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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.02.2017

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THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.351 of 2017

Kaliyannan

.. Appellant/Petitioner

versus

1. Vijayalakshmi

2. United India Insurance Co Ltd.,

No.5, Periyakadai Street,

Dharapuram, Tiruppur District... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 as amended by Act 54 of 1994 to set aside the order made in M.C.O.P.No.138 of 2013, on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Namakkal dated 28.01.2014 and for enhancement of compensation.

For appellant : Mr.C.Kulanthaivel

For Respondents: Mr.T.Ravichandran (R2)
R1-exparte

J U D G M E N T

Challenging the inadequate compensation awarded by the Claims Tribunal, the claimant has filed this Civil Miscellaneous Appeal.

2. The claimant, Kaliyappan, aged 55 years, an agriculturalist, earning a sum of Rs.10,000/- per month, met with an accident on 04.03.2012 due to which he sustained fracture in the leg and right thigh and also injury in the left eye. Hence, he filed a claim petition before the Claims Tribunal, claiming a sum of Rs.15,00,000/- as compensation.

3. The Claims Tribunal, on consideration of oral and documentary evidence, awarded a sum of Rs.5,38,024/- as compensation with interest @ 7.5% per annum from the date of petition till the date of deposit. The break-up details of the same are as follows:



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Permanent disability	-	Rs. 70,000/- (35x2000)
Pain and sufferings	-	Rs. 25,000/-
Medical Expenses	-	Rs.3,41,024/-
Attendant Charges	-	Rs. 10,000/-
Extra nourishment	-	Rs. 20,000/-
Transport Expenses	-	Rs. 10,000/-
Future Medical Expenses	-	Rs. 15,000/-
Loss of Amenities	-	Rs. 20,000/-
Loss of earnings for six months	-	Rs. 27,000/-

		Rs.5,38,024/-

Challenging the same as inadequate, the claimant has filed the above Civil Miscellaneous Appeal.

4. A perusal of the award passed by the Tribunal reveals that P.W.4 - the Doctor who examined the claimant, in his evidence, has spoken about the disablement suffered by the claimant. He has stated that the claimant has sustained fractures in his right hand, right thigh and left leg apart from head injury and other injuries. It is further evident from the records that the claimant has taken treatment as inpatient for two months and surgery has been performed by inserting a plate to treat fracture in the right thigh. P.W.2, issued disability certificate-Ex.P13 assessing the disability @ 65%. Though disability has been assessed at 65%, however, the Tribunal has fixed the disability @ 35%. However, while fixing the disability no reason whatsoever has been given by the Tribunal to fix the disability at 35%.

5. The learned counsel for the appellant/claimant submits that since the claimant has sustained three fractures in different organs the disability fixed by the Claims Tribunal without giving any reason and adopting per percentage method by fixing a sum of Rs.2,000/- awarded per percentage of disability is not justified.

6. The above contention advanced by the learned counsel for the appellant, in the light of the discussion made above, is wholly justified. This Court, taking into consideration the deposition of the doctor relating to the injuries suffered by the claimant and the basis on which the disability has been assessed, concurs that the disability should be fixed at 65% as has been assessed by the Doctor. Accordingly, this Court fixes the disability suffered by the claimant at 65%.

7. Further, taking into consideration the nature of injuries suffered by the claimant, the severity of the injuries, the surgeries undergone by the claimant and the impact of the injuries on the life and earning of the claimant, this Court is



of the considered view that it would be just and reasonable to award Rs.3,000/-per percentage of disability. Accordingly, the compensation under the head permanent disability is quantified at Rs. 1,95,000/- (Rs.3000/- X 65).

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8. Insofar as the amount awarded under the other heads are concerned, the compensation awarded under those heads, in the overall consideration of the matter, in the considered opinion of this Court is just and reasonable and warrants no interference.

9. In the result, this appeal is allowed enhancing the compensation from Rs.5,38,024/- to Rs.6,63,024/- with interest @ 7.5% per annum from the date of petition till the date of deposit. However, there shall be no order as to costs.

10. It is represented that the second respondent-Insurance Company has already deposited the compensation awarded by the tribunal. The Insurance Company is directed to deposit the balance portion of the enhanced compensation as ordered by this Court above along with interest at 7.5% p.a. from the date of petition till the date of deposit 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 said amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter. The Court fee due by the claimant shall be paid before obtaining copy of the Judgment.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

arr/GLN
To

1. The Motor Accident Claims Tribunal
Chief Judicial Magistrate, Civil Judge,
(Senior Division), Namakkal Court, Namakkal.

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

+1 cc to Mr.C.kulanthaivel Advocate sr 11131
+1 cc to Mr.T.Ravichandran Advocate sr 11208

C.M.A. No.351 of 2017

gp(co)
aa28/03/2018