

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2017

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.No.611 of 2004
and CMP.No.3128 of 2004

United India Insurance Co. Ltd.,
Rep by Branch Manager,
Nagapattinam Branch,
Nagapattinam Munsif & Taluk. ...Appellant/2nd Respondent

Vs.

1.M.Mohammed Yusuf
2.K.Prabhakaran ...Respondents/Petitioner &
1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree in MCOP.No.463 of 2000 dated 21.12.2001 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Nagapattinam.

For Appellant :Mr.N.Vijayaraghavan
For Respondents:Mr.S.Giridharan [for R1]
R2 - Exparte

JUDGMENT

This appeal has been filed by the appellant/Insurance Company against an award of Rs.2,55,620/- with interest @ 12% per annum and costs held payable by the appellant in favour of a 31 year old fish vendor for assessed (46%) and accepted disablement of 35% arising out of fracture of the right shoulder, injuries to the back, jaw, right knee etc., in an accident dated 11.4.2000. According to the insurer the appeal is confined to quantum and the assessed sum of Rs.2,01,600/- towards loss of income by adopting multiplier method is wrong.

2. This Court has carefully examined the submissions and the records relating to the award. May be an award dated 21.12.2001 for an accident dated 11.04.2000, award may seem high. But the award is under challenge and this Court is required to examine it in the context of the law or legal position as obtaining today. It is a matter of common knowledge that the awards today are far higher than before and justifiably so based on principles as evolved by decisions of the Apex Court. If the decision of the Supreme Court in Ajay Kumar Vs. Raj Kumar reported in 2011 ACJ 1 (SC) is followed, as is required to be, then the approach adopted by the Tribunal is perfectly

justified. The injuries are grievous and there is proven disablement which is not contradicted with any rebuttal evidence. The disablement would lead to loss of earning power for a fish vendor as immobility in the shoulder will directly impinge on his capacity to work. The Tribunal has scaled down the physical disablement from 46% to 35% for the purpose of determining loss of earning power, which as stated earlier is in accordance with the principles in Rajkumar's case.

3. Viewed thus the counsel was unable to pursue the appeal with any conviction as he was aware of the futility in doing so. The grants under the head 'pain and suffering' etc., are much lower what may be the present day trend which is permissible. Equally, interest at 12% per annum was in terms of the law as obtaining in 2000-2001. The claimant would be entitled to receive the award only today due to pendency of appeal. Though interest liability may be 7.5% as ruling today, only where there is enhancement this Court may be inclined to award such rate. There is no need to interfere with rate of interest also since the accident arose in 2000 and the bank rate was 12% per annum as admitted by the appellant counsel.

4. For all the above reasons, this Court has little hesitation in dismissing the appeal and confirming the award as being fair and reasonable. The insurer if has already satisfied the award, the claimant would be at liberty to receive the same. If not deposited in full, then the insurer shall do so in four weeks from the date of receipt of order copy and the claimant can withdraw the same upon such deposit. There shall be no orders as to costs in the appeal. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

ds

To

1. The Principal Sub Court,
Motor Accidents Claims Tribunal,
Nagapattinam.

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

+ 1 cc to MR.S. Giritharan, Advocate Sr.2719

CMA.No.611 of 2004

RK(CO)

EU 21.02.17