



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2018

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A (MD) .No.429 of 2018
and
C.M.P. (MD) .No.5331 of 2018

The Managing Director,
the United India Insurance Company Ltd.,
Tenkasi,
Tirunelveli District,
rep. by Branch Manager,
Nagercoil.

... Appellant/
2nd respondent

Vs.

1.Stalin Xavier

... 1st respondent /
Petitioner / Claimant

2.M.Kabir

... 2nd respondent /
1st respondent

(R2 given up)

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 30.06.2017, passed in M.C.O.P.No.34 of 2015 by the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Kanyakumari District at Nagercoil.

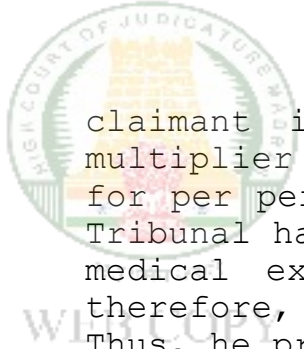
For appellant : Mr.C.Jawahar Ravindran
For 1st respondent : Mr.G.Aravinthan

JUDGMENT

Heard the learned counsel appearing for the appellant / Insurance Company and the learned counsel appearing for the first respondent / claimant.

2. It is a case of injury. The manner of the accident is not in dispute. The appellant / Insurance Company has filed this appeal only questioning the quantum.

3. The learned counsel appearing for the appellant / Insurance company would submit that at the time of accident, the claimant / injured was studying B.E. course and the injured / claimant has now completed his studies. For 15% of disability sustained by the



claimant in the accident, the Tribunal has erroneously adopted multiplier method and the Tribunal ought to have awarded Rs.2,000/- for per percentage of disability. He would further submit that the Tribunal has erroneously awarded a sum of Rs.50,000/- towards future medical expenses and Rs.25,000/- towards loss of life span and therefore, the amount awarded under the said heads may be deleted. Thus, he prayed to reduce the award passed by the Tribunal.

4. The learned counsel appearing for the first respondent / claimant would submit that though the doctor has certified that the claimant has suffered 20% of disability due to accident, the Tribunal has taken into account only 15% and adopted the multiplier method and therefore, the award passed by the Tribunal under the head of disability by adopting multiplier method need not be interfered with. He would further submit that surgeries were performed by implanting iron plates on both the forearms of the claimant and in order to remove the foreign materials by surgeries in future, the Tribunal has awarded a sum of Rs.50,000/- towards future medical expenses and therefore, he prayed not to interfere with the award passed under the said head. He would further submit that the Tribunal has awarded only a meagre sum of Rs.60,000/- towards pain and sufferings and therefore, he prayed to enhance the award passed under the said head.

5. It is seen from the record that as per Ex.P13, the claimant has sustained 20% disability due to accident. As stated by the learned counsel for the appellant / Insurance company, the multiplier method adopted by the Tribunal for 20% of disability is not proper. Therefore, the award of Rs.1,94,900/- passed by the Tribunal towards disability is deleted. This Court is inclined to award Rs.3,000/- per percentage of disability, as per the decision of the Hon'ble Supreme Court in **Vimal Kanwar Vs. Kishore Dan**, reported in **2013(1) TN MAC 641 (SC)**, and accordingly, a sum of Rs.60,000/- ($3,000 \times 20 = 60,000$) is awarded towards disability.

6. So far as the award of Rs.50,000/- passed by the Tribunal towards future medical expenses is concerned, considering the fact that the surgeries has to be conducted to remove the foreign materials (iron rod) implanted into the body of the claimant, this Court is not inclined to delete the award passed under the said head, however, reduce the same to Rs.25,000/-. In respect of the award of Rs.25,000/- passed towards life span is concerned, this Court is inclined to delete the same. A perusal of the record would go to show that the claimant had sustained three grievous injuries and as rightly stated by the learned counsel for the first respondent / claimant, a sum of Rs.60,000/- awarded by the Tribunal towards pain and sufferings is not sufficient and therefore, the amount awarded by the Tribunal towards pain and sufferings is enhanced to Rs.1,00,000/- from Rs.60,000/-. In other respects, the award passed by the Tribunal is confirmed. Thus, the amount awarded by the Tribunal is reduced as under:

Heads of award	MCOP	CMA
Pain and sufferings	Rs. 60,000/-	Rs.1,00,000/-
Life span	Rs. 25,000/-	-
Loss of amenities	Rs. 20,000/-	Rs. 20,000/-
Nutrition	Rs. 10,000/-	Rs. 10,000/-
Medial expenses	Rs.1,20,000/-	Rs.1,20,000/-
Loss of income	Rs.1,94,400/-	Rs. 60,000/-
Conveyance	Rs. 5,000/-	Rs. 5,000/-
Future medical expenses	Rs. 50,000/-	Rs. 25,000/-
Total	Rs.4,84,400/-	Rs.3,40,000/-

7. In view of the above, the award passed by the Tribunal is reduced from Rs.4,84,400/- to Rs.3,40,000/-. The appellant / Insurance Company is directed to deposit the entire award amount, less the amount already deposited, with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent / claimant is permitted to withdraw the amount now awarded with accrued interest and costs without filing any formal petition before the Tribunal. The appellant / Insurance Company is also permitted to withdraw the excess amount, if any, already deposited before Tribunal.

8. In the result, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Motor Accident Claims Tribunal,
Chief Judicial Magistrate,
Kanyakumari District.

2. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to Mr.G.ARAVINTHAN, Advocate in SR.No.70038

GCG

RJ/PN/SAR-4/26/07/2018 - 3P/5C