it, the Tribunal has awarded a sum of Rs.2,78,000/- as compensation, payable with interest at the rate of 9% p.a. from the date of petition till the date of deposit. Challenging the quantum of compensation as excessive, the Insurance Company has filed this appeal.

3. The Tribunal, on the basis of the evidence available on record found that the claimant has been admitted at the Government Hospital, Cuddalore. There had been fracture of both the bones in the right leg and consequent to mal-union, there was shortening of the leg to the extent of one inch and the disability has been assessed by the Doctor at 45%. Considering the entire materials, the Tribunal quantified the compensation as follows:

Pain and sufferings	-	Rs. 25,000/-
Extra nourishment	-	Rs. 3,000/-
Cost of attendant	-	Rs. 7,000/-
Loss of income for 6 months	-	Rs. 18,000/-
Permanent disablement	-	Rs.1,25,000/-
Loss of earning capacity	-	Rs.1,00,000/-
Total	-	Rs.2,78,000/-

4. The learned counsel appearing for the appellant Insurance Company points out that when the Tribunal has awarded a sum of Rs.1,25,000/- towards disablement compensation, which is on the higher side. Further, the compensation under the head loss of earning capacity quantified at Rs.1,00,000/- is also excessive.

5. A perusal of the materials available on record and an analysis of the impugned order passed by the Tribunal reveals that the claimant has suffered disablement to the extent of 45%. However, the Tribunal, rightfully, did not adopt the multiplier method in quantifying the disablement compensation, but rather has adopted per percentage method to quantify the compensation and, accordingly, arrived at a value of Rs.1,25,000/= as compensation for the 45% disability suffered by the claimant. This amount cannot be said to be excessive or unreasonable.

6. Insofar as the compensation awarded under the head loss of earning capacity is concerned, the Tribunal, considering the injuries sustained by the claimant, which ultimately resulted in the shortening of the leg by an extent of one inch, assessed the loss of earning capacity at Rs.1,00,000/=. The claimant was earning his livelihood as an electrician and plumber. The shortening of the leg would definitely result in hampering his mobility and his mobility would not be the same as was before the accident, due to which the earning capacity of the claimant would stand to get reduced. Keeping the above aspects in mind, the Tribunal has quantified the compensation at Rs.1,00,000/=, which this Court feels is by no means excessive or unreasonable and, accordingly, the compensation on this head is also confirmed.

7. On all the other heads as well, the Tribunal has considered the entire evidence and awarded just and reasonable compensation and, therefore, this Court is of the considered view that no interference is called for with the well considered award passed by the Tribunal.

8. For the reasons aforesaid, this Civil Miscellaneous Appeal fails and the same is dismissed, confirming the award dated 13.09.2004 passed in M.C.O.P.No.1264 of 2002by the Motor Accident Claims Tribunal (Principal Subordinate Judge), Cuddalore.

9. The Insurance Company is directed to deposit the entire award amount, less the amount, if any, deposited, along with interest at the rate of 9% p.a. from the date of petition till the date of deposit, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the entire amount to the bank account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

ogy/GLN

To

1. THE MOTOR ACCIDENT CLAIMS TRIBUNAL
(PRINCIPAL SUBORDINATE JUDGE),
CUDDALORE.

COPY TO
THE SECTION OFFICER,
V.R. SECTION, HIGH COURT,
MADRAS.

C.M.A.No.910 of 2017

SS(CO)
TR(19/03/2018)