

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2017

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.695 of 2014

B.Rajesh Ayyappan

... Appellant / claimant

..Vs..

1. S.Singaram
2. Cholamandalam MS General Insurance
Company Limited,
No.1, Village Road, Nungambakkam,
Chennai - 34
(R-1 exparte in lower court, hence, notice
is dispensed with) ... Respondents / claimants

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 09.04.2013, made in MCOP No.4015 of 2009 on the file of the Motor Accident Claims Tribunal, III Small Causes Judge, Chennai.

For Appellant : Mr. K.Varadha Kamaraj

For Respondents : Mr. Vijaya Raghavan, for R-1

For Respondent 2 : No Appearance

सत्यमेव जयते
J U D G M E N T

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This is an Appeal filed by the claimant, seeking enhancement of the compensation. The claimant, B.Rajesh Ayyappan, aged 29 years, employed as a Senior Sales Executive at M/s.ITC Limited, Chennai, earning a sum of Rs.30,000/- per month, met with an accident, on 14.07.2009. Claiming a sum of Rs.6,00,000/-, he has filed the claim petition for compensation in M.C.O.P.No.4015 of 2009. The Claims Tribunal has awarded a sum of Rs.3,79,145/-, as per the details furnished here-under:-

Loss of Income	-	Rs.	60,000/-
Transport to Hospital	-	Rs.	3,000/-
Extra Nourishment	-	Rs.	7,000/-
Damage to clothing	-	Rs.	1,000/-
Medical Expenses	-	Rs.	18,145/-
Loss of Amenities	-	Rs.	50,000/-
Pain and sufferings	-	Rs.	80,000/-
Permanent Disability	-	Rs.	1,60,000/-

			Rs. 3,79,145/-

2. The learned counsel for the appellant / claimant would contend that the Tribunal is not bound by the amount claimed by the claimant and it is the duty of the Claims Tribunal to award 'just compensation', based upon the documentary evidence produced before it and that the amount of compensation awarded is extremely low on several heads.

2.1. The main contention of the learned counsel for the appellant is that, when the disability, as assessed by the Doctors, was 80%, the Tribunal should have considered the loss of earning capacity and should have adopted multiplier method of quantification in respect of loss of earning capacity.

2.2. In order to appreciate this contention, it is necessary to look into the nature of injury, the period of treatment and the nature of disablement.

2.3. The appellant has taken treatment as inpatient at Sri Ramachandra Medical Centre from 14.07.2009 to 19.08.2009. He has suffered right parietal extradural hematoma, CSF rhinorrhea with meningitis, bilateral pulmonary embolism and right optic nerve atrophy. Right fronto-parieto occipital craniotomy and evacuation of extradural hematoma under GA was done on 19.08.2009. Lumbar puncture under local anesthesia was done on 24.07.2009 and on 28.07.2009. With regard to his disability, two doctors have been examined, one is P.W.2-Dr.R.Rajappa and another is P.W.3-Dr.Kalkura.

3. Pointing out the evidence and discussions, the learned counsel for the appellant would submit that, it is a case where the quantification should have been done adopting the multiplier method.

3.1. In order to decide the proper net monthly income, it is necessary to look into the documentary evidence available before this Court.

3.2. It is the case of the claimant (appellant herein) in the claim petition that he was receiving a sum of Rs.30,000/- per month, as salary, and his salary slip has been produced before the Court, along with the identity card, wherein the monthly income for the month of July 2009 has been shown as Rs.29,200/-. As the employer was not examined, the Tribunal has fixed the monthly income at Rs.15,000/-.

3.3. Now, the learned counsel for the second respondent would submit that, in the absence of any documentary evidence, the monthly income can be taken only at Rs.6,500/-, as per the reported decisions of the Hon'ble Supreme Court. The appellant, being the Sales Executive, would suffer loss of earning capacity on account of his immobility. His future chances of getting employment in any other organization is totally lost. In other words, his saleability in employment market would be drastically diminished on account of this permanent disablement. Certainly, it is a case where multiplier method of quantification should be adopted, in respect of loss of earning capacity, at least taking the monthly loss at Rs.6,500/-. Therefore, taking the monthly income at Rs.6,500/- and taking the loss of earning capacity at 40%, (adopting the multiplier of 17), the total amount of compensation payable for loss of earning capacity is Rs.5,30,400/- (Rs.6,500/- x 12 x 17 x 40/100).

4. The compensation awarded towards the Transportation expenses and extra nourishment are too low, hence, the compensation awarded on those heads are enhanced to Rs.10,000/- and Rs.20,000/- respectively. Towards attendant charges, no amount of compensation has been awarded by the Tribunal. Hence, towards attendant charges, a sum of Rs.10,000/- is awarded. The compensation awarded under other heads seem to be reasonable, hence the same are confirmed. In fine, the total compensation is enhanced to Rs.7,49,545/- and the breakup details of the enhanced compensation are as follows:-

Loss of Income for 4 months	-Rs. 60,000/-
Transport to Hospital	-Rs. 10,000/-
Extra Nourishment	-Rs. 20,000/-
Damage to clothing	-Rs. 1,000/-
Medical Expenses	-Rs. 18,145/-
Loss of Amenities	-Rs. 50,000/-
Pain and sufferings	-Rs. 80,000/-
Loss of earning capacity	-Rs. 5,30,400/-
Attendant charges	-Rs. 10,000/-

Rs. 7,49,545/-

5. In the result, this Civil Miscellaneous Appeal is partly allowed, enhancing the total compensation from Rs.3,79,145/- to Rs.7,49,545/- and this amount of compensation shall be deposited

by the second respondent, less the amount already deposited, along with interest at 7.5% per annum, from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant herein / claimant is permitted to withdraw the entire amount of compensation, less Rs.2,00,000/-, which shall be in deposit for a period of three years, which need not be renewed thereafter. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

srk

To

1. The Motor Accident Claims Tribunal, III Small Causes Judge, Chennai

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

+1cc to Mr.Vijayaragavan,Advocate sr.1550

+1cc to Mr.Varada Kamaraj,Advocate sr.1475

C.M.A.No.695 of 2014

mg(co)
ss(10/4/2017)

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