

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2017

CORAM:

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.911 of 2017
and C.M.P.No.4472 of 2017

The New India Assurance Co. Ltd.
 Salem.

... Appellant / 2nd respondent

versus

1. Rasul Basha

... 1st respondent / Petitioner

2. A.Marappan

... 2nd respondent/1st respondent

Prayer : This appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.07.2003 made in M.A.C.T.O.P.No.490 of 1998 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Salem.

For Appellant

:

Mr.S.Ramalingam

JUDGMENT

The claimant Rasul Basha, aged 30 years, working as a Grade-II constable, earning a sum of Rs.6,000/- p.m., met with an accident on 09.07.1998 and sustained injuries and lost three fingers in the right leg. Hence, he filed a claim petition in M.A.C.T.O.P.No.490 of 1998 before the Motor Accident Claims Tribunal (Principal Sub Judge), Salem, claiming compensation of Rs.3,30,000/-.

1.1. As against the claim made, the Tribunal has awarded a sum of Rs.2,29,310/- as compensation, payable with interest at the rate of 9% p.a. from the

date of petition till the date of deposit. The break-up details of the compensation read as follows:

Loss of earning capacity	-	Rs.1,83,600/-
Medical expenses	-	Rs. 31,800/-
Pain and sufferings	-	Rs. 5,000/-
Extra nourishment	-	Rs 5,000/-
Transport expenses	-	Rs. 3,500/-
Damage to clothes	-	Rs. 300/-
X-ray	-	Rs. 110/-
Total	-	<u>Rs.2,29,310/-</u>

1.2. Challenging the quantum of compensation, the Insurance Company has filed this appeal.

2. The main grievance of the learned counsel appearing for the appellant Insurance Company is that when the claimant, who had been employed as a Grade-II Constable at the time of accident, got promotion as Grade-I Constable, he cannot have any loss of earning capacity due to the accident. Therefore, the award of Rs.1,83,600/- on the ground of loss of earning capacity is unsustainable.

2.1. This argument appears to be acceptable. But, on a closer analysis of the details of the various heads, under which, compensation is granted, it is evident that the Tribunal did not award disablement compensation, loss of enjoyment of amenities, cost of attendant, and other incidental loss like saleability in employment market.

2.2. Evidence with regard to the consequences of the injury is that the claimant was not able to work as before; he was not able to continuously walk and discharge his duties; he was not able to accept outstation engagement and therefore, he was also loosing the benefits on account of loss of outstation engagement and he has suffered

loss of 3rd, 4th and 5th fingers; skin grafting has been done to compensate the same.

2.3. The Doctor has certified the disability at 35%. Even though the doctor has certified the disability at 35%, the Tribunal has fixed the disability at 20%. Based on Ex.P10-Salary certificate, the monthly income has been fixed at Rs.4,500/-. Since the age of the injured was 30 years at the time of accident, the proper multiplier is '17' and the loss of earning capacity has been estimated at Rs.1,83,600/-.

3. The said compensation is under challenge on the ground that neither the claimant suffered loss of income nor loss of earning capacity.

4. As discussed earlier, there is no scope for awarding compensation under the head of loss of earning capacity, when in fact the petitioner has been promoted and there is no loss in income. But, this Compensation should have been awarded for the petitioner for discharging duties with pain and discomfort. Therefore, the award of Rs.1,83,000/- is to be awarded under the head of disablement, loss of enjoyment of amenities, cost of attendant, and other incidental loss like saleability in employment market.

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5. It would be relevant to rely upon the judgment of Punjab-Haryana High Court in the case of Arvinder Singh vs. Rajinder Kumar, (dated 10 January, 2013, FAO No.1048 of 2011 (O&M)). The relevant portion of the Judgment reads as under:

“It is a “schedule injury” under the Workmen Compensation Act and the compensation has to be assessed **from the point of view of how his own saleability in a job market is diminished by such a disability.** The retention in job of an employee after such disability is not a defence

for an insurer or a tortfeasor. This issue has been answered in several judgments of various High Courts and this Court has also had an occasion to deal with the same issue in FAO No.3432 of 2009 titled New India Assurance Co. Ltd. vs. Smt.Santhosh Devi and others on 29.09.2010, vide paras 19 and 20. I would, therefore, find that the compensation has to be worked out first by taking the average income and applying percentage of loss of earning capacity. The amount must be applied with the suitable multiplier to ascertain the resultant pecuniary loss. The employer in this case had been examined to say that he was earning 10,000/- per month. A 75% disability must be taken as resulting 75% loss of earning capacity. The per month loss FAO No.1048 of 2011 (O&M) [3] would be 7,500/-. Considering the fact that he was 32 years of age, the appropriate multiplier that would be applicable in this case must have been 16. So reckoned the total compensation, loss of earning capacity itself would be more than 1,00,000/-."

Therefore, the award in this case on loss of earning capacity cannot be said to be excessive.

6. Even assuming that this award is slightly excessive, the fact that the award has been passed in the year 2003 has to be considered. The escalation in cost of living and the reduction in the value of money, is the order of the day. Cost of living is manifold comparing the lapse of decades in between the date of accident and the date of appeal. Therefore, the award cannot be said to be excessive.

7. Hence, this Civil Miscellaneous Appeal is dismissed, confirming the award dated 18.07.2003 passed in M.A.C.T.O.P.No.490 of 1998 by the Motor Accident Claims

Tribunal (Principal Sub Judge), Salem.



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8. The Insurance Company shall deposit the entire award amount of compensation along with interest at the rate of 9% p.a. from the date of petition till the date of deposit, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the claimant shall withdraw the same. No costs. Consequently, connected miscellaneous petition is closed.

14.02.2017

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To

1. The Motor Accident Claims Tribunal
(Principal Sub Judge), Salem.



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Dr.S.VIMALA, J.

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