

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.427 of 2015

A.Murugan

... Appellant

Vs

1. Murugan

2. The National Insurance Co. Ltd.,
Represented by its Branch Manager,
Dharumapuri Branch,
Dharumapuri - 636 701.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 08.11.2010 passed in M.C.O.P.No.434 of 2008 on the file of the Motor Accident Claims Tribunal cum Subordinate Judge, Dharumapuri.

For Appellant : Mr.M.Selvam

For Respondents : Mr.J.Chandran (for R2)

सत्यमेव जयते R1 - No Appearance

JUDGMENT

The claimant who suffered grievous injuries in the accident that took place on 9.4.2002, filed a claim petition in MCOP.No.434 of 2008 before the Motor Accident Claims Tribunal cum Subordinate Judge, Dharmapuri claiming compensation for a sum of Rs.20,00,000/-.

2.The Tribunal, on consideration of the oral and documentary evidence placed before it quantified the compensation in a sum of Rs.7,66,647/- the break up of which is as hereunder:-

i. Disability (60%)	- Rs.1,20,000/-
ii. Pain and suffering	- Rs. 20,000/-
iii. Extra nourishment	- Rs. 5,000/-
iv. Transport expenses	- Rs. 2,000/-
iv. Medical expenses (Ex.P7 and Ex.P8)	- Rs.6,09,647/-
v. Loss of income	- Rs. 10,000/-

Total	Rs.7,66,647/-

3.Challenging the compensation awarded as inadequate and not proportionate to the injuries sustained, the claimant has preferred the present appeal.

4.The main contention raised by the Learned counsel for the appellant is that even though it is a fit case for adopting multiplier, the tribunal has not adopted the multiplier method. Though the doctor has assessed the disability at 60%, which has been accepted by the Tribunal, however curiously, the Tribunal instead of adopting the multiplier method, has adopted the per percentage method and awarded compensation of Rs.2,000/- per percentage of disability, which is on the very lower side. The claimant has suffered fracture in his tibia and fibula bone in left leg, and he took treatment. It is also pointed out that no compensation has been awarded for loss of enjoyment and amenities eventhough the claimant is aged only 34 years. It is the further contention of the Learned counsel that the claimant, that business-Vinayaga Agro Service, has totally lost his earning for a period of one year, on account of the accident and the injuries suffered thereof, and therefore, needs to be compensated for the said period and also other heads is very low amount awarded.

5.I heard Mr.M.Selvam, learned counsel appearing for the appellant and Mr.J.Chandran, learned counsel appearing for the 2nd respondent and perused the materials available on records. No representation on behalf of the 1st respondent.

6.It is evident from the evidence available on record that no proof towards income has been furnished. The accident has happened in the year 2002 and the claimant was aged about 34 years. There is no dispute with regard to the age of the claimant. Therefore, it would be safe to fix the monthly earnings of the claimant at Rs.10,000/-.

7.The claimant has suffered 60% of disability, as it is certified by the doctor, however, the Tribunal fixed the disability at 60%. However, a perusal of the award reveals that the Tribunal has awarded Rs.2,000/- per percentage of

disability, which, as contended by the Learned counsel for the appellant is on the very low side. A perusal of the injuries sustained by the claimant and the period of treatment undergone definitely warrants a higher compensation. Though this court accepts that the compensation needs to be enhanced, however is not inclined to adopt the multiplier method. On an overall consideration of evidence, this court is of the considered view that Rs.3,000/- per percentage of disability would be proper to meet the needs of justice. Accordingly, a sum of Rs.1,80,000/- (60 x 3000) is awarded towards disability.

8. In so far as compensation under the head loss of enjoyment of amenities, it is evident from the records that no amount has been awarded by the Tribunal. Considering the entire factual matrix and the injuries suffered and the period of treatment undergone, this court award an amount of Rs.30,000/- under the head loss of enjoyment of amenities. In so far as compensation, under the head loss of income during the period of treatment is concerned, this court awards an amount of Rs.30,000/- under the said head.

9. Insofar as the compensation awarded under the other heads are concerned, is very low, this court is at the considered opinion that they are required to be enhanced to reasonable amount. Hence the amount awarded by the tribunal is modified as follows:

S.No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Loss of Income	10,000	30,000
2.	Medical Expenses	6,09,647	6,09,647
3.	Transport to Hospital	2,000	10,000
4.	Extra Nourishment	5,000	20,000
5.	Pain and Suffering	20,000	40,000
6.	Future Medical Expenses	-	50,000
7.	Loss of disability	1,20,000	1,80,000
8.	Loss of enjoyment of amenities	-	30,000
	Total	7,66,647	9,69,647

Accordingly the amount awarded by the Tribunal is enhanced to Rs.9,69,647/-.

10. In the result, this Civil Miscellaneous Appeal is partly allowed. The sum of Rs.7,66,647/- awarded by the Tribunal dated 8.11.2010 made in MCOP.No.434 of 2008 on the file of the learned Motor Accident Claims Tribunal cum Subordinate Judge, Dharampuri is enhanced to Rs.9,69,647/-. The 2nd respondent/ Insurance company is directed to deposit the entire enhanced award amount of Rs.9,69,647/- with interest at the rate of 7.5% p.a. after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order and then the 2nd respondent Insurance Company is entitled to recover the same from the first respondent/owner of the vehicle in accordance with law. On such deposit, the petitioner/ claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

1) The Motor Accident Claims Tribunal cum
Subordinate Judge, Dharumapuri.

+1 cc to M/s.M.Selvam, Advocate, S.R.No.57572

C.M.A.No.427 of 2015

RSV(CO)
SSM(28/02/2019).

सत्यमेव जयते

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