

(2008) 01 MAD CK 0115

In the Madras High Court

Case No : C.M.A. (MD) No. 1629 of 2007 and M.P. (MD) No. 1 of 2007

The Oriental Insurance Company Ltd.

APPELLANT

Vs

R. Rajakumar and Others

RESPONDENT

Date of Decision : 03-01-2008

Acts Referred:

Citation : (2008) 01 MAD CK 0115

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : K. Baskaran, for the Appellant; No appearance, for the Respondent

Judgement

G. Rajasuria, J.—This appeal is focussed as against the judgment and decree dated 26.12.2005, passed in M.C.O.P. No. 222 of 2002, on

the file of the Motor Accidents Claims Tribunal II Additional Sub Court, Nagercoil.

2. Heard the learned Counsel for the appellant. Despite printing the name of the respondents no one appeared.

3. The challenge in this Civil Miscellaneous Appeal is relating to the quantum of compensation awarded by the Tribunal, vide judgment dated

26.12.2005, to a tune of Rs. 1,92,100/- (Rupees One Lakh Ninety Two Thousand and One Hundred only) on the following sub-heads:

(i) For Loss of Earning capacity - Rs. 20,000.00

(ii) For Transportation Expenses - Rs. 1,000.00

(iii) For Nutritious Food - Rs. 20,000.00

(iv) For Loss of Cloths - Rs. 1,000.00

(v) For Medical Expenses - Rs. 70,100.00

(vi) For Pain and sufferings - Rs. 20,000.00

(vii) For permanent disability - Rs. 40,000.00

(vii) For Loss of Income - Rs. 20,000.00

Total - Rs. 1,92,100.00

4. The pith and marrow of the grounds of appeal as stood exposted from the memorandum of appeal would run thus:

For one fracture sustained by the claimant in his right leg, the Tribunal assessed the permanent disability at 40% without any rhyme or reason. The compensation under various sub-heads are also on the higher side.

5. The point for consideration is as to whether the Tribunal awarded "just compensation"?

6. During trial, on the side of the claimants P.W.1 to P.W.2 were examined and Exs.P.1 to P.9 were marked and there was no oral or

documentary evidence adduced on the side of the respondents.

7. Point: The learned Counsel for the appellant/insurance company would submit that the Tribunal simply assessed the permanent disability at 40%

even though there is no clinching evidence in that regard. The perusal of the records would reveal that the medical evidence was adduced by

examining P.W.2 the Doctor, who would narrate that the petitioner sustained 40% permanent disability in view of the mal-united fracture in his

right leg. I am of the considered opinion that there is considerable force in the submissions made by the learned Counsel for the appellant as there

is no basis for assessing the permanent disability at 40% relating to the mal-united of fracture in the right leg of the claimants. The Workmen

Compensation Act under Schedule I, Part II, Serial No. 21 contemplates only 50% permanent disability for the amputation below knee, but here

only for mal-united fracture on the right leg the permanent disability was assessed at 40%. Hence, assessing the permanent disability at 30% would

meet the ends of justice. Taking into consideration the fact that the sustained injury at the age of 25, awarding at the rate of Rs. 2,000/- for each

percent of permanent disability would be appropriate. If accordingly worked out for 30% permanent disability the compensation comes to

Rs.60,000/- (Rupees Sixty Thousand only).

8. Towards Medical Expenses the Tribunal awarded a sum of Rs.70,100/- based on documents, relating to which the appellant has not highlighted anything so as to disagree with the Tribunal, accordingly the award of Rs.70,100/- towards medical expenses could be confirmed. The Tribunal awarded a sum of Rs.1,000/- towards Transport Expenses which could be confirmed. Towards damages to clothes Rs.1,000/- was awarded which could be deleted as it is not based on any sound reasoning. Towards pain and sufferings a sum of Rs.15,000/- could be awarded taking into account the seriousness of the injury. Towards taking nutritious food a fabulous sum of Rs. 20,000/- was awarded, which by no stretch of imagination to be taken as reasonable. Hence, the said sum is reduced to Rs. 3,000/- (Rupees Three Thousand only). Towards loss of income a sum of Rs.20,000/- was awarded and towards loss of earning capacity a sum of Rs. 20,000/- was awarded which are not tenable in view of the decision of the Full Bench of this Court in Cholan Roadways Corporation Ltd. Vs. Ahmed Thambi and Others, . However as the claimant was Tailor by profession and he might not have been able to carry on with his job for about 3 to 4 months. Hence, a sum of Rs.10,000/- (Rupees Ten Thousand only) could be awarded under that sub-head. As such the compensation awarded is modified as under:

(i) For Loss of Income during

Treatment Period and

convalescent period - Rs. 10,000.00

(ii) For Transportation Expenses - Rs. 1,000.00

(iii) For Nutritious Food - Rs. 3,000.00

(iv) For Medical Expenses - Rs. 70,100.00

(v) For Pain and sufferings - Rs. 15,000.00

(vi) For permanent disability - Rs. 60,000.00

Total - Rs. 1,59,100.00

9. The learned Counsel for the appellant would convincingly argue that the interest awarded was at 12% p.a., but it should only be at 7.5% p.a. in

commensurate with the decisions of the Hon"ble Apex Court in Tamil Nadu State Transport Corporation Ltd. v. S. Rajapriya and Ors. reported in

2005 (2) TAC 297 SC and in New India Assurance Co. Ltd. v. Charlie and Anr. reported in 2006 (1) TAC 1 (SC). Hence, the interest awarded

is reduced to 7.5% p.a. instead of 12% p.a.

10. In the result, this appeal is partly allowed and the compensation awarded by the Tribunal is reduced from Rs.1,92,100/-(Rupees One Lakh

Ninety Two Thousand and One Hundred only) to Rs.1,59,100/- (Rupees One Lakh Fiftynine Thousand and One Hundred only). The rate of the

interest awarded by the Tribunal at 9% p.a. is reduced to 7.5% p.a. In other aspects the award shall hold good. Consequently, connected M.P.

(MD) No. 1 of 2007 is closed. No costs.