

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.08.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2692 of 2017

and

C.M.P.No.15040 of 2017

National Insurance Co. Ltd.,
403/B.10, Mettur Main Road,
Bhavani 2, Erode District. Appellant

/Vs/

1.Gurumurthy,
2.Chandrasekaran .. Respondents
3.Madheswaran

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the order and decree dated 13.10.2003 made in M.C.O.P.No.232 of 2000 on the file of the Motor Accident Claims Tribunal, Sub Court, Bhavani, Erode.

For Appellant : Mr.R.Sunilkumar

JUDGMENT

The appeal has been filed by the Insurance Company challenging the quantum of compensation.

2. The claimant Gurumoorthy, aged 19, an Accountant by profession, earning a sum of Rs.1,500/- per month, met with an accident on 03.07.2000 in which he suffered. Therefore, he filed the claim petition claiming compensation in a sum of Rs.1,00,000/-.

3. The Tribunal, considering the oral and documentary evidence, passed an award for a sum of Rs.69,400/-. The following are the break-up details of the award:

Loss of income	:Rs.38,400.00
Pain and suffering	:Rs.20,000.00
Extra nourishment	:Rs.10,000.00
Transport expenses	:Rs. 1,000.00

Total	:Rs.69,400.00

Aggrieved against the said award, the appellant has filed this appeal.

4. The contention of the learned counsel for the appellant is that there is no scientific basis for arriving at the percentage of disability. Therefore, the compensation awarded under the head 'disability' is excessive and it needs proportionate reduction.

5. It is the contention of the claimant that he suffered injuries to the jaw bone, left hand and in the face and because of injuries to the face, there is disfigurement of the face.

6. The claimant examined himself as P.W.1 and the doctor as P.W.2. P.W.2 has certified that there was swelling in the face and that there was difficulty for the claimant in chewing the food and swallowing the food because of the injuries sustained in the jaw bone as well as the teeth. P.W.2 has assessed the disablement at 20%.

7. The claimant contended that he is an unmarried person and because of the disfigurement in his face, his marital prospects have gravely been affected and he has also suffered loss of the earning capacity. The Tribunal, fixing the income of the claimant at Rs.1,000/- for the 20% disablement suffered by the claimant, quantified the loss of income due to disablement per annum at Rs.2,400 ($\text{Rs.1000} \times 20/100 = 200 \times 12 = 2,400$). As per the ratio laid down in Sarla Verma's case, the Tribunal adopting a multiplier of 16, quantified the compensation at Rs.38,400/- ($\text{Rs.2,400} \times 16$).

8. Learned counsel for the appellant submitted that adoption of multiplier method is wrong as no evidence has been let in to show that the claimant suffered loss of earning capacity. Considering the evidence on record, both oral and documentary, this Court is of the considered view that the contention deserves to be sustained. It is evident that the disablement suffered by the claimant has not been properly described and also how it affects his earning capacity and his ability to discharge his avocation. However, the fact remains that he has suffered injuries over the lower jaw, upper jaw as well as in the teeth. Under such circumstances, pain and suffering would be on the higher side and the claimant would also suffer loss of enjoyment of amenities. However, no compensation has been awarded towards medical expenses and loss of enjoyment of amenities. In such view of the matter, this Court feels that a transposition of the award passed under the head 'loss of earning' on the heads 'medical expenses' and 'loss of enjoyment of amenities' would be just and reasonable. The award cannot be in any way said to be excessive or highly disproportionate, but only it has been awarded on the higher side in the head of loss of income.

9. For the reasons stated above, the award, cannot be termed to be excessive or unreasonable, more so the claimant would be receiving the amount only in the year 2017 and

keeping in mind the money value and the escalation in the prices of various commodities, the compensation awarded is not liable to be interfered with. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

10. The appellant/Insurance company is directed to deposit the entire award amount along with interest at 9% and costs, as determined by the Tribunal, from the date of petition till the date of deposit, less the amount, if any, already deposited, to the credit of MCOP No.232/2000 on the file of the Motor Accident Claims Tribunal (Sub Judge), Bhavani, Erode District, 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/first respondent through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sms/kv/GLN

To

1. The Motor Accident Claims Tribunal,
Sub Court
Bhavani, Erode.

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

KS(CO)

sm:20.2.2018

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