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IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 21.06.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.2239 of 2017

and

C.M.P. No.11910 of 2017

The Oriental Insurance Company Limited,
R.V.K. Buildings, 1st Floor,
54, Dhali Road, Udumalpet.

.. Appellant/3rd Respondent

versus

1. Duraisamy @ Vellaidurai

.. 1st Respondent/Claimant

2. K.Samidurai

3. N.Amaravathi

..2nd & 3rd Respondent/
1st & 2nd Respondent

Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the award and decree dated 28.09.2006 made in M.C.O.P. No.627 of 2002 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, (FTC-3), Dharapuram.

For Appellant : Mr. S.Arunkumar

J U D G M E N T

The claimant, Duraisamy @ Vellaidurai, aged about 27 years, employed in Sugana Poultry Food Limited, earning a sum of Rs.10,000/- per month met with an accident on 23.07.2001. Therefore, he filed a claim petition claiming compensation of Rs.10,00,000/-.

2. The Tribunal, on considering the oral and documentary evidence, awarded a sum of Rs.6,00,000/-, the break-up of which is as hereunder:-

Medical Expenses	-	Rs. 60,500/-
Future Medical Expenses	-	Rs. 50,000/-
Transport Expenses	-	Rs. 20,800/-
Loss of Earning Capacity	-	Rs. 3,88,800/-
Loss of Income for 6 months	-	Rs. 24,000/-



Pain & Suffering & Extra

- Rs. 55,900/-

Nourishment

Total

Rs.6,00,000/-

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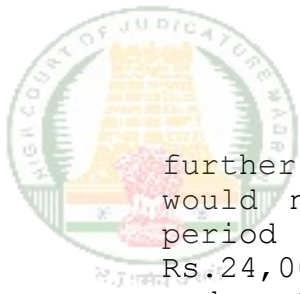
Challenging the compensation awarded as excessive and disproportionate to the injuries suffered, the present appeal has been filed by the appellant/Insurance Company.

3. The main contention of learned counsel appearing for the appellant is that the Tribunal failed to note that the alleged injuries and disability does not affect the earning power, muchless when the claimant has not produced any documentary evidence showing the alleged loss. It is the further contention of the appellant that the award of the Tribunal under the head loss of earnings is on the higher side and needs to be reduced.

4. A perusal of the order passed by the Tribunal reveals that the claimant has suffered injury over right side brain and other injuries over the head region. The claimant had taken treatment in the Government Hospital, Udumalpet and later he was shifted to Sri Ramakrishna Hospital, Coimbatore, where he was treated as in-patient for a period of 70 days. The records further reveal that two surgeries were performed on the right side of the brain. The nature of injuries suffered on the head, more especially those on the brain were certified to be grievous injuries and there is enhanced danger due to the said injuries. The Tribunal, on the basis of the medical bills, awarded a sum of Rs.60,500/=. The doctor has further opined that further surgery needs to be performed on the claimant for which the claimant will incur an expenditure for Rs.50,000/-. In such circumstances, the Tribunal awarded a sum of Rs.50,000/- towards future medical expenses. The Tribunal awarded a sum of Rs.20,800/- towards transport expenses.

5. Insofar as disability is concerned, the doctor, who examined the claimant, has certified the permanent disablement at 45%. Considering the fact that the claimant is a Diploma holder in Mechanical Engineering and has been gainfully employed and though the claimant has stated that he was earning a sum of Rs.10,000/- per month and had filed salary certificate to the said effect, however, in the absence of any corroborating evidence through the employer, the Tribunal fixed the monthly income notionally at Rs.4,000/= and adopting multiplier of 18, for the 45% disability, quantified the compensation towards loss of earnings at Rs.3,88,800/- (Rs.4000 X 12 X 18 X 45%).

6. Considering the period of hospitalization and the



further treatments required, the Tribunal held that the claimant would not be able to attend to his avocation for atleast a period of six months and, therefore, awarded a sum of Rs.24,000/- towards loss of income. Towards pain and suffering and extra nourishment the Tribunal awarded a total sum of Rs.55,900/- In all the Tribunal quantified the total compensation payable at Rs.6,00,000/-.

7. Though it is the contention of the learned counsel for the appellant that the compensation awarded towards loss of earnings is on the higher side, it is to be pointed out that the injuries suffered by the claimant are grievous in nature. Further the injuries are head injuries, more especially relating to the brain. Consequences of brain injuries can never be predicted and the injuries may at any time lead to fatality. In such view of the matter, though evidence of income has been submitted, however, the employer having not been examined to corroborate the same, the Tribunal conservatively fixed the notional monthly income and quantified the compensation, which is wholly reasonable and justifiable. This Court is of the considered view that no interference is warranted with the compensation awarded under the said head.

8. Insofar as the compensation awarded towards hospital expenses and future hospitalization expenses are concerned, the doctor, who treated the patient has opined that a further surgery needs to be performed on the claimant, which would cost around Rs.50,000/-. In that view of the matter, the Tribunal has awarded compensation future medical expenses, which is justified and no interference is warranted.

9. Insofar as the compensation awarded under the various other heads are concerned, this Court, keeping in mind the nature of injuries suffered by the claimant, the period of treatment, the future treatment that is necessitated and other factors and the impact of the injuries on the day to day activities of the claimant is of the considered view that the Tribunal has awarded just and reasonable compensation on those heads and, therefore, no interference is called for with the compensation awarded by the Tribunal.

10. For the reasons stated above, the appeal fails and the same is dismissed, confirming the award passed by the Tribunal. Consequently, connected miscellaneous petition is closed.

11. The appellant/Insurance Company is directed to deposit the entire award amount as quantified by the Tribunal along with interest and costs, 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 order. On such



deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the claimant through RTGS, within a period of two weeks thereafter.

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Sd/-
Assistant Registrar (CS II)

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Sub Assistant Registrar

rkp/GLN

To

1. The Additional District and Sessions Judge,
(FTC-3), (Motor Accidents Claims Tribunal),
Dharapuram
2. The Section Officer, VR Section,
High Court, Madras.

C.M.A. No.2239 of 2017

TM(CO)
GN(08/05/2018)