

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2484 of 2011

P.Selvam

.. Appellant/Petitioner

Vs.

1. P.Selvam

2. The Branch Manager,
National Insurance Company Ltd.,
Bangalore Road,
Krishnagiri.

.. Respondents/Respondents

Prayer:-

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 aggrieved by the Award and Decree dated 07.12.2010 made in M.C.O.P.No.265 of 2007 on the file of the Motor Vehicle Claims Tribunal/Chief Judicial Magistrate, Krishnagiri.

For Appellant : Mr.Mukund R.Pandiyan

For R1 : No appearance

For R2 : M/s.N.B.Surekha

JUDGMENT

The claimant is the appellant herein.

2.This Civil Miscellaneous Appeal has been filed aggrieved by the Award and Decree dated 07.12.2010 made in M.C.O.P.No.265 of 2007 on the file of the Motor Vehicle Claims Tribunal/Chief Judicial Magistrate, Krishnagiri.

3. The appellant/claimant aged about 22 years and he was working as Cleaner under the 1st respondent and earning Rs.4,500/- p.m. On 28.12.2006 at 12.45 hours, the appellant was the duty cleaner in the Swaraj Mazda bearing Registration No.TN-24-9627 belonging to the 1st respondent and insured with the 2nd respondent-Insurance Company proceeding near Tholurpatti-Samathvapuram on Namakkal-Trichy road was driven by its driver

in a rash and negligent manner, without any precautions and tried to over take a vehicle and lost his control, with the result the vehicle capsized on the road side. Due to the sudden impact, the appellant/claimant has sustained grievous injuries. On a complaint, a criminal case was registered against the driver of the said vehicle in Cr.No.349 of 2006 of Thottiyam Police. Claiming that the loss of earnings and disability of the appellant/claimant had filed this petition claiming compensation of Rs.5,00,000/-

4. P.W.2 Doctor who examined the appellant/claimant also deposed that surgery was done to the appellant/claimant, plate and screw were fixed on his right hand, due to his disablement, the appellant/claimant is unable to carry any object with his right hand and his right hand movements are restricted and unable to do hard work as before and has given Disability Certificate for 35% and the same is marked as Ex.A4. The Doctor has not given treatment to the appellant/claimant and he has seen the appellant/claimant only on 27.07.2010 i.e., after three and half years of the accident. The Doctor has not deposed that on what basis he has arrived the percentage of disability whether the Indian Medical Guideline or Workman's Compensation? Hence, considering the above aspects, though the Doctor has given disability certificate for 35% to the appellant/claimant, this Court taking disability as 25%. The injured sustained one grievous injury, i.e., fracture in right forearm according to Ex.A6, Discharge Summary and would have suffered a lot due to the pain and sufferings.

5. The Tribunal, after taking into consideration the oral and documentary evidence, awarded a compensation of Rs.80,500/- with interest at 7.5% per annum.

6. Heard both sides.

7. After taking into consideration of the submissions of the learned counsel for the appellant, this Court is of the considered view that the compensation arrived at by the trial Court does not warrant any interference and therefore, a sum of Rs.50,000/- awarded by the trial Court is confirmed. However, a sum of Rs.5,000/- is awarded by this Court under the head of "Loss of Amenity". A sum of Rs.13,500/- and Rs.10,000/- awarded by the Trial Court needs interference and therefore, Rs.5,500/- and Rs.5,000/- are hereby awarded by this Court under the head of "compensation for Loss of Income" and under the head of "compensation of his Pain and Sufferings". A sum of Rs.7,000/- awarded by the trial Court needs interference and therefore, a sum of Rs.15,000/- is enhanced by this Court under the head of

"Transport, expenses on attenders" and "extra nourishment" and hence, over and above, the compensation amount of Rs.80,500/- is hereby granted. The amount awarded is hereby tabulated:

Head	Trial Court	High Court
Compensation for 25% disablement (25%xRs.2000)	Rs. 50,000/-	Rs. 50,000/-
Compensation for Loss of Income	Rs. 13,500/-	Rs. 5,500/-
Loss of Amenity	---	Rs. 5,000/-
Compensation for his Pain and Sufferings	Rs. 10,000/-	Rs. 5,000/-
Transport, expenses on attenders and extra nourishment	Rs. 7,000/-	Rs. 15,000/-
Total	Rs. 80,500/-	Rs. 80,500/-

8. The learned counsel for the Insurance Company stated that the entire award amount has already been deposited and the Insurance Company shall deposit the balance amount if any within a period of eight weeks from the date of receipt of a copy of this judgment.

9. Accordingly, this Civil Miscellaneous Appeal is partly-allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1. The Motor Vehicle Claims Tribunal/
Chief Judicial Magistrate, Krishnagiri.
2. The Section Officer,
VR Section, High Court, Madras-104

+1cc to M/s.N.B.Surekha, Advocate, S.R.No.10669

C.M.A.No.2484 of 2011

CNR(CO)
CS/16/07/2019