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CMA.No.2202 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

CMA.No.2202 of 2022

Johnson

Appellant

Vs

1. Elumalai

2. The Divisional Manager, The National Insurance
Company Limited, Vellore

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 05.10.2021, made in MCOP.No.194 of 2017, by the Special Sub Judge (MACT) Tiruvannamalai.

For Appellant : Mr.F.Terry Chella Raja

For Respondents : Mr.C.Johnson-R2

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the claimant, challenging the quantum of compensation, awarded by the judgement and decree, dated, 05.10.2021, made in MCOP.No.194 of 2017, by the Special Sub Judge (MACT) Tiruvannamalai.
2. The claimant has filed the claim petition before the Tribunal, seeking a compensation of Rs.5,00,000/- on various heads, for the injuries sustained by him, in a motor road accident, which took place on 31.08.2016. The 1st Respondent herein/owner of the offending vehicle remained exparte. The claim petition was resisted, on various grounds, by the 2nd Respondent/



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Insurance Company, by filing a counter. On the side of the claimant, PW.1 was examined and Ex.P1 to Ex.P8 were marked. Ex.C1 was marked.

3. Finding that the accident had occurred only due to the rash and negligent driving of the driver of the offending vehicle belonged to the 1st Respondent, the Tribunal has awarded a total compensation of Rs.2,23,100/-, on various heads, with interest at 7.5% p.a. from the date of the claim petition till the date of realization, to be payable by the 2nd Respondent Insurance Company, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Disability (25%)	125000
2	Pain and Suffering	25000
3	Extra Nourishment	10000
4	Medical Expenses	18100
5	Attendants Charges	5000
6	Loss of Income During The Period Of Treatment	15000
7	Transportation Expenses	5000
8	Loss of Amenities	20000
Total Compensation		223100

Aggrieved by the quantum of compensation, this appeal has been filed by the claimant.

4. This Court heard the learned counsel for the Appellant and the contesting Respondent, considered their submissions and also perused the entire materials placed on record.
5. Since there is no quarrel over the manner, in which the accident had occurred, negligence aspect and the liability aspect as well and the dispute is only with regard to the quantum of compensation, the findings of the Tribunal with respect to the manner of the accident, negligence aspect and liability aspect are confirmed and also it is not necessary to narrate the entire facts in



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detail in respect of the accident.

6. According to the learned counsel for the Appellant, the accident had occurred in the year 2016 and at the time of the accident, the claimant was aged 35 years old and he was earning a sum of Rs.15,000/- p.m. as a building Contractor and as per the medical records, the committed sustained fracture of right lower end of radius malunited with fracture right mandible and for such injuries, the permanent disability was assessed at 25%, however, the Tribunal has arrived at the compensation based on percentage method, instead of adopting multiplier method and hence, the impugned compensation is to be redetermined and enhanced.
7. The learned counsel for the 2nd Respondent Insurance Company would submit that the claimant is working as a Mason and he is earning a sum of Rs.1,000/- per day and that considering the nature of injuries, the claimant was assessed to 25% disability, for which the Tribunal has awarded a fair compensation, which need not be interfered with.
8. This Court, by order dated 19.01.2024 had directed the injured claimant to appear before this Court today in order to find out the disability sustained by him and accordingly, he has appeared before this Court today. On interaction with the claimant, he has stated that he is working as a building Contractor and he is doing his avocation as he was doing before and earning a sum of Rs.1,000/- per day and he is facing some difficulties, while walking and moving. On seeing the claimant, it is seen that there is certain disability in movement of the ankle. Except this, he appears to be normal. Considering



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this aspect, the Tribunal has rightly arrived at the permanent disability at 25% and awarded a sum of Rs.5000/- per percentage, which is just and reasonable and hence, it need not be interfered with, considering the disability suffered by the claimant or there is no need to apply the multiplier method, as contended by the learned counsel for the Appellant.

9. In so far as the compensation under the head of loss of income during the period of treatment is concerned, the Tribunal has awarded a sum of Rs.15,000/- for two months (Rs.7500x2). In this regard, this Court feel that due to the injuries sustained by him, he would not have gone for his work for at least not less than six months. Hence, a lump sum amount of Rs.50,000/- is awarded towards loss of income during the period of treatment.

10. Further, this Court is of the view that the compensation amounts awarded under the other heads are just and reasonable and hence, they are confirmed. In all, the claimant is entitled to a total compensation of Rs.2,58,100/-, (Rupees two lakhs fifty eight thousand one hundred only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation.

11. In fine, this Civil Miscellaneous Appeal is partly allowed. In all, the claimant is entitled to a total compensation of Rs.2,58,100/-, (Rupees two lakhs fifty eight thousand one hundred only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation, as redetermined below:-



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S.No	Category	Award Amount (Rs.)
1	Disability (25%)	125000
2	Pain and Suffering	25000
3	Extra Nourishment	10000
4	Medical Expenses	18100
5	Attendants Charges	5000
6	Loss of Income During The Period Of Treatment	50000
7	Transportation Expenses	5000
8	Loss of Amenities	20000
Total Compensation		258100

The claimant shall pay proper court fee for the enhanced compensation amount. The 2nd Respondent / Insurance Company is directed to deposit the entire award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit, after deducting the amount, if any already, deposited, within a period of six weeks from the date of receipt of a copy of this order and also the interest for the delay in filing the appeal if any for the enhanced compensation, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer, by way of RTGS, the entire compensation amount, with interest due, directly to the bank account of the claimant, within a period of three weeks thereafter. No costs.

12.02.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm

To

1. The Special Sub Judge (MACT) Tiruvannamalai
2. The Record Keeper, VR Section, High Court, Madras



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KRISHNAN RAMASAMY, J.

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