

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A.No.2749 of 2003

United India Insurance Co. Ltd.,
Rep. by Branch Manager,
Branch Office,
74-A, Salai Road, Trichy. ... Appellant/Respondent 2

Vs.

1.Syed Gulam Rasool Albeez, ..Respondent 1/Petitioner

2.S.M.Salma Albeez .. Respondent 2/Respondent 1

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.1281 of 2002 dated 18.12.2002 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Namakkal.

For Appellant : Mr.N.Vijayaraghavan

For R1 : Mr.D.Shivakumaran

R2 : No appearance

JUDGMENT

This appeal has been filed by the Insurance Company against an award for Rs.10,00,000/- with interest at 9% per annum from 23.08.2002 till date of payment with costs by award dated 18.12.2002 made in MCOP.No.1281/2002, on the file of MACT, Principal District Court, Namakkal, as against the claim for Rs.10,00,000/-. The insurer has filed this appeal on quantum alone contending that though the second respondent herein/owner of the motor vehicle bearing registration no.TN 45 J 8773 had contested the case, the insurer having obtained permission under Section 170 M.V.Act, 1988 by virtue of orders of this Hon'ble Court made in CMP.No.19309/2003 dated 01.12.2003 in C.M.A.No.2749/2003, is entitled to pursue the appeal on quantum despite the owner of the vehicle contesting the proceedings before the Trial Court and no appeal was filed by the said owner of the vehicle. Despite service of notice, the second respondent in this appeal has not appeared in person or through counsel. The appeal has been heard on merits.

2. It is the case of insurer that the award for Rs.10,00,000/- as claimed in favour of 35 year old mechanical engineer for fracture suffered on the right thigh with assessed disability of 50% was too high and the mode and manner of assessment of award, including medical expenses of Rs.86,506.24 was not justified.

3. The learned counsel for the claimant contended that the injured was young and was employed in Saudi Arabia and earning a huge sum and because of the injuries he could not resume his duty immediately and the disability had affected his earning power as an engineer and further though the Tribunal had assessed Rs.19,27,507/- as possible compensation, the ultimate award was only for Rs.10,00,000/- only.

4. This Court has carefully considered the rival submissions. The award of the Tribunal is as detailed below:

Heads	Amount awarded by the Tribunal (Rs.)
Medical Expenses	86,507
Pain and Suffering	5,000
Permanent Disability/loss of income	18,36,000 [18,000X12X17X50%]
Total	19,27,507 restricted to 10,00,000

5. The injured is an engineer. He was young at the time of accident. He had suffered fracture on the right femur and was inpatient for a reasonable time and underwent a surgery also. He had spent almost Rs.1,00,000/- towards medical expenses. It is obvious from the nature of injuries that he may be required to incur or would have incurred further expenses for treatment. The assessed disability cannot be said to be high. There is no contra evidence. If so, as per National Insurance Co., Ltd., Vs. G.Ramesh in 2013 (2) TNMAC 583 (Mad.) Rs.3,000/- per percentage would be justified. Further, being an engineer, mobility would be necessary and injury to the left thigh would affect the same. If so, it may be appropriate to consider at least 25% towards functional disability and fixing the income at only Rs.10,000/- and a multiplier of 15, loss of earning power would easily come to Rs.4,50,000/-.

7. This Court is also inclined to enhance the sums towards pain and suffering and other heads. The award would stand modified as follows:-

Heads	Amount awarded by the Tribunal (Rs.)
Medical Expenses (rounded off)	1,00,000
Future Medical Expenses	25,000
Pain and Suffering	25,000
Permanent Disability 50% X Rs.3000)	1,50,000
Loss of earning power [Rs.2500 X 12 X 15]	4,50,000
Total	7,50,000/-

8. So far as interest liability is concerned it shall be 7.5% p.a. on and from date of claim 23.08.2002 till date of payment as against 9% p.a., granted by the Lower Court.

9. For all these reasons, the appeal shall stand allowed and the award of Rs.10,00,000/- with interest at 9% p.a. shall stand reduced to Rs.7,50,000/- with interest at 7.5% p.a. payable by the appellant insurer. The insurer shall satisfy the award, less any amount already deposited within four weeks from the date of receipt of a copy of this order and shall withdraw the excess amount deposited, if any. There shall be no orders as to costs.

Sd/-

Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To:

The Motor Accident Claims Tribunal
Principal District, Court,
Namakkal.

+1 cc to mr.M.B.Gopalan,advocate,sr.10118

+1 cc to Mr.D.Shivakumaran,advocate,sr.10049.

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