

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED : 22.06.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.2041 of 2017

The Divisional Manager,
The United India Insurance Company Limited,
No.13 Nathaji Road,
Cuddalore-1.

.. Appellant/2nd Respondent

-/Vs/-

1.Manivannan
2.M.Usman Ali

.. Respondents/Petitioner &
1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the award and Decree dated 31.08.2006 made in M.A.C.T.O.P.No.323 of 2004 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Judge(Incharge), Cuddalore.

For Appellant : M/s.S.J.Jagadev &
P.Ram Mohan

J U D G M E N T

The claimant, Manivannan, aged 23 years, working in a private company and earning a sum of Rs.10,000/- (Rupees Ten Thousand Only) per month, met with an accident on 03.08.2003. Therefore, he filed a claim petition claiming a sum of Rs.5,00,000/- as compensation.

2. The Tribunal, on consideration of oral and documentary evidence, awarded a sum of Rs.2,62,000/-, the break-up details of which is as under :-

Loss of income	:	Rs.2,04,000/-
Medical Expenses	:	Rs. 42,000/-
Pain and Suffering	:	Rs. 10,000/-
Extra Nourishment	:	Rs. 5,000/-
Transport Expenses	:	Rs. 1,000/-

Total		Rs. 2,62,000/-

Challenging the quantum of compensation as excessive, the present appeal has been filed by the Insurance Company.

3. In the accident, the claimant suffered injuries in chest and right knee and lacerated injury on the chest and chin and amputation of toe on the right leg. He was admitted at Krishna Hospital, Cuddalore and was later referred to Government Hospital, Kanagachettikulam, Pondicherry.

4. The main contention of the learned counsel for the appellant is that the percentage of disability assessed by the doctor at 50% is excessive. The assessment of disability for the loss of both toes should be only in the range of 20% to 40%. Therefore, the compensation awarded on the basis of the above assessment deserves to be reduced.

5. The materials available on record reveals that the claimant has lost the toe on the right leg due to amputation. The said disability has been assessed by the doctor at 50%. The record further reveals that the doctor has spoken about two surgeries, which are said to have been performed on the claimant due to which the claimant has suffered grievous injuries in the right leg. However, the doctor has not spoken about the nature of injuries and the extent of injuries suffered by the claimant. In the absence of details as to the nature of injuries and the extent of injuries suffered, just for the removal of the toe on the right leg, definitely the disability assessed at 50% is very excessive. Therefore, as rightly contended by the learned counsel for the appellant, the compensation requires reduction.

6. However, a further perusal of the materials reveal that on the other heads, viz., pain and suffering, transportation expenses and extra nourishment, the compensation awarded by the Tribunal is very meagre. Definitely, the injuries sustained by the claimant and the surgeries performed on him would have caused much pain and suffering which needs to be adequately compensated and the claimant would require extra nourishment to regain his health. Further, it is seen from the records that no compensation has been awarded under the head for loss of enjoyment of amenities. Therefore, this Court is of the considered view that compensation requires enhancement under the above heads.

7. The accident had taken place in the year 2003. The appellant has challenged the award after a span of 14 years and even as of today notice remains unserved on the claimant/^{1st} respondent herein. Though the compensation could be said to be on the higher side in the year 2003-2004, however, in the year 2017, the said amount cannot be said to be on the higher side.

8. Keeping in mind the present day cost of living, the inflation and the money value, this Court is of the considered opinion that though reduction needs to be made under the head loss of income, however, enhancement is warranted under the heads transportation expenses, extra nourishment and pain and suffering and compensation needs to be awarded under the head

loss of enjoyment of amenities and attender charges. In such circumstances, this Court is of the view that the reduction that would be made would stand adjusted by the enhancement that would be ordered under the other heads mentioned above. Therefore, this Court is not inclined to disturb the compensation awarded by the Tribunal, but only clarify that the excess that has been awarded under the head loss of income would stand redistributed under the other heads mentioned above.

9. For the reasons aforesaid, this appeal is liable to be dismissed and, accordingly, the same is dismissed. Consequently, connected miscellaneous petition also closed.

10. The appellant/insurance company is directed to deposit the entire award amount, along with interest and costs as quantified by the Tribunal, less the amount, if any, already deposited, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The II Additional Sub Judge (Incharge),
Cuddalore.

MG(CO)
sm:12.4.2018

C.M.A. No.2041 of 2017