

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.2368 of 2007
and M.P.No.1 of 2007

The United India Insurance Co. Ltd.,
Branch Office,
New Edapadi Road, Salem - 636 601.
By Divisional Office No.1
Peramanur Main Road,
Sankari, Salem District.

... Appellant/2nd Respondent

Vs.

1.S.Mariappan 1st Respondent/Petitioner

2.Senthil

.. 2nd Respondent/1st Respondent

(R2 set exparte before the Trial Court.
hence given-up)

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 04.3.2005 in MCOP.No.707 of 2003 on the file of the Motor Accidents Claims Tribunal [Additional District Judge, Fast Track Court No.I], Salem.

For Appellant : Mr.D.Shivakumaran
For Respondents : Mr.Ma.Pa.Thangavel [for R1]
R2 - Exparte

JUDGMENT

The insurance company has challenged the award passed by the Tribunal challenging in essence the quantum of compensation awarded by the Tribunal. The claimant, the first respondent herein, was a cleaner in the lorry that met with an accident on 14.03.2003 at about 11.30 p.m., somewhere in the National Highway in Gujarat State, when the driver of the vehicle lost control and dashed it against the stationery lorry. In the accident, the claimant had suffered multiple compound fractures, which ultimately resulted in amputation of his left leg below

the knee. There was also fracture of the right leg. Seeking a compensation of Rs.7,00,000/-, he approached the Tribunal, as against which the Tribunal has passed an award for Rs.5,96,900/- and directed its payment with interest at 9% per annum.

2. A perusal of the award shows that the Tribunal had determined the extent of victim's disability at 70% functional disability and reckoned his notional monthly income at Rs.3,000/- and applying a multiplier 18, it arrived at [Rs.3,000x12x70%x18] Rs.4,53,600/-, and including the compensation paid on other heads of non-pecuniary damages and medical bills, the Tribunal has determined the total compensation payable at Rs.5,96,900/- and directed its payment with interest at 9% per annum.

3. The learned counsel for the appellant submitted that the Tribunal ought not to have applied 18 as a multiplier, when going by the Sarla Verma dictum, it should be only 17. Further, there is no evidence to indicate that the appellant was earning Rs.3,000/- per month and required that the award be revisited and appropriately reduced.

4. Per contra, the learned counsel for the victim/claimant would submit that it is a fit case where even without any cross-objection being filed, the Court may interfere with the compensation awarded. Taking into consideration that the victim was a cleaner in a lorry and he has lost his left leg below the knee and has even suffered fractures in his right leg, the extent of disability that the claimant has suffered, this Court deems it to invoke his power under Order 41 Rule XXXI CPC and fixes it at [Rs.3,000/-x12x17x85%] Rs.5,20,200/-. On other heads of compensation, the amount determined by the Tribunal below is confirmed. The break-details of the enhanced award of compensation reads as follows :

Heads of compensation	Enhanced Amount (Rs.)
Towards medical expenses	33,300.00
Towards pain and suffering, loss of income during treatment and extra nourishment	1,00,000.00
Towards transportation	10,000.00
Towards functional disability	5,20,200.00
Total :	6,63,500.00

Thus, the award amount is suo motu enhanced to Rs.6,63,500/-.

6. In the result the appeal is dismissed and but the compensation amount is suo motu enhanced from Rs.5,96,900/- to Rs.6,63,500/-. It is submitted that the appellant has deposited the entire amount as awarded by the Tribunal. The learned counsel for the claimant/first respondent submitted that the same has not yet been withdrawn. The appellant is directed to deposit the enhanced portion of the award amount along with accrued interest alone within a period of six weeks from the date of receipt of a copy of this order and the claimant/first respondent is now permitted to withdraw the same forthwith. The claimant is also directed to pay additional court fee on the enhanced portion of the compensation amount. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

ds

To:

1.The Additional District Judge,
Fast Track Court No.I
Motor Accidents Claims Tribunal
Salem.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.Ma.P.Thangavel, Advocate SR.No.55511
+1cc to Mr.D.Shiva Kumaran, Advocate SR.No.55515

PVS(CO)
GN(06/08/2018)

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