

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2018

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

C.M.A. No. 2699 of 2016

A. Gunasekar @ Gunasekaran ...Appellant/Petitioner

Vs.

1. U. Muthukumar
(was set ex parte in Trial Court)

2. M/s. Royal Sundaram Alliance
Insurance Co. Ltd.,
Subramaniam Building,
No.1, Club House Road,
2nd Floor, Anna Salai,
Chennai 600 002.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 09.08.2016 passed by the Motor Accidents Claims Tribunal (III Judge, Court of Small Causes), Chennai, in M.C.O.P. No. 810 of 2013.

For Appellant :: Ms.P.T.Saleem Fathima

For Respondents:: R1- exparte
Mr.G. Vasudevan for R2

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN,J.)

This Civil Miscellaneous Appeal has been preferred by the injured claimant aggrieved over the quantum of compensation awarded by the Motor Accidents Claims Tribunal in M.C.O.P. No. 810 of 2013, by order dated 09.08.2016, to the tune of Rs. 3,35,000/- for the disability sustained by him due to the injuries caused in the accident that occurred on 07.12.2012.

2. Heard the learned counsel for the appellant and the learned counsel for the 2nd respondent.

3. Since the appeal has been filed by the claimant, the liability issue is not gone into, as it has already attained finality.

4. Learned counsel for the appellant would submit that the appellant sustained fracture shaft of femur right and there was malunion and widening of right femur orif. The leg also got shortened and therefore, he is experiencing difficulty in squatting and climbing steps and therefore, the disability at 25% determined by the Tribunal is very low. Moreover, she would submit that the appellant is a driver and he is unable to carry on his avocation as a driver and therefore, multiplier method has to be adopted.

5. The application of multiplier method is not a straitjacket formula to be adopted in every injury case. The disability sustained by the victim is as follows:

"Fracture shaft of femur Right Sc.2.H/o LOC"

"Malunion and widening of right femur with ORIF. P.T.

Stiffness of right knee Joint 0-90Deg. Normal 0-140

Deg. Loss of 50 deg. Movements. Wasting of right thigh

by 3 cms. (L.325 (R) 32 cms.) Difficulty in squatting

and climbing steps."

Taking into consideration, the medical records, the Doctor, who was examined as P.W.2, determined the disability at 30%. He himself had stated that the fixation of disability would vary around 5% from one Doctor to another. The Tribunal, considering the fact that P.W.2 did not give any treatment to the appellant, was of the view that the injury/disability caused to the appellant would not prevent/restrict the appellant from performing his job and determined the disability at 25% instead of 30% as assessed by the Doctor P.W.2. The approach of the Tribunal is right and the percentage of disability determined by the Tribunal at 25% has to be sustained. Further, for each percentage of disability, a sum of Rs.3000/- was rightly awarded by the Tribunal, totalling to Rs.75,000/- towards "Disability" and therefore, the amount awarded under the said head is also confirmed.

6. As already stated, this case does not warrant application of multiplier method as there is no loss of employment as contended by the learned counsel for the appellant. The Tribunal has awarded Rs. 73,926/- towards "Loss of Income" during the treatment period; Rs.10,000/- towards "Attendant charges"; Rs.15,000/- towards "Transportation to Hospital"; Rs.40,000/- towards "Extra Nourishment"; Rs.1000/-

towards "Damage to Clothing", Rs.30,000/- towards "Loss of Amenities" and Rs.30,000/- towards "Future Medical Expenses". Though the above said amounts are on the higher side, since the Tribunal exercised its jurisdiction and awarded the said amounts, this Court is not inclined to interfere with the same.

7. However, the Tribunal has awarded Rs.50,000/- towards "Pain and Suffering", besides awarding Rs.10,000/- towards "Damages for Mental and Physical Shock". Though this Court agrees with the other amounts awarded by the Tribunal, there cannot be an award of Rs.10,000/- towards "Damages for Mental and Physical Shock" and Rs.50,000/- towards "Pain and Suffering". Therefore, instead of Rs.60,000/- awarded under the said heads, put together, the same is reduced to Rs.30,000/- under both the heads. The total compensation payable to the claimant is as follows:

Disability	25% @ Rs.3000/-::	Rs.75,000/-
Pain and Suffering		
& Damages for Mental and		
Physical Shock	::	Rs.30,000/-
Loss of Income during		
treatment period	::	Rs.73,926/-
Attendant Charges	::	Rs.10,000/-
Transport to Hospital	::	Rs.15,000/-
Extra Nourishment	::	Rs.40,000/-
Damage to Clothing	::	Rs. 1,000/-
Future Medical		
Expenses	::	Rs.30,000/-
Loss of Amenities	::	Rs.30,000/-
Total	::	Rs.3,04,926/-
rounded off to	::	Rs.3,05,000/-

Hence, the award of Rs.3,35,000/- passed by the Tribunal is reduced to Rs. 3,05,000/- and the rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered.

8. In fine, the Civil Miscellaneous Appeal is dismissed reducing the compensation awarded by the Tribunal from Rs.3,35,000/- to Rs.3,05,000/-. No costs.

9. It is stated that the entire award amount has been deposited before the Tribunal by the 2nd respondent Insurance Company. The Tribunal is directed to transfer the amount, payable to the appellant, to his bank account, as per the modified award passed by this Court, through RTGS, within a period of two weeks from the date of receipt of a copy of this

order and the balance amount shall also be refunded to the 2nd respondent Insurance Company within the said period of two weeks.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

nv

To
The III Judge
Court of Small Causes, Chennai.

Copy to

1. The Section officer
VR Section , High court, Madras.
 2. The Section officer
Record Keeper
VR Section, High Court, Madras 104.
- +1 CC to Mr. Vasudevan, Advocate sr 24370.
+1 cC to Mr. Swamikannu, Advocate sr 24236.

MG(CO)
SP(28/04/2018)

C.M.A. No. 2699 of 2016

सत्यमेव जयते

WEB COPY