

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2015

CORAM

THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

C.M.A.No.104 of 2000

S.Nagarajan

.. Appellant/Petitioner

Vs.

1.R.Dharmalingam
Sevanthanpalayam Village,
A Rasanatham Post,
Namakkal Taluk, Salem District.
(Was set exparte in the trial Court)

2.The United India Insurance
Company Limited,
Motor Third Party Claims Cell,
No.38, Anna Salai,
Chennai - 600 002.

.. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act-1988 against the judgment and decree dated 19.04.1999 made in MACT OP No.3922 of 1996 on the file of the V Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

For Appellant : Mr.M.Swamikkannu
M/s.S.Rathinamani

For Respondents : Mr.R.Ravichandran for R2
R-1 Notice Dispensed with.

JUDGMENT

The claimant-injured is the appellant before this Court for enhancement of compensation of Rs.79,500/- against the total claim of Rs.3 Lakhs. The petitioner was, on the date of the accident on 18.10.1996, aged about 40 years and was vegetable vendor using tricycle. The petitioner met with an accident, involving the vehicle belonging to the 1st respondent and insured with the second respondent-United India Insurance Company and he sustained severe injuries in both the legs and multiple internal and external injuries all over the body, besides fracture in rib bones and right fore-arm and was admitted as inpatient in Government KMC Hospital, Madras and was treated for the fracture and injuries between 18.10.1996 and 21.10.1996 as inpatient and

thereafter as outpatient. P.W.2, Ortho Specialist, in his witness box, deposed that he was treated for head injury, brain contusion and for his right fore-arm fracture and the fracture was not mal-united. As a result, he experienced severe pain while breathing and he was not able to lift his right hand and he lost his strength and grip in the right hand and the wrist movements are also restricted. P.W.2, accordingly, assessed the disability at 70%. The Tribunal though accepted his plea, that he was carrying on brokerage business, awarded Rs.2,5000/- as compensation for loss of income during treatment period. According to the petitioner/claimant, the Tribunal failed to determine the loss of future earning by applying multiplier method and awarded Rs.65,000/- at Rs.1,000/- per degree of disability, which is too low and inadequate and it is not in accordance with law. It is also argued before this Court that the compensation awarded under the other heads is not in proportion to the loss and sufferings undergone by the petitioner/claimant.

2. Per contra, the learned Standing Counsel appearing for the second respondent-Insurance Company would defend the quantum of compensation by drawing the attention of this Court to the nature of avocation of the claimant and probable monthly income that should have been earned by him. There is no dispute that the claimant was doing vegetable business by using tricycle during the relevant point of time. However, the Tribunal failed to fix any amount as monthly income of the claimant from the source mentioned.

3. As rightly argued by the learned counsel for the claimant, the Tribunal ought to have fixed his monthly income and ought to have further decided as to whether, the multiplier method could have been applied or not. While doing so, the Tribunal ought to have taken into consideration the income of Rs.1,000/- as derived by the petitioner by brokerage business. The failure to adopt such course, in my considered view, is not proper and suffer from infirmity and the determination of the compensation hence, cannot be allowed to sustain. This Court, considering the age, nature of avocation, probable monthly income derived by the petitioner currently, the nature and degree of disability and impact of the same, on the nature of his avocation and other fractures, is inclined to modify the award as follows:

Loss of income during Treatment period	-	Rs.	5,000/-
Transport to hospital and extra Nourishment	-	Rs.	5,000/-
Medical Expenses	-	Rs.	5,000/-
pain and sufferings	-	Rs.	15,000/-
Loss of earning by applying multiplier method	-	Rs.	1,10,000/-
Loss of amenities	-	Rs.	10,000/-

		Rs.	1,50,000/-

The enhanced amount is payable with interest at 7.5% p.a. from the date of petition till the date of deposit.

4. In the result, the compensation of Rs.79,500/- is enhanced to Rs.1,50,000/- payable with interest at 7.5% p.a from the date of petition till the date of deposit and the 2nd respondent/Insurance Company is directed to deposit the entire balance award amount within a period of eight weeks from the date of receipt of copy of this judgment and on such deposit of the amount into Court, the petitioner/claimant is permitted to withdraw the entire amount with interest and costs, on due cheque petition and the Civil Miscellaneous Appeal is accordingly allowed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

- 1.The Motor Accidents Claims Tribunal
(V Judge, Small Causes Court), Chennai.
- 2.The Section Officer, High court Madras
copyto:The Section Officer, High Court, Madras
+1 cc to Mr.M.Swamikkannu Advocate sr.46576
+1 cc to Mr.R.Ravichandran Advocate sr.46921

C.M.A.No.104 of 2000

aa15/10/2015