



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.2732 of 2021

S.Devaraj

...Appellant/Claimant

Vs.

1.C.Saravanan

2.The New India Assurance Company Ltd.,
Motor Third Party Claims Hub,
No.233, Bombay Mutual Building, 6th Floor,
N.S.C.Bose Road,
Chennai - 600 001.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 10.11.2020 made in MCOP.No.5978 of 2017 on the file of the Motor Accident Claims Tribunal, (Small Causes Court, Special Sub-Court No.2), Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mrs.S.R.Sumathy for R2

J U D G M E N T

The injured claimant, seeks enhancement of the compensation awarded to him at Rs.4,10,596/- for the injuries suffered by him in a road accident that occurred on 04.09.2017.

2.According to the claimant, as a result of the accident, he has suffered multiple injuries and fractures, which had a great impact on his earning capacity. It was also contended that the claimant had spent huge amount towards medical expenses and therefore, sought for a compensation of Rs.20,00,000/-. The Insurance Company resisted the claim contending that the accident occurred due to the negligence of the claimant and the



vehicle that was insured with the respondent Insurance Company was not involved in the accident.

3.The Tribunal however, rejected the claim of the Insurance Company on the factum of the accident and upheld the contention of the appellant / Claimant. The Insurance Company has accepted the finding and has paid the compensation as fixed by the Tribunal. Hence, the claimant is on appeal, seeking enhancement.

4.Mr.K.Varadha Kamaraj, learned counsel appearing for the Appellant would vehemently contend that considering the nature of the injuries, the Tribunal was not right in awarding only a sum of Rs.50,000/- towards permanent disability. He would submit that the Tribunal must have adopted the multiplier method and awarded just compensation.

5.Contending contra, Mrs.S.R.Sumathy, learned counsel appearing for the Insurance Company would submit that the award is very reasonable and it does not require interference at the hands of this court. She would also point out that the disability caused is only amputation of 4th toe in the left leg and certain crush injuries in the 2nd and 3rd toes, apart from the certain other minor injuries mentioned by the Doctor. The Medical Board has assessed the disability at 10%. The Tribunal has examined the reason for the assessed disability and has held that the claimant has not suffered any functional disability due to the accident and therefore, he would be entitled only to a lumpsum compensation at Rs.5,000/- per percentage. On that conclusion, the Tribunal awarded a sum of Rs.50,000/- towards disability. The Tribunal has also awarded the following amount under the heads as compensation:-

Heads	Amounts
Pain and Suffering	Rs.10,000/-
Transport Expenses	Rs.5,000/-
Extra Nourishment	Rs.10,000/-
Damages to Clothes and Articles	Rs.2,000/-
Loss of Amenities	Rs.10,000/-
Cost of Assistance	Rs.5,000/-
Mental agony for the family members	Rs.5,000/-
Loss of Income	Rs.30,000/-
Medial Expenses	Rs.2,83,596/-



6.Mr.K.Varadha Kamaraj, learned counsel appearing for the Appellant would vehemently contend that the Tribunal was not right in adopting percentage method instead of multiplier method to assess the compensation for disability. He would also contend that the Tribunal should have granted more amount towards transportation and attender charges. He would also point out that the award of Rs.10,000/- towards loss of amenities is too low. Contending contra, Mrs.S.R.Sumathy, learned counsel appearing for the respondent Insurance Company would submit that the award on the whole is just and reasonable and it is not warrant interference at the hands of this case. I have considered the rival submissions of the learned counsel.

7.From the injuries sustained by the claimant namely, amputation of the 4th toe and deformity in the 2nd and 3rd toes of the leg, it is clear that there cannot be any impact on his earning capacity because of the injuries. In the absence of loss of earning capacity, the Tribunal cannot be faulted for fixing the compensation on the percentage basis instead of adopting multiplier method. Therefore, I do not see any error in the award of the Tribunal for disability. The Tribunal has awarded Rs.10,000/- for pain and suffering. Considering the fact that the petitioner had undergone surgery and he has lost one of his left toes, the award of pain and suffering at Rs.10,000/- appears to be too low and the same is enhanced to Rs.25,000/-. The Tribunal has awarded a sum of Rs.10,000/- towards loss of amenities. Considering the nature of the injury and the disfigurement that was caused, I am of the opinion that the same could be enhanced to Rs.20,000/- instead of Rs.10,000/-. The award under the other heads are confirmed.

8.In fine, this civil miscellaneous appeal is partly allowed, the award is enhanced to Rs.4,35,596/-. The Insurance Company shall deposit the enhanced compensation with interest at 7.5% from the date of petition till date of deposit within a period of six weeks from today. On such deposit, the claimant is permitted to withdraw the same. Parties to bear their own costs in the appeal.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR



WEB COPY

To:-

The Motor Accidents Claims Tribunal,
Small Causes Court, Sub-Court No.2,
Chennai.

Copy to

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

+lcc to Mr.K.Varadha Kamaraj, Advocate Sr.1705

CMA.No.2732 of 2021

nmI[co]
srg 17/02/2022