

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.2144 of 2016

The Branch Manager,
The Oriental Insurance Co.Ltd.,
No.6, Mummy Daddy Complex,
Mettu Theru,
Thiruthuraipoondi. ...Appellant /2nd Respondent

/versus/

1.Samandham ... 1st Respondent/Petitioner

2.Muthuraman ...2nd Respondent/ 1st Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act against the Decree and Judgment passed in M.C.O.P.No.133 of 2014 on 12.02.2016 on the file of the learned Motor Accidents Claims Tribunal (Subordinate Judge) Mannargudi, Thiruvarur District.

For Appellant : Mr.J.Chandran

For R1 : Mr.D.Lakshmipathy

For R2 : No Appearance

J U D G M E N T

(The case has been heard through video conference)

This matter was heard on 12.08.2020 and at the request of the learned counsel for the respondent to verify the records, it was adjourned today.

2. The learned counsel representing the Insurance Company recollected the arguments and submissions. The learned counsel for the respondent submitted that they have verified the records.

3. On perusing the papers, this Court finds that two serious errors in awarding the compensation have crept and it has been pointed out by the learned counsel for the appellant that by erroneous assessment and non application of mind, the

Tribunal has awarded wrong percentage for future prospects and the 1st respondent has been awarded excessive and exorbitant compensation for the fracture on the left femur. The error in the Tribunal award which is referred above are as under:

In claim petition the claimant has mentioned his age as 60 years, and earning Rs.7,500/- per month as Canteen Staff. He has stated that he had fracture in his left femur and abrasion all over the body He had taken treatment in the hospital from 25.03.2013 to 27.04.2013. For the said fracture, he has relied upon the disability certificate Ex.P-8, wherein the Doctor has certified that the permanent disability of the Appellant is 64%. The Tribunal has taken this certificate on its face value and has applied the said percentage of disability for the loss of income with multiplier 9. The Tribunal even if it had accepted the disability it would be to that part of the body and not for the whole body. It is beyond any one's compensation that the fracture on the left femur would cause 64% disability, either physical or functional. Even if it is so, the disability would cause 30% at the functional disability at the most. Likewise, for a the person 60 of years old, The Hon'ble Supreme Court in Pranay Sethi case, has fixed only 10% future prospects, whereas in this case, the Tribunal has fixed 50% future prospects. On the face of it, the said fixation bristles with error. Hence it needs interference.

4. The learned counsel for the appellant would submit that pursuant to the interim direction passed by this Court in C.M.P.No.15411 of 2016 dated 03.10.2016 the entire award amount has been deposited and the claimant has already withdrawn 50% of the award amount. Taking note of the above submission, this Court holds that the excess estimation of loss of income should be modified as below:

Income is fixed at Rs.5,000/- p.m., and 10% towards future prospects of Rs.500/- is added making it as Rs.5,500/- per month. Thus the annual income is Rs.66,000/- on multiplier 9 is applied with 30% disability in earning capacity is $66,000 \times 9 \times 30\% = 1,78,200/-$ in respect of other heads, this Court is of the view the same need not be interfered. Thus the award interfered and modified as below:

Loss of income due to disability	Rs.1,78,200/-
Pain and suffering	Rs. 25,000/-
Transportation	Rs. 5,000/-
Nourishing Food	Rs. 5,000/-

Loss of income due to disability	Rs.1,78,200/-
Loss of income (6,000X3)	Rs. 18,000/-
Total	Rs.2,31,200/-,

The claimant is entitled to get compensation as above with 7.5% interest. The Insurance Company is permitted to withdraw the excess amount if any on appropriate petition.

5. With the above modification, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpl

To

1.The Motor Accidents Claims Tribunal
(Subordinate Judge) Mannargudi,
Thiruvarur District

2.The Section Officer,
VR Section,
High Court,
Madras.

LN (CO)
RMP (20/01/2021)

C.M.A.No.2144 of 2016

WEB COPY