

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2017

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THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2594 of 2017

and

C.M.P.No.14240 of 2017

The Oriental Insurance Co.Ltd.,
Imperial Road,
Subhagovindam Buildings,
Cuddalore.

... Appellant/2nd Respondent

/Vs/

1. Ravi alias Ravikumar ...1st Respondent/Petitioner

2. K.P.Saravanan ... 2nd Respondent/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 21.12.2004 made in M.C.O.P.No.37 of 2003 on the file of the Motor Accident Claims Tribunal, Additional Subordinate Judge, Cuddalore.

For Appellant : Mr.M.Rajasekhar

JUDGMENT

As against the claim made for a sum of Rs.10,00,000/-, the Tribunal has passed an award for a sum of Rs.1,80,000/-. Challenging the same, the Insurance Company has filed this appeal.

2. The claimant, Ravi @ Ravikumar, aged 27, Contractor and Financier, earning a sum of Rs.10,000/- per month, met with an accident on 17.10.1996 in which he suffered grievous injuries, permanent disablement and loss of earning capacity. The claimant, therefore, filed the claim petition claiming a sum of Rs.10,00,000/- before the Motor Accident Claims Tribunal, Cuddalore in M.C.O.P.No.37 of 2003. The Tribunal, on consideration of the materials placed before it, awarded a sum of Rs.1,80,000/-, the breakup of which are as hereunder :-

Loss of Income	:	Rs. 75,000/-
Pain and suffering	:	Rs. 40,000/-
Attendant Charges	:	Rs. 5,000/-
Disablement compensation:		Rs. 60,000/-

Total		Rs.1,80,000/-
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3. The main contention raised by the learned counsel for the appellant is that the Tribunal ought not to have awarded a sum of Rs.60,000/-, when the disability has been assessed by the doctor PW2 at 40%. It is also contended that without fixing the income, the Tribunal committed a mistake in awarding a sum of Rs.75,000/- towards loss of income.

4. The claimant, in his evidence, has deposed that he sustained fracture and suffered other injuries over the right leg. The wound certificate, Ex.P-3 discloses fracture of both the bones, viz., tibia and fibula. The doctor has stated that there has been loss of muscle from thigh bone to ankle bone, due to which, nerves have been affected. Due to the loss of muscle, there is no strength for the bones and that there is swelling along with loss of sensation and that there had been shortening of leg to the extent of 2 cm and loss of power to the extent of 75%. The doctor, P.W.2, assessed the disability at 40% and issued Ex.P-4 certifying that the claimant is having difficulty in walking and sitting and crossing his legs and that it is difficult for the claimant to stand for a long time. Considering the above medical evidence, both oral and documentary and fixing the age of the claimant at 35, the Tribunal fixed the income of the claimant, conservatively at Rs.100/- per day, and quantified the loss of earning capacity at Rs.75,000/-. Compensation towards pain and suffering and extra nourishment, both put together, have been quantified at Rs.40,000/-, cost of attendant charges was awarded at Rs.5,000/- and disablement compensation was fixed at Rs.60,000/-.

5. Though the learned counsel for the appellant submitted that the disablement compensation is excessive, however, taking into consideration the medical records as also the oral evidence of the doctor and also the fact that the doctor has assessed the disability at 40%, the Tribunal has awarded only a sum of Rs.60,000/-. Even assuming that the Tribunal has awarded Rs.2,000/- per percentage of disability, the award at Rs.60,000/= would show that the Tribunal has fixed the disability only at 30%, which, by no stretch of imagination could be said to be disproportionate or unreasonable. When the medical expert himself has assessed the disability at 40% on the basis of the medical records, the Tribunal, on a conservative

approach, has fixed it only at 30% and awarded compensation of Rs.60,000/-.

6. Though it is submitted by the learned counsel for the appellant that a far excessive amount at Rs.75,000/- has been awarded under the head 'loss of earning capacity', however, considering the fact that the compensation awarded by the Tribunal under the other heads noted above reveal that they are on the lower side. Further, no amount has been awarded towards medical expenses, though the claimant has suffered grievous injuries, as spoken to by the doctor. Further, no amount has been given for loss of enjoyment of amenities and transport expenses. Therefore, the amount of Rs.75,000/= awarded under the head 'loss of earning capacity', though could be termed high, need no interference, as any excess therein would offset the compensation not awarded under the head 'medical expenses', 'loss of enjoyment of amenities' and 'transport expenses'.

7. In such view of the matter, this Court feels that the compensation awarded by the Tribunal along with interest @ 9% from the date of filing of the claim petition till date of deposit cannot be termed to be excessive or unreasonable, considering the fact that the award was passed in the year 2004. Accordingly, finding no merit in the grounds raised by the appellant, the appeal is dismissed confirming the award passed by the Tribunal in M.C.O.P.No.37 of 2003. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

8. The appellant/Insurance company is directed to deposit the entire award amount along with interest at 9% p.a., less the amount, if any, already deposited, to the credit of MCOP No.37 of 2003 on the file of the Motor Accident Claims Tribunal, (Addl. Sub Judge), Cuddalore, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimant/first respondent through RTGS within a period of two weeks thereafter.

Sd/-

Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

sms/kv/GLN

To

1. The Motor Accident Claims Tribunal,
Additional Subordinate Judge
Cuddalore.

C.M.A.No.2594 of 2017
and
C.M.P.No.14240 of 2017

ssd(co)
nr 05/03/2018



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