

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29.08.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2839 of 2017

Doss @ Arokiyadoss .. Appellant

/Vs/

1.A.Manoharan

2.(United India Insurance Co.ltd.,
Kumbakonam rep.by its branch
Manager)

The Branch Manager,
New India Assurance Co.Ltd.,
Nageswaran Sannadhi,
Kumbakonam. ... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the disallowed portion of award and decree dated 13.12.2000 made in M.C.O.P.No.75 of 1998 on the file of the Motor Accident Claims Tribunal cum Principal Sub Court, Kumbakonam.

For Appellant : Mr.R.Rajaramani

For Respondent : Mrs.S.R.Sumathi for R-2

JUDGMENT

The claimant Doss @ Arokiyadoss has filed the claim petition for compensation in respect of permanent disablement suffered by him, in the accident that took place on 05.05.1997. Even though he claimed a sum of Rs.4,00,000/-, the tribunal has passed an award for a sum of Rs.63,000/- under the following heads :

Permanent disablement 35%	: Rs.35,000/-
Loss of earning capacity	: Rs.25,000/-
Medical expenses	: Rs. 500/-
Transport expenses	: Rs. 1,000/-
Extra nourishment	: Rs. 1,500/-

Total compensation	: Rs.63,000/-

2. Challenging the award as grossly inadequate, the claimant has filed this appeal.

3. The contention of the learned counsel for the appellant is that when there is an evidence to show that there

is shortening of right leg by 9 cm and there is restriction in the movement of thigh bone and having regard to the employment of the claimant as a driver, it is a fit case for enhancement.

4. A perusal of the award of the Tribunal reveals that the claimant was admitted in the hospital on 05.05.1997 the date of accident itself and he has taken continuous treatment as inpatient and he has been discharged only on 28.08.1997. Overall, the claimant has been an in-patient for more than 3 ½ months.

5. It is the case of the claimant that after surgeries, he is continually continuing his medical treatment on account of non-healing of the injuries. The doctor, PW2, has deposed that there is shortening of right leg to the extent of 4 cm and the lower part of the right leg to the extent of 5 cm and, in all, a total shortening by 9 cm and has also spoken to about the various other injuries suffered by the claimant and has fixed the disability at 65%. Though the doctor has fixed the permanent disability at 65%, however, on a conservative approach, the Tribunal has fixed the permanent disability at 35%. Therefore, by no means, the fixation of disability at 35% by the Tribunal could be said to be unreasonable and without evidence. Further, this Court is of the view that though the disability is assessed at 35%, however the compensation awarded at Rs.1,000/- per percentage of disability is on the lower side. Therefore, this Court feels that the compensation at Rs.1,500/- per percentage of disability would be just and reasonable.

6. It is further evident that the avocation of the claimant is driver. It is needless to state that leg is the main source of strength for the driver, who controls the vehicle, be it acceleration or braking with the use of his right leg. Controlling of the movement of the vehicle rests on the right leg for which force from the right leg is an important necessity. When the evidence of the doctor is categorical that the right leg is reduced by 9 cm, it goes without saying that the overall action of the claimant in the discharge of daily duties would stand wholly curtailed and he would not be in a position to discharge his duties as he was discharging before the accident. Therefore, having regard to the nature of the injury suffered vis-a-vis the avocation being performed by the claimant, the reasoning of the Tribunal that there is total loss of earning capacity cannot be said to be perverse or unreasonable.

7. Though the learned counsel for the appellant pointed out that the physical disablement will not always be directly proportional to the functional disablement, yet it is trite that physical disablement and functional disablement vary only by a very slender margin. In the case on hand, the physical disablement of the claimant is of such a nature that the

functional disablement would only be higher and cannot be said to be lower in any way. Further, the compensation awarded under other heads also are on the lower side and, accordingly, the same requires some enhancement as well.

8. For the reasons stated above, the compensation awarded by the Tribunal requires modification. Accordingly, the compensation awarded by the Tribunal under the various heads, are modified as hereunder :-

S. No.	Head	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Permanent Disability at 35%	35,000/-	52,500/-
2	Loss of Earning capacity	25,000/-	65,000/-
3	Medical Expenses	500/-	2000/-
4	Transport Expenses	1000/-	2500/-
5	Extra Nourishment	1500/-	3000/-
	Total	63,000/-	1,25,000/-

Accordingly, this Court enhances the compensation from Rs.63,000/= to Rs.1,25,000/=-, thereby, the effective enhance being Rs.62,000/-.

9. In the result, the appeal is allowed in part, as indicated above. Consequently, connected miscellaneous petition is closed, if any. However, there shall be no order as to costs.

10. It is represented by the learned counsel for the appellant that the entire award amount, as determined by the Tribunal, has already been deposited. The appellant is directed to deposit the balance amount as enhanced by this Court above. Considering the fact that the claim petition is of the year 1998, this Court is of the considered view that it would not be appropriate to award interest at 12% as ordered by the Tribunal, considering the fact that the matter is pending for more than two decades. Therefore, this Court feels that the interest of 12% as ordered by the Tribunal requires modification and, accordingly, the same stands modified to 6% p.a. from the date of claim petition till date of deposit.

11. The 2nd respondent /Insurance company is directed to deposit the enhanced award amount along with interest at 6% per annum and costs, as determined by this Court, from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this judgment. Excess amount, if any, deposited the 2nd respondent/Insurance company is permitted to withdraw the

same. On such deposit being made, the Tribunal is directed to transfer the entire award amount directly to the bank account of the appellant/claimant through RTGS within a period of two weeks thereafter. Additional Court fee shall be paid by the appellant /claimant for the enhanced amount before obtaining the copy of the judgment.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sms/kv/GLN

To

1. The Motor Accident Claims Tribunal
cum Principal Sub Court, Kumbakonam.
2. The Section Officer, VR Section,
High Court, Madras.

RJI(CO)

sm:18.4.2018

C.M.A.No.2839 of 2017



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