

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 23-11-2016

Judgment Pronounced on : 30.06.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.2540 of 2009
and MP.No.1 of 2009

The Divisional Manager,
United India Insurance Company Ltd.,
Cuddalore. Appellant/2nd Respondent

Vs.

1.Arumugham
2.Akbar Ali
(R2 set exparte before the Tribunal)
... Respondents/Claimant & 1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 28.07.2006 made in MCOP.No.238 of 2005 passed by MACT (Sub Judge), Chidambaram.

For Appellant : Mr.K.Padmanabhan
For R1 : No appearance
For R2 : Exparte before Lower Court

JUDGMENT

The claimant while he was travelling as a passenger in an auto rickshaw bearing No.TN 31R 2540 that was insured with the appellant, had suffered injuries when the auto capsized due to its driver's rash and negligent driving. He was first treated at Raja Muthiah Medical College Hospital, Annamalainagar and then at Pondicherry General Hospital. Seeking compensation of Rs.5.0 lakhs the claimant approached the Tribunal whereas the Tribunal passed an award for Rs. 1,94,320/- payable with interest at 8% p.a. The quantum thus awarded by the Tribunal is now under challenge in the appeal filed by the insurance company.

2. The major component of the award amount is Rs. 1,84,320/- awarded towards loss of earning power. For arriving at this amount, the Tribunal has treated the nature of the injury that the claimant has suffered as functional disability and has applied the multiplier method. The claimant at the relevant time has been working as a coolie and has claimed that he was earning anywhere between Rs.200 to 250/- a day. P.W.2, the doctor, who assessed the disability has deposed that a fracture

to his radius bone near the right-wrist has restricted the movement of the claimant's wrist. He has also deposed that that the bones have mal-united. The claimant was 35 years old at the time of accident and reckoning his income at Rs.100 a day and applying a multiplier of 16 and reducing the sum to 48% (which represents the extent of disability which P.W.2 has determined), the Tribunal has arrived at the sum of Rs.1,84, 320/- on the head of loss of earning capacity.

3. The learned counsel for the appellant chiefly contended that there is no medical evidence to the effect that the claimant has suffered functional disability and hence Tribunal should not have adopted multiplier method.

4.This Court is not convinced. First, for someone who has suffered two fractures one to his head and another to his right wrist, the Tribunal has been almost insensitive in ignoring to award compensation on all but two heads: On loss of earning power and for pain and suffering. What happened to other heads of general damages such as for transport, nourishments, loss of amenities, attendant support besides compensation for loss of earning during treatment period? Second, medical evidence in aid of functional disability is not necessarily a mandatory criterion, though its usefulness cannot be disregarded. After the authoritative pronouncement of the Supreme Court in Rajkumar Vs.Ajay Kumar and another [(2011) ACJ 1], the duty is primarily cast on the Tribunal to assess the impact of injury on the earning capacity of the injured. Third, at this distant point of time, what might have been considered as excessive portion of the compensation, has lost its effective monetary significance.

5. To conclude, this Court holds that the appeal is bereft of any merits and consequently the appeal is dismissed but without costs. The appellant-Insurance Company is directed to deposit the compensation amount with interest at 8% per annum, less if any already deposited, before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, and on such deposit, claimant is entitled to withdraw it forthwith. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

ds

To:
The Motor Accident Claims Tribunal
(subordinate Judge),
Chidambaram.

+1cc to Mr.M.J.Vijayaraghavan, Advocate in sr.no.68427

CMA.No.2540 of 2009

LRS (CO)
NR 09/10/2017



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