

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2020

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1158 of 2016

Sathiya Vasagam

..Appellant/Claimant

Vs.

1.Ramasamy

2.H.Rajkumar

3.The United India Insurance Company Limited,
C.G.Complex,
No.139-Kumaran Road,
Tirupur.

...Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment & Decree dated 22.02.2016 passed in MACT.O.P.No.855 of 2014 on the file of the Motor Accidents Claims Tribunal, 1st Additional District Judge, Tirupur.

For Petitioner : Mr.K.Myilsamy

For Respondents : M/s.I.Malar for R3
Non-appearance for R1
R2-Ex-parte Lower Court

J U D G M E N T

The appeal is preferred by the claimant seeking enhancement of compensation.

2. The accident occurred on 02.06.2014 at about 13.00 hrs at near Kosavampalayam School, Kosavampalayam to Palladam Road. A case was registered by the Palladam Police Station under Sections 279, 337 IPC. The claimant, on account of the accident, sustained head injury, fracture in hip, injury in both hand, multiple grievous injuries all over the body. The claimant filed an application seeking compensation of Rs.10,00,000/- and the Tribunal adjudicated the issues. With regard to liability, the Tribunal arrived at a conclusion that the claimant is a third

party and for negligent act of the first respondent/driver, the second and third respondent are liable to pay the compensation. With reference to the quantum of compensation, the Tribunal considered the nature of the injuries sustained as well as the treatment taken by the claimant. Dr.SenthilKumar P.W.4 was examined to prove the disability sustained by the petitioner. The Doctor has deposed that on examination, he found that surgical scar is present over left hip and tenderness is present over left hip. X-ray shows total hip replacement left side and assessed partial permanent disability at 48% and accordingly, the said document was filed as Ex.P6. Taking note of all these factors, the Tribunal awarded the compensation of Rs.1,50,000/-.

3. The learned counsel appearing on behalf of the appellant mainly contended that hip replacement caused permanent disability to the appellant and therefore, the Tribunal ought to have applied multiplier so as to calculate the compensation. Further, it is contended that the award of compensation on various other heads are also inadequate and the said compensation deserves further enhancement.

4. The said grounds are disputed by the learned counsel appearing on behalf of the Insurance Company by stating that the Doctor who has not treated the appellant/claimant, was examined before the tribunal, who in turn, made an assessment based on certain medical records and therefore, the Tribunal fixed the disability at 35%, which cannot be said to be improper.

5. This Court is of the considered opinion that the appellant/claimant was working as cutting master in D.G.Garments and was earning a sum of Rs.7,000/- per month. As far as the treatment undergone by the appellant is concerned, this Court is of the opinion that the said treatment as well as the disability cannot be construed as a permanent disability so as to calculate the compensation by applying multiplier. However, the Tribunal has erred in not granting the compensation for attender charges, loss of income, more specifically, during the period of treatment and other heads also require some enhancement. Accordingly, the total compensation of Rs.1,50,000/- awarded by the tribunal is enhanced as detailed hereunder:

(i) Disability (3000 X 35)	:	Rs.1,05,000/-
(ii) Pain and Suffering	:	Rs.25,000/-
(iii) Transport Expenses	:	Rs.20,000/-
(iv) Nutrition	:	Rs.20,000/-
(v) Attender Charges	:	Rs.20,000/-
(vi) Loss of Income for four months (Rs.7000 X 4)	:	Rs.28,000/-
Total	:	Rs.2,18,000/-

6. The Third respondent/Insurance Company is directed to deposit the entire award amount, if not already deposited, within a period of six weeks from the date of receipt of a copy of this judgment and on such deposit, the appellant/claimant is permitted to withdraw the said amount by filing appropriate application and the payments are to be made through RTGS. The appellant is entitled for 7.5% interest per annum in respect of enhanced compensation. The appellant is liable to pay the additional court fee for enhanced compensation.

7. Accordingly, the civil miscellaneous appeal stands allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssb

To

The Motor Accidents Claims Tribunal,
1st Additional District Judge, Tirupur.

Copy To:

The Section Officer
V.R Section High Court Madras.

+1 cc to Mr.I.Malar, Advocate Sr.No. 20315

+1 cc to M/s.K.Myilsamy, Advocate Sr.No. 19819

SSI (CO)
RMP (26/04/2021)

सत्यमेव जयते C.M.A.No.1158 of 2016

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