

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.No.2307 of 2017

A.John ...Appellant

Vs.

1.B.Dhamodharan
No.43, Samathuvapuram,
Perumpulipakkam, Arakonam,
Vellore District.
(Was set exparte in the trial Court)

2.Shriram General Insurance Co. Ltd.,
No.66, Inside City Centre Complex,
Syed Thirumallai Pillai Road,
T.Nagar, Chennai-600 017.
Now functioning at
Shriram General Insurance Co. Ltd.,
1st Floor, Plot No.5m Ramachandran Street,
Saravanan Nagar, Srivaram, Perungudi,
Chennai-600 096.

....Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 24.01.2017 made in MACT OP No.3299 of 2013 on the file of the II Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

For Appellant : Ms.P.T.Saleem Fathima

For Respondents : Mr.S.Dhakshinamoorthy for R2
R1-Exparte

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN,J.)

The Civil Miscellaneous Appeal has been filed against the judgment and decree dated 24.01.2017 made in MACT OP No.3299 of 2013 on the file of the II Judge, Motor Accidents

Claims Tribunal (Court of Small Causes), Chennai seeking enhancement.

2. The claimant, who suffered injuries in a motor accident that occurred on 31.03.2011, is the appellant. As a result of the accident, the right toe of the claimant was removed. The Tribunal assessed the permanent disability on the basis of evidence of P.W.2 Doctor at 40% and granted a sum of Rs.1,20,000/- towards permanent disability. The Tribunal has also granted Rs.50,000/- towards transportation, extra nourishment and miscellaneous expenditure; Rs.10,000/- towards medical expenses; Rs.10,000/- towards attendant charges; Rs.50,000/- towards pain and suffering; Rs.26,000/- towards loss of earning during the period of treatment and Rs.25,000/- towards loss of amenities and in all, a sum of Rs.2,91,000/- has been awarded as total compensation.

3. We have heard Mrs.P.T.Saleem Fathima, learned counsel for the appellant/claimant and Mr.S.Dhakshinamoorthy, learned counsel for the second respondent-Insurance Company. The first respondent remained ex-parte before the Tribunal and hence, notice is dispensed with.

4. Mrs.P.T.Saleem Fathima, learned counsel for the appellant/claimant, would contend that the Tribunal should have awarded certain amount towards loss of future income.

5. Mr.S.Dhakshinamoorthy, learned counsel for the second respondent-Insurance company would contend that there is no evidence to show any chance of loss of future income. The injured continued his services in the same employment even after the accident.

6. Taking into account the fact that the injured continued in service after the accident, we are of the opinion that no amount can be granted towards future loss of earning capacity. At the same time, it is seen from the records that the injured took treatment in the Government Hospital, Chennai, as in-patient from 31.03.2011 to 11.05.2011 i.e., almost for a period of three months. Therefore, the attendant charges is increased to Rs.30,000/- from Rs.10,000/-. Damages for pain and suffering is increased to Rs.1,00,000/- as against Rs.50,000/- granted by the Tribunal. Loss of amenities is increased to Rs.1,00,000/- from Rs.25,000/-. The Tribunal has not awarded any amount towards loss of marital prospects. Hence, we award a sum of Rs.60,000/- towards loss of marital prospects. The compensation granted on the other heads is sustained. The details of the modified compensation as per the above discussion are as under:-

Transportation, extra nourishment

and miscellaneous expenditure	Rs. 50,000/-
Medical expenses	Rs. 10,000/-
Attendant charges	Rs. 30,000/-
Damages for pain, suffering and trauma	Rs.1,00,000/-
Disability	Rs.1,20,000/-
Loss of earning during the period of treatment	Rs. 26,000/-
Loss of amenities	Rs.1,00,000/-
Loss of Marital prospects	Rs. 60,000/-

Total	Rs. 4,96,000/-

The same is rounded off to Rs.5,00,000/-.

7. The Civil Miscellaneous appeal is partly allowed and the award of the Tribunal is enhanced to Rs.5,00,000/- (Rupees five lakhs only) with proportionate interest at 7.5%. The second respondent-Insurance Company is directed to deposit the enhanced award amount within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the entire award amount with interest. There will be no order as to costs in this appeal.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

raa

To
The Court of Small Causes, II, Chennai.

Copy To
The Section Officer, VR Section
High Court, Madras. (2 Copies)

+1cc to Mr.M.Swamikannu, Advocate SR.No.59676

+1cc to Mr.S.Dhakshnamoorthy, Advocate SR.No.60222

C.M.A.No.2307 of 2017

GMV (24/09/2018)