

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2017

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

C.M.A.No.2597 of 2017

Ramesh ... Appellant/Petitioner
Versus

1. R.Perundevi
2. The Oriental Insurance Company Ltd.,
Imperial Road, Cuddalore ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 12.12.2003 made in M.C.O.P. No.88/99 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Panruti.

For Appellant : Mr. Um.Ravichandran
For Respondents : Mr.R.Sivakumar for R2
R1- Exparte

JUDGMENT

The claimant, Ramesh, aged 27, a businessman, earning a sum of Rs.5,000/- p.m. met with an accident on 28.03.1997. He suffered multiple fractures in the right tibia and Fibula. Contending that the injury resulted in loss of earning capacity, he claimed a sum of Rs.6,80,000/- as compensation by filing claim petition before the Tribunal.

2. The Tribunal, on considering the oral and documentary evidence, an award for a sum of Rs.1,99,354/-, the break up details are as under :-

Rs.

Medical expenses as per bills produced	:	1,24,354/-
Disablement 40%	:	40,000/-
Loss of income	:	15,000/-
For mental agony, transportation and Extra nourishment	:	20,000/-

Total		1,99,354/-

3. Learned counsel appearing for the appellant pointed out that compensation has not been awarded under pertinent heads, which has resulted in denial of rightful compensation to the claimant. It is further submitted that the compensation for pain and sufferings, transportation charges and extra nourishment have been cumulatively granted at Rs.20,000/-, which is extremely on the lower side. Therefore, it is prayed that this Court may grant suitable compensation under the various heads and also enhance the compensation under the heads under which very meagre compensation has been granted.

4. Per contra, learned counsel for the respondent submits that the disablement has been assessed only at 40% and the Tribunal has rightly awarded Rs.40,000/- towards disablement compensation and that itself would be sufficient compensation. It is further submitted that separate compensation for loss of earning capacity is not contemplated.

5. This Court gave its anxious consideration to the materials available on record as also the findings recorded by the Tribunal for the purpose of awarding compensation.

6. A perusal of the records reveal that the claimant was admitted as in-patient for a period of 2 ½ months. Further the nature of injuries and the surgeries performed on the claimant reveal that there is restriction in movement to the extent of 90 degrees. The above injuries coupled with the surgeries would definitely have caused lot of pain and suffering to the claimant. Not awarding any compensation for the pain suffered by the claimant would be wholly unjustifiable. Therefore, this Court is of the considered opinion that a sum of Rs.30,000/- be awarded under the head pain and suffering, which would meet the ends of justice.

7. Similarly, no compensation has been awarded under the head loss of enjoyment of amenities. The claimant is aged 27 years and the restriction in movement due to the injuries to the extent of 90 degree would definitely cause much trouble in the day-to-day activities of the claimant. The claimant would not be able to enjoy the life as a normal person would be able to enjoy. The restriction would carry on through his life and, therefore, for the said suffering, the claimant needs to be compensated. It is evident from the deposition of the doctor that there is bend in the bone, which would definitely hinder the movement of the right leg. The doctor has assessed the disability at 40%, which has been accepted by the Tribunal on the documentary evidence. Considering the overall circumstances, this Court is of the considered opinion that an amount of Rs.20,000/- as compensation under the head loss of enjoyment of amenities would be a just and reasonable

compensation.

8. The compensation awarded under the other heads, in the considered opinion of this Court does not call for any interference and, accordingly, the same is confirmed.

9. In the result, this civil miscellaneous appeal is allowed enhancing the compensation awarded by the Tribunal by Rs.50,000/-. However, there shall be no order as to costs.

10. The 2nd respondent/insurance company is directed to deposit the entire enhanced award amount, as quantified by this Court above, along with interest @ 7.5% p.a., from the date of claim petition till the date of deposit, less the amount, if any, already deposited by it, 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 is directed to transfer the amount directly to the bank account of the claimant through RTGS, within a period of two weeks, thereafter. The claimant is directed to pay the balance court fee on the enhanced amount of compensation awarded in this appeal before obtaining a copy of the Judgment.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

vsi2/GLN

To

1. The Motor Accident Claims Tribunal,
Subordinate Court, Panruti
2. The Section Officer,
V.R. Section,
High Court, Madras - 104.

C.M.A.No.2597 of 2017

SKV(CO)
GN(16/03/2018)