



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment
08.01.2021

Date of Pronouncing Judgment
17.03.2021

WEB COPY

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.569 of 2015

N.Senthamil Selvan

.. Appellant/Claimant

Vs.

1.M.S. Rayji

2.The Oriental Insurance Company Limited,
Represented by its Manager,
Seeranvelil Building,
Near Mini Civil Station,
N.H. Kanchirapalli - 686 507
Kerala State.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.111 of 2010 dated 23.01.2012 on the file of the Court of Principal Sub-Ordinate Judge (Motor Accident Claims Tribunal) Mayiladuthurai.

For Appellant : Mr. A. Muthukumar

For Respondents : Mr. K. Vinod, for R2
No Appearance for R1

J U D G M E N T

The award dated 23.01.2012 passed in M.C.O.P.No.111 of 2010, is under challenge in the present civil miscellaneous appeal. The claimant is the appellant and the appeal is filed seeking enhancement of compensation.

2. The claimant who suffered injuries in the road accident filed the above claim petition for compensation on the ground that the accident had taken place due to the rash and



negligent driving of the driver of the first respondent vehicle which is insured with the second respondent Insurance Company.

3. The tribunal has accepted the case of the petitioner and awarded compensation of Rs.92,041/-.

4. The factum of the accident and the manner of the accident and negligence on the part of the driver of the first respondent vehicle which is insured with the second respondent are not under challenge and hence, the finding rendered in this regard by the Motor Accident Claims Tribunal are hereby confirmed.

5. Heard, the learned counsel for the appellant and the learned counsel for the second respondent.

6. On the point of quantum, P.W.2 Doctor-V.Muthu had issued Ex.P.11 disability certificate, fixing the disability as 40%. On perusal of Ex.P8 discharge certificate, it is seen that even before the accident, the claim petitioner was affected with polio. In the accident his thigh bone was broken into three pieces which resulted in compound fracture and he was on physiotherapy for six months and the angular rotation of the right leg was restricted by 10% and further, the muscle has also lost its strength. Accordingly, P.W.2 Doctor fixed the permanent disability as 40%.

7. The Tribunal has awarded a sum of Rs.42,000/- for 28% of disability by fixing a sum of Rs.1,500/- per percentage of disability. Taking into consideration the evidence of P.W.2 and the previous medical history of the claim petitioner, I am of the considered opinion that the disability would be fixed as 35% and he was treated as in-patient and took treatment for 69 days. Thereafter, he could not able to attend his regular work for three months and hence, the compensation is re-assessed as under:-

8.Disability :-

The tribunal has awarded a sum of Rs.42,000/- towards disability. The said sum is enhanced to Rs.52,500/- (1500 x 35%).

9.Pain and sufferings:-

The tribunal has awarded a sum of Rs.10,000/- towards pain and sufferings. The said sum is enhanced to Rs.30,000/-.

10.Attendant Charges (70 days in the hospital) :

The tribunal has awarded a sum of Rs.5,500/- (500x11) towards attendant charges. The said sum is enhanced to Rs.15,000/-.



11.Loss of Income for three months:-

Ex.P9 is the Salary Certificate and Ex.P10 is certificate of leave on medical grounds. No amount has been awarded towards loss of income by the Tribunal and therefore, a sum of Rs.2,40,000/- (80,000/-x3) is awarded towards loss of income for three months.

12.Loss of Amenities:

No amount has been awarded towards loss of amenities by the Tribunal and therefore, a sum of Rs.10,000/- is awarded towards loss of amenities.

13.Nutrition and Extra Nourishment:

The tribunal has awarded a sum of Rs.10,000/- towards transportation and extra nourishment and the same is confirmed.

14.Medical Bill:

The tribunal has awarded a sum of Rs.24,541/- towards medical bill. The said sum is enhanced to Rs.35,000/- as per Ex.P.3.

15. Hence, award amount of a sum of Rs.92,041/- as ordered by the tribunal stands enhanced to Rs.3,92,500/-.

16. Consequently, the total compensation amount of Rs.92,041/- awarded by the Tribunal is hereby modified and enhanced to Rs.3,92,500/-. The second respondent / Oriental Insurance Company Limited is directed to deposit the modified award amount of Rs.3,92,500/- along with the interest, within a period of four weeks, from the date of receipt of copy of the judgment and on such deposit, the appellant-claimant is permitted to withdraw the entire award amount by filing an appropriate application and the payments are to be made through RTGS. Thus, the award dated 23.01.2012, passed in M.C.O.P.No.111/2010, stands modified and C.M.A.No.569/2015 stands allowed in part.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AT



To

The Motor Accident Claims Tribunal
Principal Sub-Ordinate Judge,
Mayiladuthurai.

Copy to:

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.Elveera Ravindran, Advocate, S.R.No.16941

+1cc to Mr.A.Muthukumar, Advocate, S.R.No.16864

Pre-delivery Order in
C.M.A.No.569 of 2015

VG-II (CO)
SU (28/10/2021)